

**To be recorded with Deed Records in accordance with ORC § 317.08
Format of document conforms to requirements of ORC § 317.114**

Environmental Covenant

This Environmental Covenant is entered into by Joe Smith ("**Owner**"), The XYZ Corporation ("**Holder**") and the **State Fire Marshal of Ohio** 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 subject property is identified as the Former XYZ Corporation Gas Station located approximately 0.35-miles east of the community of A-Town, Ohio, in the north-central portion of Monroe County, BUSTR Incident No. 12345678-N00001.

Two underground storage tanks (USTs) were removed by XYZ Corporation from the property on December 5, 2001. The laboratory analytical results of confirmatory soil samples revealed that two soil samples collected from beneath the dispenser island contained benzene at a concentration that exceeded the BUSTR action level. From 2001 through 2004, an extensive site investigation was completed, including the collection of soil and groundwater samples throughout the area to delineate the lateral and vertical extent of potential soil and groundwater contamination. The investigation results revealed that soil contamination was restricted to the immediate area under former dispenser island. Groundwater analytical results from samples collected from four monitoring wells showed that groundwater was not impacted. Limited evidence of light non-aqueous phase liquids (LNAPL), characteristic of motor oil, was observed in one monitoring well. The analytical results of a groundwater sample collected directly beneath the LNAPL showed that the product does not represent a source of dissolved phase petroleum hydrocarbon constituents of the groundwater system. LNAPL recovery actions revealed that recovery rates were negligible. The presence of a coal seam immediately underlying the site effectively acts as a natural carbon filter to inhibit potential LNAPL migration, as demonstrated by site investigation activities and results. In addition, site investigation activities revealed the presence of an inactive used oil tank and oil water separator on the property.

Remedial actions were completed in June 2004. The inactive used oil tank and oil water separator tank were removed from the property. The analytical results of confirmatory samples collected from the sidewall and floor were either non-detect or detected below the action levels. The property was restored to original grade conditions. The Soil immediately under the former dispenser island was excavated from an area measuring approximately 9 feet by 8 feet by 8 feet deep. A total of 64 tons of soil and debris were removed and transported off-site for disposal at Suburban Landfill located in Sunnyville, Ohio.

Since the site is just outside the BUSTR rule qualifications for a non-residential and non-drinking water scenario, activity and use limitations must be established. These limitations are needed in order to lessen or eliminate various contaminant exposure pathways – in this case, for the contaminant, benzene, via groundwater ingestion, soil to indoor air, soil to outdoor air, etc. The property and any portion thereof must be restricted to Non-Residential Use (as defined by BUSTR) designation with a prohibition against groundwater extraction and the prohibition against basements designed for routine human occupancy, in order to address these exposure pathways.

All administrative records regarding the petroleum release and corrective action process, pursuant to Chapter 3737 of the Ohio Revised Code, that occurred at the Property that is the subject of this Environmental Covenant may be obtained through a public records request by requesting information on Former XYZ Corporation Gas Station, located in A-Town, Ohio, BUSTR Release Number 12345678-N00001.

Bureau of Underground Storage Tank Regulations
Division of State Fire Marshal
Attention: Public Information Clerk
8895 East Main Street
Reynoldsburg, OH 43068

NOW THEREFORE, the “Owner” Joe Smith, “Holder” XYZ Corporation and State Fire Marshal of Ohio 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. Description of Property. This Environmental Covenant concerns an approximately 5.0 acre tract of real property owned by Joe Smith, located at 7805 East Main Street, A-town, Monroe County, Ohio, and more particularly described in **Exhibit “A”** attached hereto and hereby incorporated by reference herein (“**Property**”).
3. Owner(s). Joe Smith (“**Owner**”), who is located at 7805 East Main Street, A-Town, Ohio is the owner of the Property.

4. Holder(s). The State Fire Marshal of Ohio, the Owner, Joe Smith, whose address is listed above, and XYZ Corporation, which is located at 111 First Street, B-Town, Pennsylvania 13000 are the ("**Holders**") of this Environmental Covenant.

5. Activity and Use Restrictions. As part of the corrective action at the Subject Property and in consideration for the State Fire Marshal of Ohio's forbearance to require unrestricted land use for the Subject Property and to issue a no further action status, Owner hereby imposes and agrees to comply with the following activity and use limitations:

Prohibition Against Extraction of Groundwater. As a portion of the remedy under the State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR") program to protect against exposure to petroleum in groundwater located at or underlying the Property described herein, no person shall extract the groundwater located at or underlying the Property or any portion thereof for any purpose, potable or otherwise, except for groundwater investigation or remediation.

Land Use Restriction. As a portion of the remedy under the State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR") program to protect against exposure to petroleum on and underlying the Property described herein, the Property and any portion thereof is hereby restricted to Non-Residential Use only, as that term is defined in Ohio Administrative Code ("OAC") 1301:7-9-13(C)(17). (effective March 1, 2005). (See Ohio Administrative Code ("OAC") 1301:7-9-13(C)(26) for the definition of Residential Use (effective March 1, 2005)).

