

**[EASEMENT-TYPE COVENANT TEMPLATE -
FOR USE WHERE TITLE TO PROPERTY IS NOT TRANSFERRED]**

01/17/14

**To be recorded with
Deed – ORC §317.08**

**ENVIRONMENTAL COVENANT
Ohio Water Pollution Control Loan Fund
Water Resource Restoration Sponsor Program
XXXXXXXXXXXX Watershed
WPCLF WR39xxxx-xxxx
[insert unique property name here]
XXXXXXXXXXXX Project**

This Environmental Covenant (“Covenant”) is entered into by [*Name of Owner*], an [*Owner’s status: e.g., City = ‘Ohio municipal corporation’, or park district = ‘Ohio body politic and corporate’, or individual = “individual”*] (“Owner”), and the State of Ohio Environmental Protection Agency, including its successor agencies (“Ohio EPA”), a non-holding party, pursuant to Ohio Revised Code (“R.C.”) §5301.80 to §5301.92, for the purpose of restoring, maintaining and protecting, in perpetuity, the Conservation Values identified herein by subjecting the property described below to the activity and use limitations set forth herein. For the purposes of this Covenant, the Owner, the Holder, if any, and Ohio EPA shall be known collectively as the “Parties.” This Covenant concerns the Property described in Section 2. below.

Ohio EPA, through its Water Pollution Control Loan Fund (“Fund”) and the Fund’s Water Resource Restoration Sponsor Program (“Program”), offers financial assistance pursuant to R.C. §6111.036 for the restoration or protection, or both, and maintenance of Ohio’s aquatic ecosystem resources. The Ohio EPA has awarded financial assistance to [*Name of Borrower of WPCLF sponsor loan (this is NOT the WRRSP Implementer)*] (“Loan Recipient”) for the implementation of the environmental response project as approved by the Ohio EPA (referred to herein as the “Project”) that is the basis for this Covenant as set forth in R.C. §5301.80(E)(3). As part of the Project, the Loan Recipient will cause the restoration, or protection, or both, and the maintenance, of the aquatic ecosystem resources associated with the Property.

As a condition of Ohio EPA’s award of financial assistance from the Fund for the Project, Ohio EPA, the Loan Recipient, and the Owner have agreed to legally restrict the activities that will be conducted upon, and uses that will be made of, the Property in order to prevent direct and indirect adverse impacts to surface and ground waters, and to the Conservation Values associated with the Property.

All persons shall take notice that if the Loan Recipient or any party acting on behalf of or at the behest of the Loan Recipient violates this Covenant, the violation will be considered a default on the part of the Loan Recipient under the terms of the Fund’s agreement for financial assistance for the implementation of the Project, entered into by

Ohio EPA and the Loan Recipient.

Now therefore, the Owner and the Holder(s), if any, and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. §5301.80 to §5301.92.
2. Property. This Covenant concerns an approximately **XX.XXXX** acre tract of real property (the "Property"), owned by [name of current property owner] located in [number + street, name of township or city, and county, where WRRSP property is located], and more particularly described in Exhibit A attached to this Covenant and incorporated by reference (the "Property").
3. Owner. [name of Owner under the Covenant] of [number + street, city/township, county, state] where Owner resides] is the Owner of the Property. All references to "Owner" in this Covenant shall include a reference to all owners of the Property executing this Covenant, jointly and severally, if there is more than one owner, and all assigns and successors in interest of the present owner(s), including any Transferee. The term "Transferee," as used in this 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.
4. Ohio EPA. References to "Ohio EPA" include the Ohio Environmental Protection Agency and any successor agency.
5. Holder. [Name of Holder], of [number + street, city/township, county, state] where Holder resides] is a Holder of this Covenant ("Holder"). All references to "Holder" in this Covenant shall include a reference to all present and future holders under this Covenant, jointly and severally, if there is more than one holder. Holders may be added in accordance with the section of this Covenant entitled "Amendment of the Covenant or the Plan."
6. Conservation Values. The Parties recognize the value of the Property as an aquatic ecosystem resource, as well as a scenic, natural, and aesthetic resource. The Property in its current state contributes to the physical, biological, and chemical integrity of water resources in the [name of watershed where Property is located] watershed. The restoration, preservation, and maintenance of the Property as an aquatic ecosystem resource is a part of the attainment and maintenance of the aquatic life uses of the waters of the State of Ohio pursuant to §303 of the Clean Water Act, 33 U.S.C. §1313 and §6111.041 of the Ohio Revised Code. The Parties hereby agree that effective perpetual protection and maintenance of the Property and of any environmental improvements to the Property made as part of the Project or thereafter, are essential to preserve the Conservation Values of the Property. The Owner and Holder further agree to use their best efforts to identify and prevent from occurring reasonably foreseeable actions that may be detrimental to the accomplishment of the purposes of this Covenant and the Plan.

