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 OHIO EPA  
 Ann M. Radcliffe  
 Lake County Recorder



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2014R008167

LAKE COUNTY OHIO  
 RECORDED ON  
 04/03/2014 12:10:30PM

ANN M. RADCLIFFE  
 LAKE COUNTY RECORDER  
 REC FEE: \$104.00  
 PAGES: 10

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Reflected hereon is the pertinent recording information:

- File Number
- Date Filed
- Time Filed
- Recording Fee
- Number of pages recorded

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[www.lakecountyohio.gov/recorder](http://www.lakecountyohio.gov/recorder)

(440) 350-2510  
 Eastern Lake County

(440) 918-2510  
 Western Lake County

(440) 350-5940  
 Fax

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To be recorded with Deed  
Records - ORC § 317.08

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Elm Street Truck Depot, LLC ("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 ("the Property"), to the activity and use limitations set forth herein.

This Environmental Covenant concerns a portion of the Diamond Shamrock Painesville Works Site, known as Operable Unit 5 (OU5) of the Diamond Shamrock Painesville Works Site. Environmental conditions are presented in the Feasibility Study for OU5, dated June 10, 2011. Prior to addition of soils across the property by the former property owner, James Nicholson, the property met unrestricted residential use risk-based standards. However, following the addition of soils by Mr. Nicholson in 2006, surface and subsurface soils on the property were found to contain metals and polycyclic aromatic hydrocarbons at levels which no longer met unrestricted residential use risk-based standards. The property continued to meet restricted commercial/recreational use risk-based standards for soils. Ground water below the property exceeded Region 9 tap water PRGs for bis(2-ethylhexyl)phthalate and manganese.

Information regarding OU5 may be reviewed by contacting the Records Management Officer for the Division of Environmental Response and Revitalization, at Ohio EPA's Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087, 330-963-1200, or by contacting Anthony Scheiber, Elm Street Truck Depot, LLC at P.O. Box 1106, Fairport Harbor, Ohio 44077, (440) 477-9211.

Now therefore, Owner of Elm Street Truck Depot, LLC 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 3-acre tract of real property; parcel currently numbered 15-A-020-0-00-009-0 owned by Elm Street Truck Depot, LLC, and located at 950 Elm Street, Painesville, in Lake County Ohio, and more particularly described in Exhibit 1 attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. This Property is owned by Elm Street Truck Depot, LLC ("Owner"),

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which is located at P.O. Box 1106, Fairport Harbor, Ohio 44077.

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 remedial action Owner hereby imposes and agrees to comply with the following activity and use limitations:

- A. Commercial or Industrial Land Use Only. The Property is hereby restricted to commercial or industrial land use only. Residential land use of the property is prohibited.

Commercial land use is 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; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail warehouses; repair and service establishments for appliances and other goods; professional offices; banks and credit unions; office buildings; retail businesses selling food or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities.

Industrial land use is 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 area; limited access highways; railroad switching yards; and marine port facilities.

- B. Prohibition against Ground water Extraction. Ground water located at or underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water or in conjunction with construction or excavation activities or maintenance of subsurface utilities;

- C. Prohibition against Ground water Well Construction. No new ground water wells for potable use may be constructed at the Property.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

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.

8. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives and the city of Painesville 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 any Transferee shall submit to Ohio EPA and the city of Painesville on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property 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:

- A. Commercial or Industrial Land Use Only. The Property is hereby restricted to commercial or industrial land use only. Residential land use of the property is prohibited.
- B. Prohibition against Ground water Extraction. Ground water located at or underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water or in conjunction with construction or excavation activities or maintenance of subsurface utilities;
- C. Prohibition against Ground water Well Construction. No new ground water wells for potable use may be constructed at the Property.

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. 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 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.

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; and the Director of the Ohio EPA, pursuant to ORC § 5308.82 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 when 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 the Owner or Transferee of the Property or 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 shall file such instrument for recording with the Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

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 Lake 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 Lake County Recorder.

