

To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Business Development Properties, Inc. ("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 BDP Property, as defined below, to the activity and use limitations set forth herein.

WHEREAS, the BDP Property is part of the larger Ford Bros. (aka Tri-State Tank Cleaning) Site. On January 2, 1990, the State of Ohio filed a complaint for injunctive relief and civil penalty against Jenny and J. Robert Ford (the Fords), the owners of the Site at that time, as well as several companies that are no longer in existence, in the Court of Common Pleas, Lawrence County, Ohio (Court) for violations of Ohio Revised Code (ORC) Chapter 3734 and the rules promulgated thereunder at the Site. On January 29, 1992, the Court issued a Judgment Entry and Consent Order (Consent Order) between the State of Ohio and the Fords. The Consent Order required the Fords to, inter alia, prepare and submit a written closure plan; comply with Ohio's hazardous waste laws and regulations; and provide proof of compliance with Ohio Administrative Code (OAC) 3745-66-42, 3745-66-43, and 3745-66-47. The Fords failed to comply with the Consent Order and subsequently ceased operations and abandoned the Site. An inspection of the abandoned Site revealed abandoned drums and waste tanks. At the request of Ohio EPA, the United States Environmental Protection Agency (U.S. EPA) performed an emergency removal action in December, 1993. On November 24, 1997, Ohio EPA conducted soil sampling to determine the approximate size of the impacted soil area contributing to the VOC groundwater plume that emanated from the Site.

WHEREAS, on November 3, 2000, US EPA issued an Engineering Evaluation/Cost Analysis (EE/CA) for the Ford Bros (aka Tri-State Tank Cleaning) Site. Ohio EPA conducted several sampling events in January and February, 2006 which: 1) showed the continued presence of volatile organic compounds (VOCs), including trichloroethylene and dichloroethylene, migrating from the Site to the Village of Coal Grove wellfield; and 2) defined the extent of the contaminant source area at the Site. Based upon the results of the January/February 2006 sampling events, as well as historical sampling data, Ohio EPA issued a revised EE/CA on September 19, 2006. The revised EE/CA selected in situ chemical oxidation for the remediation of Site soils that leach VOC contaminants into groundwater, and selected enhanced in situ bioremediation to reduce or eliminate contaminant mass within the saturated groundwater zone at the Site.

WHEREAS, on April 6, 2007, Ohio EPA issued unilateral orders to the Fords requiring them to perform a remedial design and remedial action at the Site. The Fords did not respond to the unilateral orders and, therefore failed to comply with the timeframes set forth therein. Pursuant to ORC 3734.20(B), Ohio EPA entered the Site to execute the soil remediation portion of the strategy selected in the Revised EE/CA. Ohio EPA entered the Site on June 2-4, 2008, to conduct sampling to determine the effectiveness of the soil remediation. Analytical results received thus far indicate a reduction in soil contaminant levels, although the information is not sufficient to determine the appropriate end use of the Site, inclusive of the BDP Property. Groundwater results, however, indicate no appreciable decrease in contaminant levels to date and continue to exceed the maximum contaminant level.

WHEREAS, the Site was sold at Sheriff's auction on March 18, 2008. The Site consisted of four parcels. Three of the four parcels (parcels numbered 29-046-1500.000, 29-051-0300.000, and 29-051-0400.0) were purchased by BDP. One of the four parcels (parcel number 29-051-0100.000) was purchased by Ellic Taylor.

Whereas, the administrative record for this project is on file with Ohio EPA at its Southeast District Office, 2195 Front Street, Logan, Ohio 43138 and is maintained under the file name "Ford Bros. (aka Tri-State Tank Cleaning) Site";

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. BDP Property. This Environmental Covenant concerns real property parcels numbered 29-046-1500.000, 29-051-0300.000, and 29-051-0400.000 owned by Business Development Properties, Inc. (BPD), located at 510 Riverside Drive, Coal Grove in Lawrence County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("BDP Property").
3. Owner. BDP, which is located at P.O. Box 488, South Point, Ohio is the owner of the BDP Property.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the environmental response project described in the Director's Final Findings and Orders for the Ford Bros. (aka Tri-State Tank

Cleaning) Site entered into the Director's Journal on _____, Owner hereby imposes and agrees to comply with the following activity and use limitations:

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

OAC 3745-300-08(B)(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(B) 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.