Prohibition against Basements. As a portion of the remedy under the State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR") program to protect against exposure to petroleum on and underlying the Property described herein, no basement or other permanent subsurface or underground structure designed for routine human occupancy shall be constructed at the property.

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 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 State Fire Marshal of Ohio from exercising any authority under applicable law.

8. Rights of Access. Owner(s) hereby grants to State Fire Marshal, its agents, contractors, and employees; XYZ Corporation; Village of A-Town and Monroe County officials the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. 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 BOOK___, PAGE _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Prohibition Against Extraction of Groundwater. As a portion of the remedy under the State Fire Marshal’s Bureau of Underground Storage Tank Regulations (“BUSTR”) program to protect against exposure to petroleum in groundwater located at or underlying the Property described herein, no person shall extract the groundwater located at or underlying the Property or any portion thereof for any purpose, potable or otherwise, except for groundwater investigation or remediation.

Land Use Restriction. As a portion of the remedy under the State Fire Marshal’s Bureau of Underground Storage Tank Regulations (“BUSTR”) program to protect against exposure to petroleum on and underlying the Property described herein, the Property and any portion thereof is hereby restricted to Non-Residential Use only, as that term is defined in Ohio Administrative Code (“OAC”) 1301:7-9-13(C)(17). (effective March 1, 2005).

Prohibition against Basements. As a portion of the remedy under the State Fire Marshal’s Bureau of Underground Storage Tank Regulations (“BUSTR”) program to protect against exposure to petroleum on and underlying the Property described herein, no basement or other permanent subsurface or underground structure designed for routine human occupancy shall be constructed at the property.”

Owner, or its assigns or successors in interest (including any Transferee who conveys the Property) shall notify the State Fire Marshal and any Holders other than the Owner within thirty (30) days after each conveyance of an interest in any portion of the Property. Such notice shall include the name, address, and telephone number of the Transferee who acquires the Property, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the real property being transferred.

10. Compliance Reporting. Owner(s) or any Transferee shall submit to the State Fire Marshal of Ohio, **every five (5) years**, written documentation verifying that the activity and use limitations remain in place and are being complied with. The first five (5) year period shall commence from the Effective Date as defined in this Environmental Covenant. (See Paragraph 17)

11. Non-complying Use. If the Property or any portion of the Property is put to a use that does not comply with this Environmental Covenant, then the **no further action (NFA) status** issued for the Property by the State Fire Marshal of Ohio, pursuant to Chapter 3737 of the Ohio Revised Code and the regulations promulgated thereunder, is void on and after the date of the commencement of such non-complying use.

12. Representations and Warranties. Owner(s) hereby represents and warrants to the other signatories hereto that 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; that the Owner holds fee simple title which is free, clear and unencumbered; that the Owner has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Owner's intention to enter into this Environmental Covenant; 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 of by which Owner may be bound or affected.

13. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; Holder, and the State Fire Marshal of Ohio¹, 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 State Fire Marshal of Ohio and the Owner or Transferee and other Holders, if any 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 Monroe County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to State Fire Marshal and Holder.

¹ See ORC § 5301.82 (B) (3), which allow for "limitations on amendment or termination."

14. 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.
15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
16. 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 Monroe County Recorder's Office.
17. 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 Monroe County Recorder.
18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: **State Fire Marshal of Ohio; the Village of A-Town, County of Monroe, and Holder, XYZ Corporation.**
19. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Bureau of Underground Storage Tank Regulations ("BUSTR")
Enforcement Section
Division of State Fire Marshal
8895 East Main Street
Reynoldsburg, OH 43068

The undersigned Owner (or representative of owners) and Holders represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

JOE SMITH (OWNER)

(Signature) Owner, **JOE SMITH**

Date

Print Name and Title

State of Ohio :

County of Monroe :

Before me, a notary public, in and for said county and state, personally appeared the **Owner, Joe Smith**, who acknowledged to me that he did execute the foregoing instrument on his behalf.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20____.

Affix Seal
Here

Notary Public (Signature)

Commission Expires

STATE FIRE MARSHAL OF OHIO

(Signature) **Donald C. Cooper, Chief Deputy State Fire Marshal
on behalf of Larry L. Flowers, State Fire Marshal of Ohio**

Date

State of Ohio :
County of Licking : ss

Before me, being a notary public, in and for said county and state, did personally observe the appearance of Donald C. Cooper, Chief Deputy State Fire Marshal, who acknowledged to me that he did execute the foregoing instrument on behalf of the State of Ohio, Division of the State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR).

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20_____.

Affix Seal
Here

Notary Public (Signature)

Commission Expires

EXHIBIT A

Legal Description

Parcel ID: 90830000001

Situated in the Township of XX, County of XX and State of Ohio and knows as being part of the Original Township section 34 and bounded and described as follows:

Beginning on the center line of South Center Road, said center line being also the Northerly line of said section 34, at the Northeasterly corner of parcel no. 5 of lands conveyed to Joseph and Margaret Jones, by deed dated September 2, 1932 and recorded in Volume 412, Page 345 of XX County Deed Records... etc.....

**(OR USE/ATTACH COPY OF MOST RECENT DEED
(PREFERRED METHOD))**