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 City of Painesville, Lake County.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner 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

Or, send electronically to: [records@epa.state.oh.us](mailto:records@epa.state.oh.us)

And

Ohio EPA – Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DERR Site Coordinator for Diamond Shamrock OU5 Site

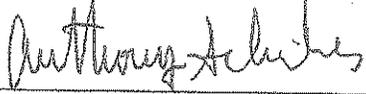
As to Owner

Anthony Scheiber, Sole Member and President  
Elm Street Truck Depot, LLC  
504 Seventh Street  
Fairport Harbor, Ohio 44077  
440-477-9211

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

**IT IS SO AGREED:**

Elm Street Truck Depot, LLC



Signature of Owner

Anthony Scheiber, sole member Elm Street Truck Depot, LLC

ANTHONY SCHEIBER PRES.

Printed Name and Title

12-11-13

Date

State of Ohio )

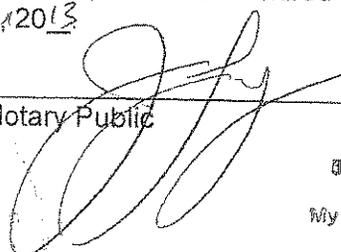
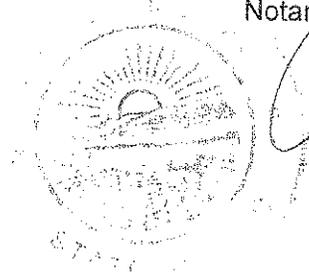
County of Lake )

ss:

Before me, a notary public, in and for said county and state, personally appeared Anthony Scheiber \_\_\_\_\_, a duly authorized representative of Elm Street Truck Depot, LLC \_\_\_\_\_, who acknowledged to me that he did execute the foregoing instrument on behalf of Elm Street Truck Depot, LLC \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 11<sup>th</sup> day of December 2013.

Notary Public

JAMES M. LYONS, Attorney At Law  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 107.03 H. C.

OHIO ENVIRONMENTAL PROTECTION AGENCY

C. Butler  
Craig W. Butler, Interim Director

2/28/14  
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 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 28<sup>th</sup> day of Feb., 2014.  
*February*



Charma Diane Casteel  
Notary Public

CHARMA DIANE CASTEEL  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES

May 10, 2014

This instrument prepared by:

James M. Lyons  
240 E. Main St.  
Painesville, Ohio 44077

# Exhibit 1

situated in the City of Painesville, County of Lake and State of Ohio, and known as being a part of Original Painesville Township Lot No. 6, Tract No. 3 and is bounded and described as follows:

Beginning in the centerline of Elm Street at an iron pin stake found marking its intersection with the centerline of State Street, 66 feet in width;

Thence North 12 degrees 39' 53" East, along said centerline of Elm Street, 916.68 feet to an iron pin stake found marking an angle therein;

Thence South 82 degrees 33' 12" East, continuing along said centerline of Elm Street, 995.70 feet to an iron pin stake found marking an angle therein;

Thence South 65 degrees 33' 34" East, continuing along said centerline of Elm Street, 720.63 feet to a point located North 65 degrees 33' 34" West, a distance of 1614.83 feet from an iron pin stake found marking an angle in said centerline;

Thence North 24 degrees 26' 26" East, perpendicular to said centerline of Elm Street, 30.00 feet to an iron pin stake set in the northerly line of same and the principal point of beginning of the following described parcel of land;

COURSE I: Thence North 26 degrees 23' 31" East, a distance of 178.45 feet to an iron pin stake;

COURSE II: Thence South 67 degrees 08' 13" East, a distance of 543.25 feet to an iron pin stake;

COURSE III: Thence South 57 degrees 17' 44" East, a distance of 135.70 feet to an iron pin stake;

COURSE IV: Thence South 25 degrees 42' 52" West, a distance of 173.84 feet to an iron pin stake set in said northerly line of Elm Street;

COURSE V: Thence North 65 degrees 33' 34" West, along said northerly line of Elm Street, 679.55 feet to the principal point of beginning and containing 2.887 acres of land as surveyed and described in Oct., 1996 by Timothy P. Hadden, Ohio Professional Surveyor No. 6786, of CT Consultants, Inc., be the same more or less, but subject to all legal highways.