

201200847215
 Filed for Record in
 GEauga COUNTY OHIO
 SHARON C GINGERICH, RECORDER
 09-19-2012 At 09:37 am.
 RSTS 128.00
 OR Book 1932 Page 1695 - 1706

RESTITUTION

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by **Bobs Beverage, Inc.** ("Owner"), **Kim Ullman** ("Holder") 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 to the activity and use limitations set forth herein.

The "Ullman Oil Site" refers to the property located at 9810 and 9812 East Washington Street, Chagrin Falls, Geauga County, Ohio. This Environmental Covenant is required by the Consent Order dated October 12, 2007 in *State of Ohio, ex rel. Marc Dann Attorney General of Ohio v. Bob's Beverage, Inc., et al.*, in the Court of Common Pleas Geauga County, Ohio, Case No. 06M000655. The administrative record for the Ullman Oil Site is located at Ohio EPA's Northeast District Office at 2110 E. Aurora Road, Twinsburg, Ohio 44087. There are identified chlorinated volatile organic compound (CVOC) contaminants in both soil and ground water at the Ullman Oil Site. The area of soil contamination is shown on Figures 9 and 10 of the 1996 Remedial Investigation Report, submitted by the Owner and Holder as required by the September 13, 1994 Director's Final Findings and Orders, covers the Ullman Oil Site including approximately 1/3 acre to be covered. The identified CVOCs are the following: 1,1,1-trichloroethane, Tetrachloroethene, Trichloroethene, 1,1,2-trichloroethane, 1,1-dichloroethene, Vinyl chloride, 1,2-dichloroethane, and Methylene chloride.

Now therefore, Owner Bob's Beverage, Inc., Holder Kim Ullman, 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 a real property parcel numbered 01-047200 owned by Bob's Beverage, Inc., located at 9812 East Washington Street, in Chagrin Falls, Geauga County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. **Owner.** Bob's Beverage, Inc. ("Owner") which is located at 9812 East Washington Street, Chagrin Falls, Ohio 44023-0399, is the owner of the Property.
4. **Holders.** Owner Bob's Beverage, Inc., whose address is listed above, and Kim Ullman whose business address is the same as listed above, are the Holders of this Environmental Covenant.
5. **Activity and Use Limitations.** As part of the Consent Order dated October 12, 2007, Owner hereby imposes and agrees to comply with the following Activity and Use limitations:

Environmental Covenant
Ullman Oil Property
Page 2

Cover Systems

The integrity of any remedial cover systems at the Property shall not be adversely affected.

Land Use Limitations

Soil excavation is prohibited in the source (capped) area, which is within or below the cap as shown in Exhibit B, without prior approval by Ohio EPA under OAC 3745-27-13. This restriction will be relied upon to eliminate the potential for construction workers or other workers to have direct contact with the contaminated soils.

Ground Water Limitations

Ground water located at or underlying the Property, as shown on Exhibit B, shall not be extracted or used for any purpose, potable or otherwise, unless otherwise authorized by Ohio EPA.

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 Bob's Beverage, Inc., Holder Kim Ullman, 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 Holder and Ohio EPA.

6. **Running with the Land.** This Environmental Covenant shall be binding upon the Owner Bob's Beverage, Inc. 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 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 Bob's Beverage, In. and holder Kim Ullman hereby grant to Ohio EPA, its agents, contractors, and employees the right of access to the Property, upon proper identification, for implementation or enforcement of this Environmental Covenant.

Environmental Covenant
Ullman Oil Property
Page 3

9. **Compliance Reporting.** Owner Bob's Beverage, Inc. or any Transferee shall submit to Ohio EPA 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 7-6, 2012, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON 9-18, 2012 IN [DOCUMENT , or BOOK 1932, PAGE 1695]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Cover Systems

The integrity of any remedial cover systems at the Property shall not be adversely affected.

Land Use Limitations

Soil excavation is prohibited in the source (capped) area, which is within or below the cap as shown in Exhibit B, without prior approval by Ohio EPA under OAC 3745-27-13. This restriction will be relied upon to eliminate the potential for construction workers or other workers to have direct contact with the contaminated soils.

Ground Water Limitations

Ground water located at or underlying the Property, as shown on Exhibit B, shall not be extracted or used for any purpose, potable or otherwise, unless otherwise authorized by Ohio EPA.

Owner Bob's Beverage, Inc. and Holder Kim Ullman shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other

Environmental Covenant
Ullman Oil Property
Page 4

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 which is free, clear and unencumbered;
- 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 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 Bob's Beverage, Inc. or a Transferee; Holder Kim Ullman 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 Bob's Beverage, Inc. or Transferee and Holder Kim Ullman 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 Bob's Beverage, Inc. or Transferee shall file such

Environmental Covenant
Ullman Oil Property
Page 5

instrument for recording with the Geauga 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 Bob's Beverage, Inc. shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Geauga 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 Geauga County Recorder's Office.