Limitation on the Use of Groundwater. Groundwater located at or underlying the BDP Property shall not be extracted or used for any potable use, or other uses involving human contact or exposure, except for investigation, monitoring or remediation of the groundwater.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the BDP 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 and 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 BDP 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 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, its agents, contractors, and employees, the city of Coal Grove, and Lawrence County, the right of access to the BDP Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA, the city of Coal Grove, and Lawrence County, upon request, 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 BDP Property or any portion of the BDP 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 _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE LAWRENCE COUNTY RECORDER ON _____, 2009, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

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

Limitation on the Use of Groundwater. Groundwater located at or underlying the BDP Property shall not be extracted or used for any potable use, or other uses involving human contact or exposure, except for investigation, monitoring or remediation of the groundwater.

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the BDP Property. Owner's 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 BDP Property;
- B. that the Owner holds fee simple title to the BDP Property which is subject to the interests or encumbrances that do not conflict with the activity and use limitations identified herein;
- 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 the Owner has identified all other persons that own an interest in or hold an encumbrance on the BDP Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
- E. 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.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; and the Ohio EPA, pursuant to ORC § 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 BDP 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 Lawrence 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 BDP Property, with the Lawrence 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 BDP Property with the Lawrence 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; the city of Coal Grove, and Lawrence County and each person holding a recorded interest in the BDP Property; and any other person designated by Ohio EPA.

Environmental Covenant
BDP Property

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:

Kevin O'Hara
Division of Emergency and Remedial Response
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

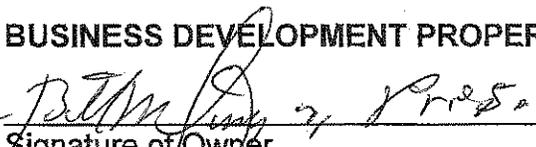
~~[title or position]~~
~~[address]~~



The undersigned representative of Owner represents and certifies that [he/she/they] [is/are] authorized to execute this Environmental Covenant.

IT IS SO AGREED:

BUSINESS DEVELOPMENT PROPERTIES

BW 
Signature of Owner

BILL W. DINGUS, PRESIDENT
Printed Name and Title

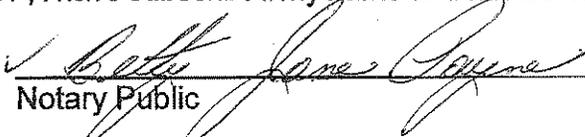
AUGUST 5, 2009
Date

State of Ohio)
County of Lawrence)

ss:

Before me, a notary public, in and for said county and state, personally appeared Bill W. Dingus a duly authorized representative of Business Development Properties, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Business Development Properties.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 5th day of August, 2009.


Notary Public

BETTY JANE PAYNE
Notary Public, State of Ohio
My Commission expires 3-9-2011

Environmental Covenant
BDP Property

OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski
Chris Korleski, Director

8/26/09
Date

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, 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 26th day of AUGUST, 2009.



Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
May 10, 2014

This instrument prepared by:

Dr. Bill Dingus
Business Development Properties, Inc.
216 Collins Avenue
Southpoint, Ohio 45680-0488

And

Ann M. Fischbein, Staff Attorney
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

EXHIBIT A

EXHIBIT A

Being a part of Frac. Section 3, Frac. T.1. R. 18, BEGINNING at a stake on the bak of the Ohio River from which a Beech 30" in diameter bears N. 67 degrees E. 35 links and a Sycamore 5 feet in diameter bears S. 22 degrees east 51 links, this being the N.W. Corner of a 2 acre lot sold by John Newton to Elizabeth Mayhew; thence N. 49 degrees N. 2172 links to a stake; thence N. 40 degrees 15' east 13 chains to a stake; thence N. 21 degrees east 6 chains, 50 links to a stake in the bottom from which an Elm 16" in diameter bears N. 18 degrees east 52 links; thence S. 59 degrees east 3 chains and 60 links to a stake; thence N. 70 degrees east 1 chain, 61 links to a stake at the east line of said section 3; thence south on said line 5 chains, 79 links to a Beech stump it being the N.E. corner of a lot of land heretofore sold by John Newton to Samuel Lambert; thence S. 61 1/2 degrees west 5 chains and 8 links to a stake from which a Beech 10" in diameter bears N. 80 degrees east 78 links; thence N. 42 degrees east 40 links to a stake; thence S. 41 degrees west 13 chains to the place of BEGINNING including all in front of the same to the Ohio River. SAVING AND EXCEPTING therefrom a certain tract of land conveyed by Catherine Talbot and Ephraim Talbot to the Scioto Valley Railway Company by deed dated February 19, 1881 and recorded in D.B. 42, Pg. 293 of the Lawrence County, Ohio Records of Deeds. ALSO, EXCEPTING THEREFROM a certain tract of land conveyed by Catherine and Ephraim Talbot to the West Virginia and Ironton Railroad Company by deed dated May 19, 1890 and recorded in D.B. 49, Pg. 522 of the Lawrence County, Ohio Records of Deeds. ALSO EXCEPTING therefrom those certain lots conveyed by Catherine and Ephraim Talbot to Elizabeth Gannon by deed dated March 12, 1898 and recorded in D.B. 62, Pg. 447. ALSO EXCEPTING therefrom a certain tract of land conveyed by catherine Talbot to Norfolk and Western Railway Company be deed dated December 10, 1917 in D.B. 104, Pg. 197. ALSO EXCEPTING therefrom all streets and alleys dedicated for public use by Deed of dedication dated August 13, 1896 and recorded in Records of Plats of Lawrence County Vol. 2, Pg. 115 for a more particular descriptions of the several lots and lands excepted from said conveyance reference is here made to the Records of Deeds and the records of plats herein referred to. The last above described tract contains 1.75 acres , more or less, and being a part of the same property conveyed to the grantors herein by deed recorded in D.B. 170, Pg. 369 of the Lawrence County, Ohio Deed Records.