7. Natural Condition. As used herein, “aquatic ecosystem resource,” and “scenic, natural, and aesthetic values” shall mean, without limiting the generality of the terms, a condition that is no less natural than the condition of the Property at the time of the execution of this Covenant, and no less natural than any improved environmental conditions that may be attained subsequently. For the purposes of this Covenant, “natural” means that native plants and animals are permitted to carry out their life cycles without adverse direct or indirect human interference, or neglect of the purposes of this Covenant.

8. Restoration and Protection Plan. The above Conservation Values and other conservation values of the Property have been identified and included in the Property’s final Restoration and Protection Plan as approved by Ohio EPA (“Plan”). The Plan is hereby incorporated by reference into this Covenant, and without limitation is intended to serve as a supplement to the purposes of this Covenant, and further defines the commitments of the Owner and Holder for future management of the Property. The Owner and Holder represent that this Plan accurately describes the Property at the time of the execution of this Covenant.

No provision of the Plan shall supersede the purposes or terms of the Covenant. If there is a conflict between the language in the Plan and the language in the Covenant, the language of the Covenant shall govern.

Copies of the Plan may be viewed at the headquarters offices of the Ohio EPA’s Division of Environmental and Financial Assistance, currently at 50 West Town Street, Columbus, Franklin County, Ohio, or its successor division.

9. Activity and Use Limitations. The Owner covenants on behalf of the Owner and the Owner’s heirs, successors and assigns, with the Holder, its successors and assigns, and with the Ohio EPA, to refrain from severally and collectively, any activity on, or use of, the Property which is inconsistent with the purposes of this Covenant or detrimental to the Conservation Values expressed herein. Such activity or use is expressly prohibited. By way of example and without limitation, the Owner hereby imposes upon the Property, and the Owner and Holder agree to comply with the following limitations of activity and use of the Property:

- a. **Conservation**. Restoration, maintenance, and protection of the Conservation Values of the Property shall be carried out and maintained in accordance with the conservation activities as defined in the Plan and this Covenant.
- b. **Natural Area**. The Property shall be maintained in perpetuity as a natural area. The Property shall be managed to accomplish the purposes of this Covenant. If there may be occasion when the management of the Property for a purpose other than those of the Covenant conflicts with the management of the Property for the purposes of the Covenant, the management of the Property for the purposes of the Covenant shall be superior to the

management of the Property for any other purpose or use, and the management for the other purpose shall therefore be modified to eliminate conflict, or terminated, in favor of management for the purposes of the Covenant.

In order to maintain the ecological balance of the Property or to protect human health and safety, hunting and trapping may be permitted by the Owner in consultation with the Ohio Department of Natural Resources, Division of Wildlife and in accordance with State regulations.

