To be recorded with Deed Records – ORC §317.08

ENVIRONMENTAL COVENANT
SOUTH DAYTON DUMP AND LANDFILL SITE

This Environmental Covenant is made as of the _____ day of _____, 2013, by _____, as Owner and Holder, pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting property located within the South Dayton Dump and Landfill Site (hereinafter, the "Site") (further described below) to the activity and use limitations and to the rights of access described below.

Whereas, the Site contains a former commercial and industrial landfill at which were disposed various hazardous substances; and

Whereas, several private parties agreed to conduct studies and evaluate cleanup options at the Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9600 et seq., pursuant to an August 10, 2006 Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study ("ASAOC for RI/FS") with the United States Environmental Protection Agency ("U.S. EPA"); and

Whereas, the same private parties agreed to conduct sub-surface gas sampling and, as determined to be necessary and appropriate, design and install vapor abatement mitigation systems in structures impacted by subsurface gas migration, and, as determined to be necessary and appropriate, design and implement a landfill gas extraction system, all under an April 5, 2013 Administrative Settlement Agreement and Order on Consent for Removal Action ("ASAOC for Removal Action"); and

Whereas, approximately 40 acres of the former landfill at the Site have been built over and/or are being used for other commercial and/or industrial purposes; and

Whereas, the Site is comprised of numerous property parcels owned by various separate persons and/or entities; and

Whereas, work continues at the Site under the ASAOC for RI/FS and ASAOC for Removal Action; and

Whereas, the Owner and Holder has agreed: to grant a permanent right of access over the Property to the Access Grantees for purposes of implementing, facilitating and monitoring the RI/FS and remedial action as may be selected in a Record of Decision ("ROD") issued by U.S. EPA; and to impose on the Property activity and use limitations as covenants that will run with the land for the purpose of protecting human health and the environment;

Now therefore, Owner agrees to the following:

Definitions

1. Access Grantees. The United States Environmental Protection Agency ("U.S. EPA"), the Ohio Environmental Protection Agency ("Ohio EPA"), the private parties who signed the ASAOC's and their agents.

2. Agency. The United States Environmental Protection Agency, within the meaning of Ohio Revised Code 5301.80(B).

3. Amendment. Any change to this Environmental Covenant, including the Activity and Use Limitations set forth herein, or the elimination of one or more Activity and Use Limitation when there is at least one limitation remaining.

4. Holder. Owner is the Holder of this Environmental Covenant.

5. Owner. The Owner of the Property is _____.

6. Property. The Property is located on real property parcels numbered _____ and located on _____ Road in the City of Moraine in Montgomery County, Ohio and more particularly described in Exhibit A attached hereto and hereby incorporated by reference.

7. Site. The Site consists of the property parcels located at 1901 through 2153 Dryden Road and 2225 East River Road in Moraine, Ohio and as described in Exhibit B to this Environmental Covenant.

8. Termination. The elimination of all Activity and Use Limitations set forth herein and all other obligations under this Environmental Covenant.

9. Transferee. Any future owner or any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgages, easement holders, and/or lessees.

1. Environmental Covenant.

This instrument is an Environmental Covenant executed and delivered pursuant to §§ 5301.80 to 5301.92 of the Ohio Revised Code.

2. Activity and Use Limitations.

A. Owner and Transferee(s) agree for themselves and their successors in title not to permit the Property to be used in any manner that would interfere with or adversely affect the conduct of the RI/FS or the integrity or protectiveness of remedial action, which has been implemented or which may be implemented unless the written consent of the U.S. EPA to such use is first obtained. In the event Owner or Transferee intends to excavate or otherwise engage in activity that may disturb soils at the Property, Owner or Transferee shall submit to U.S. EPA

for approval a soil management plan. Owner or Transferee shall not commence the excavation or other activity that may disturb soils until such soil management plan is approved. Owner or Transferee shall comply with the terms of the soil management plan.

B. Owner or Transferee shall be solely responsible for installing vapor intrusion mitigation systems as necessary and/or appropriate in any buildings or other structures constructed or modified on the Property after the recording of this Environmental Covenant.

C. The Property is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(C)(2)(c)(ii) and (C)(2)(c)(iii).

D. Groundwater underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the groundwater or, subject to prior notice to, and any conditions imposed by, U.S. EPA, in conjunction with construction or excavation activities or maintenance of subsurface utilities.

If any event or action by or on behalf of an Owner or Transferee constitutes a breach of the Activity and Use Limitations, Owner or Transferee shall notify Ohio EPA and U.S. EPA within 30 days of becoming aware of the event or action, and shall remedy said breach within 60 days of becoming aware of the event or action, or within such other timeframe as may be agreed to by the Owner or Transferee and Ohio EPA and U.S. EPA.

3. 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.

4. 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.

5. Access

Owner and Transferee(s) hereby grant to the Access Grantees the right of access to the Property for implementation or enforcement of this Environmental Covenant and to oversee or undertake any activity required by the ASAOC for RI/FS, ASAOC for Removal Action, and/or subsequent Order or Consent Decree. The access rights do not limit any statutory authority of the Ohio EPA or the U.S. EPA nor do they provide any rights against those agencies.

6. Administrative Record

A. Certified copies of the ASAOC for RI/FS and ASAOC for Remedial Action have been recorded with respect to the Property in the Office of the Montgomery County Recorders Miscellaneous Book 25, Pages 268-324. The ASAOC's constitute environmental response projects as defined by ORC § 5301.80(E) and authorize and require certain investigation and action to be taken by the signatory private parties.

