AFFIDAVIT

STATE OF OHIO

COUNTY OF FRANKLIN

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Lassiter, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Environmental Covenant issued by the Director, and entered in the Ohio EPA Director's Journal on September 1, 2012, regarding property known as ODOT D5 Headquarters, located at 115 ½ Maholm Street in Newark, Licking County, Ohio and further described in the attached Environmental Covenant.

Laura Zarino
Paralegal
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 1st day of September, 2012.

Janine M. Maney
Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:
Sarah M. Miles, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049

JANINE M. MANEY
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
My Comm. Has No Expiration Date
Section 147.03 R.C.

Ohio EPA SEP 1 '17
Entered Directors Journal
ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by The State of Ohio, Department of Transportation ("ODOT" or "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.

Whereas, this Environmental Covenant concerns an area known as the ODOT Former District 5 Headquarters. The area known as the ODOT Former D5 Headquarters is Parcel #054-186854-00.000 and Parcel #054-186860-00.000 as recorded in Instrument Number 201406250011575 and being a part of Exhibit A, 4.124 Acres. Additionally, ODOT is the Owner of additional certain real property located in the City of Newark, Licking County, Ohio 43055 (Parcel #054-223590-00.000, 054-223938-00.000, 054-228720-00.000, 054-229584-00.000, 054-226560-00.000, 054-217932-00.000, 054-217944-00.000, 054-221784-00.000, 054-230238-00.000, 054-221154-00.000, 054-220626-00.000 and 054-228810-00.000 as recorded in Instrument Number 201406250011575) and being a part of Exhibit A, 4.124 Acres, all of Exhibit B, 0.271 Acre and all of Exhibit C, 0.751 Acre. Said Exhibit A, Exhibit B and Exhibit C are the legal description reference on the Affidavit of Survey of Robert C. Canter as recorded in Instrument Number 201406250011575, Licking County Official Records. Collectively, these Parcel numbers are known as the "Property", and:

Whereas, Owner asserts the implementation of appropriate use restrictions on land and ground water use on the Property is in furtherance of protecting human health and the environment.

Now therefore, Owner and Ohio EPA agree to the following:

1. **Environmental Covenant.** This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. **Property.** This Environmental Covenant concerns the Property as described above and attached as Exhibit A.

3. **Owner.** The State of Ohio, Department of Transportation ("Owner") is the owner of the Property. Owner is located at 1880 West Broad Street, Columbus, Ohio 43223.
4. **Holders.** Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner, whose address is listed above.

5. **Activity and Use Limitations.** As part of the closure plan of waste management units on the Property, Owner hereby imposes and agrees to comply with the following activity and use limitations:

A. **Limitation Prohibiting Construction of Occupied Structures.** The construction, placement or use of occupied structures on the Property is forbidden unless Owner or Transferee contacts and obtains permission from the Ohio EPA.

B. **The Property shall not be used for residential, commercial or industrial land uses.**

The term "residential land use" shall include, but not be limited to, the following:

(i) Single and multi-family dwelling and rental units;
(ii) Day care centers and preschools;
(iii) Correctional facilities;
(iv) Transient or other residential facilities; and
(v) Production of food-chain products by agricultural means for animal or human consumption.

The term "commercial land use", shall include, but not be limited to warehouses, retail gasoline stations, retail establishments, professional offices, office buildings, hotels and motels, religious facilities, restaurants and other food and beverage services, entertainment facilities, hospitals and clinic, and parking facilities.

The term "industrial land use", shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and parking/driveway use.

C. **Limitation Prohibiting Ground Water Extraction and Use.** Groundwater underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring and remediation of groundwater or in conjunction with construction or excavation activities or maintenance of subsurface utilities.

D. **Limitation on Excavation Activities.** For any and all excavation activities occurring more than 18 inches below the surface, notice must be provided.
to the owner and Ohio EPA. A health and safety plan must be submitted to Ohio EPA for approval.

E. Limitation on Transfer of Materials. No subsurface soils shall be transferred from 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 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 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 right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner or Transferee, if applicable, shall annually submit to Ohio EPA written documentation verifying that the activity and use limitations set forth herein remain in place and are being complied with. Documentation shall be due to Ohio EPA Central Office on June 1st of each year beginning the year after the effective date of this Environmental Covenant, unless otherwise directed by Ohio EPA.
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 LICKING COUNTY RECORDER ON ________, 20___, IN [DOCUMENT______, or BOOK______, PAGE_____] THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

A. Limitation Prohibiting Construction of Occupied Structures. The construction, placement or use of occupied structures on the Property is forbidden unless Owner or Transferee contacts and obtains permission from the Ohio EPA.

B. The Property shall not be used for residential, commercial, or industrial land uses, as defined in OAC 3745-300-08(C)(2)(a), OAC 3745-300-08(C)(2)(b), and OAC 3745-300-08(C)(2)(c), respectively.

C. Limitation Prohibiting Ground Water Extraction and Use. Groundwater underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring and remediation of groundwater or in conjunction with construction or excavation activities or maintenance of subsurface utilities.

D. Limitation on Excavation Activities. For any and all excavation activities occurring more than 18 inches below the surface, notice must be provided to the owner and Ohio EPA. A health and safety plan must be submitted to Ohio EPA for approval.

E. Limitation on Transfer of Materials. No subsurface soils shall be transferred from 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 that the Owner conducted a current title search that shows that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;

C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property, and, if applicable, notified such persons of the Owner’s intention to enter into this Environmental Covenant; 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, the Holder, 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 and the Holder 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 Licking County Recorder’s Office, and shall provide a true 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 Licking 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 Licking County Recorder.

17. **Distribution of Environmental Covenant.** The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Ohio EPA.

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:

Ohio EPA – Central Office  
Lazarus Government Center  
Division of Environmental Response and Revitalization  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: DERR Records Management Officer

Or, send electronically to: records@epa.state.oh.us

And

Ohio EPA – Central District Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Site Coordinator for ODOT Former District 5 Headquarters

Any notice to Holder shall be sent to:
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street
Columbus, OH 43223
Attn: Legal Counsel

[Remainder of page left intentionally blank]
The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

OWNER AND HOLDER: The State of Ohio, Department of Transportation

Jodi Eissass-Locker on behalf of Jerry Wray, Director

State of Ohio )
County of Franklin ) ss.

Before me, a notary public, in and for said county and state, personally appeared Jodi Eissass-Locker on behalf of Jerry Wray, a duly authorized representative of the Owner and Holder, who acknowledged to me the execution of the foregoing instrument on behalf of the Owner and Holder.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 30th day of June, 2017.

Notary Public

This instrument was prepared by:

Steven Ross Irvine
Assistant Legal Counsel, Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223
Mail Stop# 4170
OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig Butler, Director

State of Ohio
County of Franklin

...Before me, a notary public, in and for said county and state, personally appeared Craig Butler, the Director of Ohio EPA, who acknowledged to me the execution of the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1ST day of SEPTEMBER, 2017.

Notary Public

This instrument was prepared by:

Steven Ross Irvine
Assistant Legal Counsel, Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223
Mail Stop# 4170

Sarah M. Miles
Staff Attorney, Ohio EPA
50 West Town St, Suite 700
Columbus, Ohio 43216-1749
EXHIBITS A, B & C
LEGAL PROPERTY DESCRIPTIONS