- c. **Division.** The Property may not be voluntarily divided, partitioned, subdivided, or conveyed except in its current configuration; i.e., the Property must be conveyed in its entirety.
- d. **Uses of Land.** There shall be no agricultural, industrial, commercial, or residential activity on the Property.
- e. **Structures.** No buildings or other structures, including but not limited to, billboards or advertising of any kind, camping accommodations, and mobile homes shall be erected or placed on the Property.
- f. **Resource Extraction.** Owner shall grant no new rights for mining, drilling, exploring for or removal of, water, minerals, oil, gas, or other substances from the Property. There shall be no mining, drilling, exploring for or removal of, water, minerals, oil, gas, or other substances from the Property [except as identified and described in Exhibit B (*Delete this phrase from the covenant if there are no easements or other property rights that are presently in effect identified in Exhibit B.*)].
- g. **Earth Moving and Land Surface Alteration.** [Except as may be necessary to implement the restoration of the Property as defined by the scope of work to be performed under the Project, (*If no restoration of the Property that requires earth moving or land surface alteration is approved as part of the immediate Project, delete this phrase from the Covenant.*)], there shall be no ditching, draining, diking, filling, excavating, or removal or disturbance of topsoil, sand, gravel, rock, or other materials.
- h. **Drainage Alterations.** [Except as necessary to implement the Project,] there shall be no manipulation or alteration of wetlands, creeks, streams, surface or subsurface springs or other bodies of water, or any activities on, or uses of, the Property that may be detrimental to the aquatic or terrestrial ecosystems of the Property. There shall be no activity that disturbs water bodies, riparian zones, or drainage ways without prior approval of Ohio EPA, consistent with the purposes of this Covenant.

[The bracketed phrases in f., g., and h. above will be deleted from a

Covenant unless the Project has been determined by Ohio EPA to include them as immediate activities or terms for the specific Property.]

- i. **Roads.** [Except as may be necessary for environmental restoration as a part of the Project, or as established in the Encumbrances identified in Exhibit B of this Covenant,] *(If the restoration of the Property requires the immediate construction of roads as part of the approved Project, or if the encumbrances identified in Exhibit B allow the construction of roads, include this phrase. If there is no restoration requiring the immediate construction of roads, or if there are no encumbrances currently in effect authorizing the construction of roads, then delete this phrase from the Covenant.)* there shall be no building of new roads or other rights of way. Existing roads may be maintained, but shall not be widened or improved. The Owner shall propose no road construction without first submitting a plan for the construction to Ohio EPA and receiving prior approval from Ohio EPA.
- j. **Trails.** Limited development of foot trails (including boardwalks) for hiking, photography, or nature observation may be permitted upon the condition that their construction and use shall produce minimum levels of disturbance to the environment, and that their construction and use shall not be detrimental to the Conservation Values of this Covenant. The Owner shall construct no trail without first submitting a plan for the proposed construction and maintenance of the trail to Ohio EPA, and receiving prior approval from Ohio EPA.
- k. **Vehicles.** There shall be no operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any recreational motorized vehicles on the Property, except: (i) law enforcement vehicles, (ii) emergency vehicles, (iii) equipment of Owner or Holder used by Owner or Holder, or of an agent or contractor of Owner or Holder, used for the purpose of maintaining the Property or in connection with activities conforming to the terms of the Covenant that are permitted by the Plan, and (iv) as otherwise may be provided in Exhibit B of this Covenant.
- l. **Dumping.** There shall be no dumping of trash, garbage, or hazardous or toxic substances on the Property. All trash or nonconforming material that is dumped or placed on the Property shall be removed from the Property by the Owner and the Holder within thirty (30) days of its discovery.
- m. **Plants and Animals.** There shall be no purposeful introduction of domestic livestock or non-native plants or animals. Non-native, non-invasive cover crops may be planted temporarily to control erosion and assist in the establishment and restoration of permanent native habitats. There shall be no feedlots permitted on the Property. No plants or animals shall be removed from the Property except as permitted by the Owner, or the Holder, this Covenant, and State law.