B. Copies of the U.S. EPA administrative record for the Site are maintained at the following locations: U.S. EPA Region 5, Superfund Records Center (7th Floor), 77 W. Jackson, Chicago, Illinois 60604; _____ Library, _____, _____, Ohio _____.

7. Notice upon Conveyance

A. Not later than 10 days prior to any proposed conveyance of any part of the Property, Owner and any subsequent Transferee shall provide the proposed transferee(s) with a copy of this Environmental Covenant.

B. 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 and grants of access set forth in this Environmental Covenant and provide the recorded location of this Environmental Covenant.

C. Owner, Holder, and Transferee shall notify U.S. EPA and 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 documentation evidencing the conveyance, a legal description of the property being transferred, a survey map of the property being transferred; and the closing date of the transfer of ownership of the Property.

8. Representations and Warranties of Owner

Owner represents and warrants:

A. That Owner is the sole owner of the Property;

B. That Owner holds fee simple title to the Property which is free, clear and unencumbered except for _____;

C. That Owner has the power and authority to make and enter into this Agreement as Owner and Holder, to grant the rights and privileges 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;

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.

9. Rights and Remedies

A. Compliance with this Environmental Covenant may be enforced pursuant to ORC 5301.91 or other applicable law.

B. In the event that Owner or Transferee(s) violates the terms of this Environmental Covenant, then, in addition to any rights which U.S. EPA may have under the ASAOC for RI/FS, ASAOC for Removal Action, or subsequent Order or Consent Decree, U.S. EPA shall have the right to immediately seek an appropriate equitable remedy. Owner and Transferee(s) waive all due process or other constitutional right to notice and hearing or the posting of bond by U.S. EPA before the grant of a temporary restraining order, preliminary injunction and/or other remedy pursuant to this Subsection 9(B).

C. All of the rights and remedies set forth in this Environmental Covenant or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of, or exclusion of, any other right, remedy or option available hereunder or under the ASAOC for RI/FS, ASAOC for Removal Action, or subsequent Order or Consent Decree or at law. The failure to exercise any right granted hereunder, to take action to remedy any violation by Owner of the terms hereof or to exercise any remedy provided herein shall not be deemed to be a waiver of any such right or remedy and no forbearance on the part of U.S. EPA and no extension of time for performance of any obligations of Owner hereunder shall operate to release or in any manner affect U.S. EPA's rights hereunder.

D. No action or decision by U.S. EPA related to environmental remediation at the Site shall independently give rise to judicial review under this Environmental Covenant. Nothing in this Environmental Covenant shall restrict the U.S. EPA from exercising any authority it may have under applicable law. U.S. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable.

E. U.S. EPA does not assume any obligations under this Environmental Covenant. U.S. EPA's signature to this Environmental Covenant does not constitute a commitment, contract or obligation for future action on the part of U.S. EPA.

F. Nothing in this Environmental Covenant shall restrict the Ohio EPA or U.S. EPA from exercising any authority under applicable law.

10. Future Cooperation; Execution of Supplemental Instruments

Owner and Transferee(s) agree to cooperate fully with U.S. EPA and Ohio EPA and to assist them in implementing the rights granted them under this Environmental Covenant and, in furtherance thereof, agree to execute and deliver such further documents as may be requested by U.S. EPA and Ohio EPA to supplement or confirm the rights granted hereunder.

11. Amendment or Termination

A. This Environmental Covenant may be modified, amended or terminated only by a written instrument signed by Owner or Transferee (as the case may be), U.S. EPA, and Ohio EPA pursuant to ORC 5301.90 and other applicable law. Upon transfer of all or any portion of the Property, Owner waives any rights that they might otherwise have under ORC Section 5301.90 to withhold consent to any amendments, modifications, or termination of this Environmental Covenant, to the extent that they have transferred their interest in that portion of the Site affected by said modification, amendment or termination.

B. Within thirty (30) days of signature by all requisite parties on any Amendment or Termination of this Environmental Covenant, the Owner or Transferee(s) shall file such instruments for recording with the Montgomery County Recorder's Office, in the same manner as a deed to the Property and shall provide a file- and date-stamped copy of the recorded instrument to the U.S. EPA and Ohio EPA as set forth in Paragraph 17 of this Environmental Covenant.

12. 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.

13. Governing Law

Except as provided herein, this Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio. Federal law shall govern issues related to environmental remediation; the adequacy of the institutional controls to protect human health and the environment; and issues involving or relating to the U.S. EPA.

14. Recordation

Within thirty (30) days after 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 Montgomery County Recorder's Office.

15. 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 Montgomery County Recorder.

16. Distribution of Environmental Covenant

Within thirty (30) days after recordation, Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to U.S. EPA and the Ohio EPA at the address set forth in Paragraph 17 of this Environmental Covenant. In addition, Owner shall deliver a copy to the City of Moraine.

17. Notices

Unless notified otherwise in writing, all other notices, requests, demands or other communications required or permitted under this Environmental Covenant shall be given to the U.S. EPA and Ohio EPA at the following addresses:

A. U.S. EPA

Director of Superfund Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

B. Ohio EPA

_____
Division of Emergency and Remedial Response
Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, OH 45402

18. Compliance

On an annual basis, Owner and any Transferee shall submit to U.S. EPA and Ohio EPA written documentation verifying that the activity and use limitations remain in place and are being complied with.

The undersigned representatives of Owner represents and certifies that he/she is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

_____ _____
Signature of Owner Date

_____
Printed Name

STATE OF OHIO)
) ss:
COUNTY OF_____)

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

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 2013.

_____
Notary Public

758346.1

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B

SITE DESCRIPTION