DESCRIPTION APPROVED
LAWRENCE CO. ENGR.

Date: 5-8-2008
By: [Signature]

EXHIBIT A

Situate in the Village of Coal Grove, Lawrence County, Ohio; Lot No. 17 of the subdivision of the Newton Dower Estate in Section 30, T.1.R. 18 consisting of lot lying between the Scioto Valley R.R. and Pike. For a more particular description of said premises, reference is made to the record of said subdivision in the office of the Clerk of Courts of Common Pleas Court, Lawrence County, Ohio in the case of Mary A. Bing against the Newton heirs. Said property described in the 1958 Auditor's Duplicate as being in Upper Township, Coal Grove, Ohio, Page 17, Line 9, L. 17, Auditor's Plat of 1870 and being 0.37 acres.

DESCRIPTION APPROVED
LAWRENCE CO. ENGR.

Date: 5-9-2008
By: Wally Harrison

EXHIBIT A

Situate in the Village of Coal Grove, Upper Township, Lawrence County, Ohio: situated Lot 2 of the subdivision of Lot 17 of the John Newton Estate in Frac. Section ~~30~~ T.1.R. 18. Being all of the premises conveyed by Fred C. Meyers, aka Fred Myers, Executor of the Estate of Kunnegunda Meyers, aka Cunijundi Myers, and Gunde Myers, to Dennis Huddle as recorded in D.B. 140, Pg. 349, the said Deed Records. EXCEPTING the 0.25 acre tract of land conveyed by Dennis and Edith Huddle the Norfolk and Western Railway Company be deed dated March 29, 1944, as recorded in D.B. 170, Pg. of the Deed Records of said County. The part to be conveyed hereby is more particularly described as follows: BEGINNING at a tee rail marking the corner common to the River frontage conveyed by W. Franklin to Scioto Valley Railway Company be deed dated May 27, 1882 as recorded in D.B. 42, Pg. of said Deed Records. Said beginning corner is on top of the river bank and is on the line common to Lot 1 and 17 of the John Newton Estate; thence with the line common to Lot 1 and 17 of the John Newton Estate, N. 40 degrees 15' east 369.02 feet to an iron pin near a tee rail marking a corner common the above mentioned 0.25 acre tract. A tee rail bears N. 40 degrees 15' east 15.8 feet; thence with the south curved line of said 0.25 acre tract (the chord of same bearing S. 34 degrees 57' east 366.09 feet an iron pin near a tee rail on the line common to Lots 1 and 2 of the Subdivision of Lot 17 of the John Newton Estate; thence with the line common to Lots 1 and 2 of Lot 17 of the John Newton Estate S. 39 degrees 47' west passing an iron fence post at 86.68 feet, 269.98 feet to an iron pin on the top bank of the Ohio River, said corner being common to the parcel of land conveyed by W.H. Ford, et al., to Ford Brothers, Inc., by deed dated May 29, 1956, and recorded in D.B. 250, Pg. 188 of said Deed Records, the river frontage conveyed by condemnation from James Warren to Scioto Valley Railway Company dated December 16, 1880 as recorded in Final Civil Record, Vol. 4, Pg. 302 and the river frontage conveyed by W.W. Franklin to Scioto Valley Railway company by deed dated May 27, 1882 as recorded in D.B. 42, Pg. 292 of the said Deed Records; thence with the top bank of the Ohio River N. 46' west 356.2 feet to the BEGINNING and contains an area of 2.6 acres, more or less as surveyed Ernest C. Book, Registered Prof. Surveyor, No. 2269, July 26, 1958,

DESCRIPTION APPROVED
 LAWRENCE CO. ENGR.
 Date: 5.9.2008
 By: [Signature]