- n. **Vegetation Controls.** Except for those actions that are necessary for environmental preservation, management or restoration purposes, for the protection of human health and safety, or for the maintenance of a diversity of naturally occurring habitat types and control of exotic species of plants, there shall be no removal, destruction, cutting, trimming, or mowing of any trees or other vegetation.
 - o. **Chemical Control of Invasive Species.** Except as may be necessary for environmental preservation, management, or restoration purposes, for the protection of human health and safety, or for the prevention of the spread of a nonnative species, there shall be no use of fertilizers, insecticides, fungicides, or rodenticides. Herbicides may be used for the control of state-designated noxious weeds and for the control of other invasive exotic plant species consistent with best ecosystem management practices and government regulations.
 - p. **Other Interests in Property.** No new power lines, transmission lines, utility lines, nor communications towers may be constructed on the Property, nor shall any easements or other interests in the Property be granted for this purpose.
10. Running with the Land. This 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 R.C. §5301.85(A) or any other applicable provision of law.
11. Violation And Corrective Action.
- a. **Notice and Cure.** If the Ohio EPA determines that a violation of the terms of this Covenant has occurred or is threatened, the Ohio EPA shall provide written notice of such violation to the Owner and Holder, and shall request corrective action sufficient to cure the violation. Where the violation involves injury to the Conservation Values of the Property resulting from use, activity, or neglect that is inconsistent with this Covenant, upon request by the Ohio EPA, the Owner and Holder will restore the portion of the Property so injured to its prior condition in accordance with a plan approved in advance in writing by the Ohio EPA.
 - b. **Injunctive Relief.** If the Owner and Holder fail to cure the violation within thirty (30) days after receipt of notice thereof from the Ohio EPA, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Ohio EPA may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* if necessary, by temporary or permanent injunction, and to require the restoration of the Property in the condition that existed prior to any such injury.

c. **Emergency Enforcement.** If the Ohio EPA determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Ohio EPA may pursue its remedies under this section without prior notice to the Owner and Holder or without waiting for the period provided for cure to expire.

Except as provided in the Section of this Covenant entitled "Ohio EPA's Rights and Remedies," each Party shall bear its own costs incurred in enforcing the terms of this Covenant, including, without limitation, costs and expenses of suit and attorney's fees. Costs of environmental restoration necessitated by the Owner's violation, or the Holder's violation, of the terms of this Covenant shall be borne by the Owner or the Holder, respectively.

12. Compliance Enforcement. Compliance with this Covenant may be enforced pursuant to R.C. §5301.91 or any other applicable provision of law. Failure to timely enforce compliance with this Covenant or the use limitations contained herein by any person to whom relief for violation of the Covenant is available shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict the Ohio EPA from exercising any other authority or remedy under applicable law.

All costs incurred by the Ohio EPA and/or any Holder other than the Owner in enforcing the terms of this Covenant against the Owner, including, without limitation, costs and expenses of suit and attorney's fees, and any costs of environmental restoration necessitated by the Owner's violation of the terms of this Covenant shall be borne by the Owner.

13. Rights of Access. Owner hereby grants to Ohio EPA and to the Holder, their agents, contractors, and employees, the right of access to the Property for implementation or enforcement of this Covenant, including inspection of the Property or the Project.

14. Right to Post Signs. Ohio EPA shall have the right to post one or more signs on the Property that indicate that the Property's acquisition has been financed by Ohio EPA and the Program. The Holder and the Owner agree to notify the Ohio EPA if a sign is damaged or removed.

15. Compliance Reporting. Beginning with a submittal one year and thirty days after execution of this Covenant, the Holder and Owner shall annually submit to Ohio EPA written documentation describing the status of the Conservation Values which are the subject of this Covenant or the Plan, and verifying the extent to which the activity and use limitations remain in place and are being complied with in accordance with this Covenant and the Plan. Each report shall include a complete enumeration and description of any alterations or disturbances made to the Property or the Project that have occurred within or beyond the terms of the Covenant and the Plan that have not

been identified in a previous compliance report.