17. **Distribution of Environmental Covenant.** The Owner Bob' Beverage, Inc. and holder Kim Ullman shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Chagrin Falls; any lessee, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83.

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:

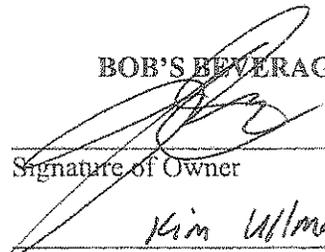
Enforcement Coordinator
Division of Environmental Response and Revitalization
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
or, send electronically to: records@epa.state.oh.us

Environmental Covenant
Ullman Oil Property
Page 6

Gunner Zikmanis
Site Coordinator
Division of Environmental Response and Revitalization
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

The undersigned representative of Owner Bob's Beverage, Inc. and Holder Kim Ullman represent and certify they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

BOB'S BEVERAGE, INC.


Signature of Owner
Kim Ullman VP

Printed Name and Title

7/6/12

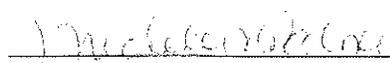
Date

State of OHIO)
County of COLUMBUS)

ss:

Before me, a notary public, in and for said county and state, personally appeared Kim Ullman a duly authorized representative of Bob's Beverage, Inc. who acknowledged to me that she did execute the foregoing instrument on behalf of Bob's Beverage, Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 6th day of July, 2012.



Notary Public

MICHELE M. PALMER
Notary Public, State of Ohio
My Commission Expires 8/16/2015
Recorded in Lake County

Environmental Covenant
Ullman Oil Property
Page 7

OHIO ENVIRONMENTAL
PROTECTION AGENCY

[Signature]
Scott J. Nally, Director

8/8/12
Date

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared SCOTT J. NALLY, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 8th day of AUG, 2012.



Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2014

Environmental Covenant
Ullman Oil Property
Page 8

KIM ULLMAN

[Handwritten Signature]
Signature of Holder

Kim Ullman
Printed Name and Title

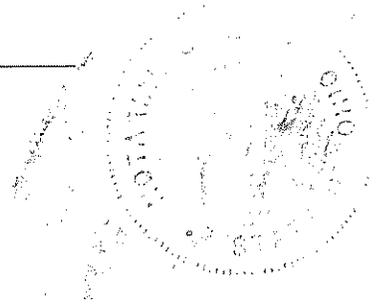
7/6/12
Date

State of Ohio)
County of Crawford) ss:

Before me, a notary public, in and for said county and state, personally appeared Kim Ullman, a duly authorized representative of Franklin Energy, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Franklin Energy.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1st day of July, 2012.

[Handwritten Signature]
Notary Public



This instrument prepared by:

Charles P. Royer, Esq.
McCarthy, Lebit, Crystal & Liffman Co., L.P.A.
101 West Prospect Avenue
1800 Midland Building
Cleveland, Ohio 44115
(216) 696-1422
(2160 696-1210 (facsimile)

MICHELE M. PALMER
Notary Public, State of Ohio
My Commission Expires 8/16/2015
Recorded in Lake County

Participating Map
in Geauga County
Certificate of Record

MIDLAND TITLE SECURITY, INC.
No. 5-9857

FOR 812 111138

364976
WARRANTY DEED - Without Deceit Clause - No. 101A
The Ohio Land Bank Co. Cleveland

Know all Men by these Presents That: Albatross Limited, an Ohio Limited Partnership,

the Grantor,
who claims title by or through instrument, recorded in Volume 1089, Page 737 County Recorder's Office, for the consideration of Ten Dollars

(10.00) received to its full satisfaction of Ebb's Beverage, Inc. an Ohio Corporation

the Grantee

whose TAX MAILING ADDRESS will be 9812 East Washington Street Auburn Township

do give, grant, bargain, sell and convey unto the said Grantee, its heirs and assigns, the following described premises, situated in the Township of Auburn

County of Geauga and State of Ohio:

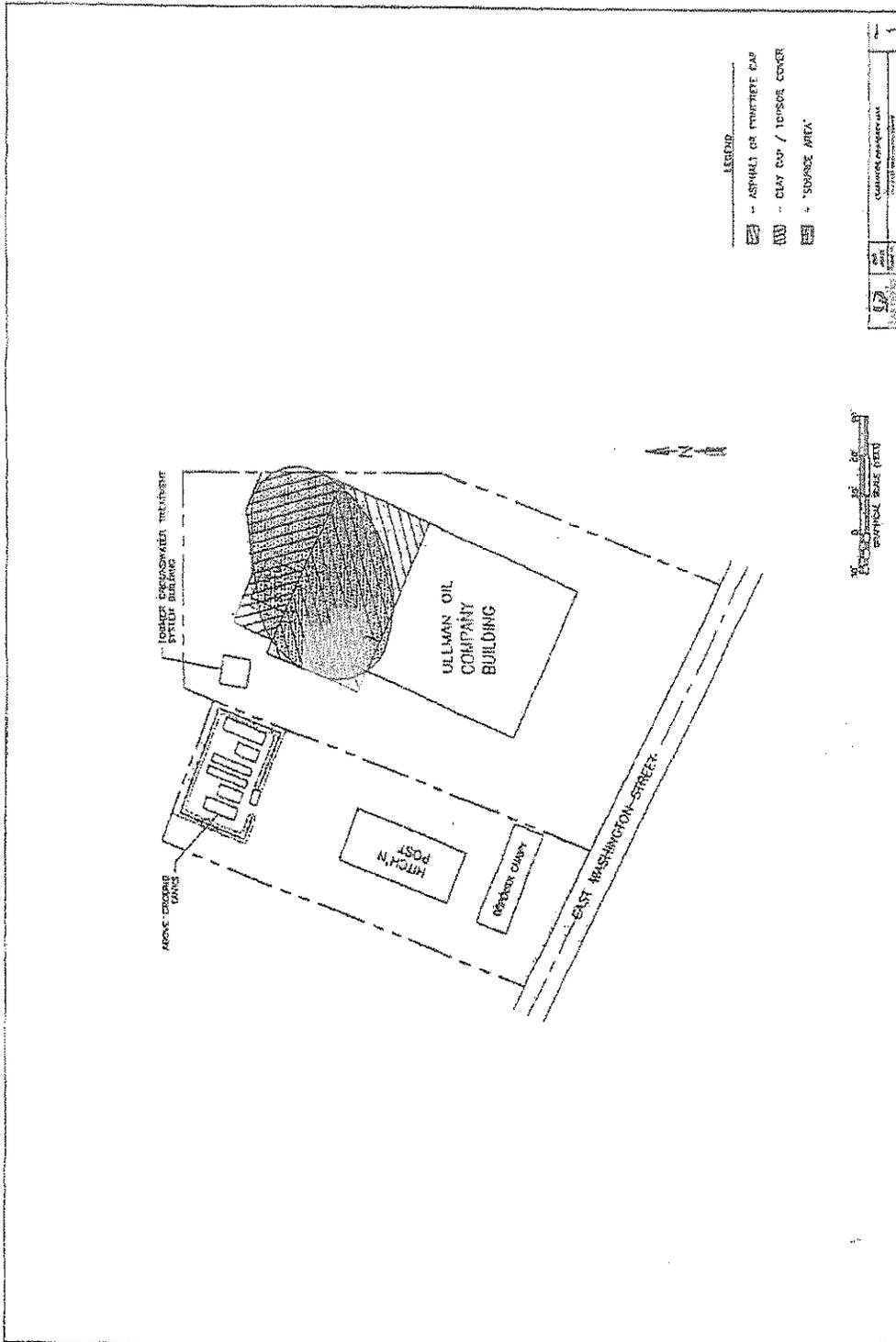
and known as being part of Original Auburn Township Section 1, Tract Two, and bounded and described as follows:
Beginning in the center line of Washington Street (60 feet wide) at a point which is distant North 62° 31' 00" West 285.50 feet, measured along said center line, from the Southwesterly corner of land conveyed to R & M Ullman by deed recorded in Volume 532, Page 416 of Geauga County Records;
Thence North 62° 31' 00" West, along the center line of Washington Street, a distance of 217.77 feet to the Southeastly corner of 0.725 acres of land conveyed to M. Ullman by deed recorded in Volume 611, Page 407 of Geauga County Records;
Thence North 21° 23' 40" East, along the Easterly line of land so conveyed to M. Ullman, a distance of 340.22 feet to the Southerly line of land conveyed to the Land Title Guarantee and Trust Co., Trustees, by deed recorded in Volume 501, Page 509 of Geauga County Deed Records;
Thence South 89° 55' 04" East, along the Southerly line of land so conveyed to The Land Title Guarantee and Trust Co., a distance of 176.10 feet;
Thence South 3° 20' 47" West a distance of 203.52 feet;
Thence South 23° 59' 00" West a distance of 234.06 feet to the place of beginning and containing 1.881 acres of land, be the same more or less, but subject to all legal highways.
The above described 1.881 acres of land is subject to an ingress and egress easement more particularly described as being parallel to and 12 feet Easterly, by rectangular measurement, from the westerly line of the above described 1.881 acre parcel, said easement measuring 150 feet in length Northerly from the center line of Washington Street.