Beginning five years after completion of the Project, the Owner, the Holder and Ohio EPA may agree to an alternative compliance reporting schedule according to Ohio EPA's determination regarding the needs of the Covenant.

16. Conveyance of the Property and Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recorded location of this 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:
[At this point, the notice shall restate Section 9. of this Covenant.]"

The Owner shall notify Ohio EPA and any Holder other than the Owner of any intended conveyance not less than thirty (30) days in advance of conveyance of any interest in the Property. The notice shall include the name, address, and telephone number of the proposed Transferee, a copy of the proposed deed or other documentation that will evidence the conveyance, and a survey map that shows the boundaries of the Property as it is being transferred.

17. Representations and Warranties. The Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- b. that this 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 of or by which the Owner may be bound or affected; and

USE EITHER

- c1. that the Owner has identified all persons that hold any interest in, or right to, the Property ("Encumbrance") in Exhibit B attached to this Covenant. **OR**
- c2. that the Owner is the sole owner of the Property and holds fee simple title that is free, clear and unencumbered.

IF C1. APPLIES, USE SECTION 18 BELOW. IF C2. APPLIES, DELETE SECTION 18 AND RENUMBER ACCORDINGLY.

18. Encumbrances. The Parties agree that a holder of an effective Encumbrance shall be permitted to conduct activities on, and make uses of, the Property for the limited purposes provided in the Encumbrance, subject to the provisions of the following paragraph.

When a holder of an Encumbrance performs any activity on the Property, the Owner and the Holder shall, or shall cause the Encumbrance holder to, restore the Property as quickly as possible to its original condition. Such restoration shall be designed and implemented with prior consultation with the Ohio EPA and shall be incorporated into the Plan for future maintenance.

19. Termination of the Covenant. This Covenant may be terminated only (1) as a result of the exercise of the power of eminent domain, or (2) (a) when the Ohio EPA and all persons consent in accordance with the requirements of §5301.90(A) of the Revised Code and (b) when it becomes impossible to secure, to a substantial degree, the benefits sought through the Covenant.

Certain changes in the character of land use in and around the Property are inevitable, and are considered to be within the contemplation of the Parties. Only where the changes that have occurred are of such importance as to amount to a defeat of the purposes of the Covenant may the Parties initiate termination. Changes that merely reduce the benefits derived from the enforcement of the Covenant are not sufficient grounds for the Parties to seek to terminate the Covenant.

Termination means the elimination of all activity and use limitations set forth herein and all other obligations under this Covenant.

20. Amendment of the Covenant or the Plan.

- a. This Covenant may be amended to accommodate an assignment of the Covenant to a new Holder pursuant to R.C. §5301.90(C).
- b. Otherwise, the Covenant or the Plan may be amended only upon agreement by all the persons identified in R.C. §5301.90(A) that a proposed amendment is consistent with the purposes of the restoration or preservation of the Property, and is without adverse direct or indirect impact to the Property's Conservation Values. Each person shall document in writing that it has reviewed the proposed amendment, found it to be consistent and without such adverse direct or indirect impact, and shall state the basis for those findings. The documentation shall be submitted to Ohio EPA.

- c. Any amendment shall be made only by a written instrument duly executed by the Director of Ohio EPA, the Owner, and Holder, pursuant to R.C. §5301.90 and other applicable law.

The Owner shall file such instrument for recording with the [Name of County where Property is located] County Recorder's Office within thirty (30) days of signature by all requisite parties. Within ten (10) days of recordation, the Owner shall distribute a file- and date-stamped copy of the amended recorded Covenant to: Ohio EPA's Division of Environmental and Financial Assistance, the County of [Name of County where Property is located] the [City, Village, town] of [Name of nearest community where Property is located] and [Name of Township where Property is located] Township, any Holder, any lessee, each person who signed the Covenant (unless the person waived in a signed record the right to consent or unless a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence), each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

- d. Amendment means any changes to this Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining.

21. Exercise of eminent domain. The Owner and the Holder shall use their best efforts against any attempt to exercise the power of eminent domain or other involuntary attempt to extinguish, limit, or impair this Covenant.

In the event of a valid exercise of eminent domain, the Owner, Holder and Ohio EPA, may collectively agree to a settlement of terms that includes but is not limited to location of any easement, construction practices related thereto, or the fair market value of said interest in the Property. Such settlement shall be incorporated into the Covenant or the Plan upon the approval of the Ohio EPA.

22. Restitution.

- a. If as a result of the reduction of the burden of this Covenant, or as a result of the termination of this Covenant or, as a result of the termination of the Covenant and transfer of all or part of any interest in the Property, proceeds or compensation are received by the Owner and the Holder, then any such proceeds or compensation received by the Owner and the Holder in exchange for an interest in the Property or in exchange for use of the Property, including without limitation rent or other income, shall be divided between the Ohio EPA, the Owner and the Holder, in proportion to their respective individual investments in the Property.

That proportion shall be established by using the ratio of (A) the monetary contribution by the Ohio EPA for the Project to (B) the monetary contribution of the Owner and (C) the monetary contribution of the Holder for the acquisition of the Property, or for the restoration of the Property for the purposes of this Covenant, all as valued at the time the Project is completed.

b. If the proceeds or compensation are not in the form of money (e.g., proceeds in the form of a grant of another parcel of land or easement on another parcel of land), the fair market value of the proceeds shall be determined by appraisal or other agreed method, and the Owner and the Holder shall pay to the Ohio EPA a sum equivalent to that portion of the fair market value equal to the proportional share of the Ohio EPA's investment in the Property.

c. Ohio EPA hereby covenants to apply its share of such proceeds to a project of the Fund or, if the Fund no longer exists, to a project at any location in Ohio that accomplishes the same water resource restoration and protection purposes as this Covenant.

d. The Owner shall provide written notice to the Ohio EPA not less than sixty (60) days prior to the initiation of any judicial proceedings pursuant to this section.

23. Ohio EPA's Rights and Remedies. Notwithstanding other rights and remedies available to the Ohio EPA under this Covenant and pursuant to R.C. §5301.80 - §5301.92, in order to accomplish the purposes of this Covenant the following rights and remedies are conveyed to the Ohio EPA so that it may: (1) preserve and protect the Conservation Values of the Property, (2) prevent any activity on or use of the Property which is inconsistent with the purposes of this Covenant, and (3) require the restoration of any areas of the Property that may be damaged by any unauthorized activity or use.

a. **Scope of Relief.** The Owner and Holder agree that the Ohio EPA may be entitled to the injunctive relief described in this section in addition to such other relief to which the Ohio EPA may be entitled, including specific performance of the terms of this Covenant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Ohio EPA's remedies described in this Covenant shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

b. **Damages.** Where injunctive relief or specific performance does not sufficiently repair or restore Conservation Values damaged or diminished by a violation of this Covenant, the Ohio EPA shall be entitled to recover damages from the Owner and the Holder for violation of the terms of this Covenant or for injury to any Conservation Values protected by this Covenant, including, without limitation, damages for adverse impacts to water quality or aquatic ecosystems. Without limiting the Owner's and the Holder's respective liabilities therefore, Ohio

EPA, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

c. **Cost of Enforcement.** All costs incurred by the Ohio EPA in enforcing the terms of this Covenant against the Owner or the Holder, including, without limitations, costs and expenses of suit and attorney's fees, and any costs of restoration necessitated by the Owner's or the Holder's violation of the terms of this Covenant shall be borne by the Owner or Holder according to their respective responsibilities and actions under the terms of this Covenant.

d. **Forbearance.** Forbearance by the Ohio EPA to exercise its rights under this Covenant in the event of any breach of any of its terms shall not be deemed or construed to be a waiver by the Ohio EPA of such term or of any subsequent breach of the same. No delay or omission by the Ohio EPA in the exercise of any right or remedy shall be construed as a waiver.

e. **Waiver of Certain Defenses.** The Owner and the Holder hereby waive any defenses of laches, estoppel, adverse possession, or prescription.