Geauga County Engineer
Reviewed by BK E
date 7-8-18

This conveyance has been examined and the Grantor has complied with Section 315.202 of the Ohio Revised Code.
FEES 210.00
PERMISSIVE S. 310.00/210.00
EXEMPT
RICHARD J. MAKOWSKI
County Auditor

be the same more or less, but subject to all legal highways.

ALL STATE LEGAL
EXHIBIT
A



ALL-STATE LEGAL[®]

EXHIBIT

B

EXHIBIT B

Instrument 201200247215 OR Book Page 1932 1705



May B. 2007

Mr. Charles P. Royer, Esq.
McCanny, Lebit, Crystal & Liffman Co., L.P.A.
101 West Prospect Avenue
Suite 1800
Cleveland, Ohio 44115-1068

RE: "Source Area" Capping
Ulman Oil Company
9812 East Washington Street
Bainbridge Twp., Ohio

Dear Mr. Royer:

In support of settlement discussions in the matter concerning State of Ohio v. Bob's Beverage Inc., et al. (Case No. 06M000655), this letter and the attached drawing present the proposed location, composition, and general construction specifications for the cap over an area of approximately 18,100 square feet, at the above Ulman Oil Company (Ulman) facility. The proposed cap encompasses the area identified as the "source area" in a Feasibility Study (FS), dated July 2, 1998, prepared by Sanborn, Head & Associates, Inc. (Sanborn).

The objective of capping is to reduce surface water infiltration in the "source area" and thus reduce the risk that the existing chlorinated solvent plume will increase in extent or concentration. Two (2) different cap systems will be used. Approximately 10,500 square feet will be capped with full-depth asphalt. The remainder of the "source area" will be capped with clay and topsoil and then seeded. See the attached drawing for the approximate extent of each cap type. Actual surface grades and asphalt pavement section design will be determined as part of the redesign of the bulk plant facility. Therefore, final design of the cap systems will be completed as part of the overall facility redesign and modification. The final plans for the cap systems will be in accordance with the general descriptions provided in this letter and will be provided to the Ohio EPA for their approval prior to construction of the cap systems. The following provides additional detail regarding the two (2) cap systems.

Asphalt

In the area of planned pavement, asphalt is proposed as the cap material. The existing surface will be graded and recompact. The asphalt will be placed in three (3) layers, or lifts, with each lift being compacted prior to placement of the next. The surface of the asphalt will be pitched to drain to the outer edges, away from the "source area", or to storm water catch basins, if installed as part of the redesigned facility.

Clay/Topsoil

Prior to construction of the clay cap, topsoil will be stripped and stockpiled for re-use, the water filtration ("septic system") and evapo-transpiration system components and associated backfill will be removed, and remaining native soil will be cut to a minimum of 24 inches below planned final grade. It is anticipated

Partners Environmental Consulting, Inc.

Corporate Office: 31100 Solon Road, Suite G • Solon, Ohio 44139 • phone: (440) 248.6005 • fax: (440) 248.6374
Offices in Maryland

"Source Area" Capping
Ullman Oil Company
Bainbridge, Ohio

Page 2

May 8, 2007

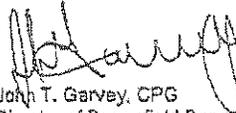
that the native soil will be clay suitable for use in the cap. Cohesive soils will be suitable for use in the cap if they meet the following criteria:

At least 50% of the soil by weight will pass the #200 sieve, and
the soil shall plot above the A-line in the Unified Soil Classification System (ASTM D 2487)

The clay cap will consist of 18 inches of well compacted cohesive soil, placed in maximum eight (8) inch thick loose lifts, adjusted to a moisture content at or wet of optimum, and compacted to 95% of Standard Proctor Density. A minimum of six (6) inches of topsoil will be placed over the clay cap. The surface will be graded to provide a slope of no less than 3%, prevent ponding, and provide positive drainage to the north-northeast, away from the source area. The entire capped area will be seeded with perennial grasses to establish a lawn that will be maintained as part of the landscaping.

Please contact the undersigned if you have any questions regarding the information in this letter.

Sincerely,
Partners Environmental Consulting, Inc.


John T. Garvey, CPG
Director of Brownfield Services


Dan E. Brown, CPG
President

cc: Mr. Kim Ullman