24. **Liability.** The Owner and the Holder agree that the State of Ohio, the Ohio EPA, its officers, employees, and agents shall not be liable for any loss or damage to property, or for any loss or injury to or death of any person, or for any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the Project, or the use thereof, provided that such damages are not the caused by negligent or intentional acts of the Ohio EPA, its officers, employees and agents.

25. **Severability.** If any provision of this 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.

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

27. **Effective Date.** The effective date of this Covenant shall be the later of: (a) the date upon which the Owner and Holder, if any, and Ohio EPA have signed the Covenant, or (b) the date the Owner has acquired title to the Property, in which latter case representations made by the Owner in this Covenant as to the Property will take effect on the date of title acquisition.

28. **Recordation.** Not more than thirty (30) days after the Effective Date of this Covenant, Owner shall file the Covenant for recording, in the same manner as a deed to the Property, with the [Name of County where Property is located] County Recorder's Office.

29. **Distribution of Environmental Covenant.** Within ten (10) days of recordation, the Owner shall distribute a file- and date-stamped copy of the recorded Covenant to: Ohio

EPA, the [City, Village, town] of [Name of community nearest where Property is located], [Name of County where Property is located] County, and [Name of Township where Property is located] Township, the Holder, any lessee, each person who signed the Covenant, each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

30. Notice. Unless the Ohio EPA notifies the Owner and the Holder in writing otherwise, any document or communication required by this Covenant to be submitted to Ohio EPA shall be submitted to:

Chief
Division of Environmental and Financial Assistance
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

or, where this address is no longer valid and the Ohio EPA has not notified otherwise, to the Director of Ohio EPA at his headquarters offices.

31. Authorized Representative. The undersigned representatives of the Owner, the Holder, if any, and Ohio EPA represent and certify that they are each authorized to execute this Covenant.

IT IS SO AGREED:

The remainder of this page intentionally blank.

OWNER
[NAME OF OWNER]

Signature

Date

Name of Signatory and Title

State of Ohio)

ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____ [Name of Signatory] _____, a duly authorized representative of _____ [Name of Owner (if self, omit "a duly authorized representative of")] who acknowledged to me that he/she did execute the foregoing instrument on behalf of _____ [Name of Owner (if self insert "himself" / "herself")].

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

SEAL

Notary Public

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HOLDER
[NAME OF HOLDER]

Signature

Date

Name of Signatory and Title

State of Ohio)

ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____ [Name of Signatory] _____, a duly authorized representative of _____ [Name of Holder (if self, omit "a duly authorized representative of")] who acknowledged to me that he/she did execute the foregoing instrument on behalf of _____ [Name of Holder (if self insert himself / "herself")].

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

SEAL

Notary Public

The remainder of this page intentionally blank.

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Interim Director

Date

State of Ohio)

ss:

County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared, Craig W. Butler, the Interim Director of the Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of the Ohio EPA, this ____ day of _____, 20__.

SEAL

Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The remainder of this page intentionally blank.

EXHIBIT B

MAP, EASEMENTS AND OTHER ENCUMBRANCES

PLEASE INCLUDE A MAP OF THE COVENANT AREA AND SHOW ANY EASEMENTS OR OTHER ENCUMBRANCES IF APPLICABLE. IF THERE ARE NO EASEMENTS OR ENCUMBRANCES ON THE PROPERTY, INSERT "NONE" ON THIS PAGE. SEE SECTIONS 17. AND 18.

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