



**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
James L. Miraldi, Judge**

Date 08/08/19

Case No. 03CV136143

JIM PETRO, ATTORNEY GENERAL

Plaintiff

ELIZABETH EWING

Plaintiff's Attorney

VS

LORNE J ELBERT JR

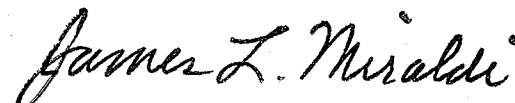
Defendant

DAVID LENEGHAN

Defendant's Attorney

Consent judgment entered. See Journal. Costs to Defendants.
The telephone conference set for August 8, 2019 is cancelled.

VOL____PAGE____


James L Miraldi, Judge

CC:

**To The Clerk: THIS IS A FINAL APPEALABLE ORDER
Please serve upon all parties not in default for failure to appear;
Notice of the Judgment and it's date of entry upon the Journal**



**IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

STATE OF OHIO, *ex. rel.*,
DAVE YOST,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

LORNE J. ELBERT, JR., et. al.,

Defendants.

CASE NO. 03CV136143

JUDGE JAMES L. MIRALDI

CONSENT ORDER

The State of Ohio, by its Attorney General¹ ("Plaintiff"/"the State") and at the written request of the Director of the Ohio Environmental Protection Agency ("the Director"), has filed a Complaint seeking injunctive relief and civil penalties against Defendant Joseph J. Elbert, Executor of the Estate of Lorne J. Elbert, Jr. and Kasper Properties, Inc., for violations of Ohio's air, construction and demolition debris, solid waste, and hazardous waste laws and the rules adopted under those laws, concerning Defendants' ownership and operation of an unpermitted hazardous waste facility at its property located near 447 Oberlin Elyria Road, Elyria, Lorain County, Ohio ("the Site").

This Court found Defendants liable on two claims after trial. The Ninth District Court of Appeals directed entry of judgment against Defendants on all remaining claims after appeal. *State ex rel. Rogers v. Elbert*, 180 Ohio App.3d 284, 2008-Ohio-6746, 905 N.E.2d 235 ¶ 27-36,

¹ Attorney General Dave Yost is substituted as relator under Ohio Rule of Civil Procedure 25(D)(1).

45, 48, and 58 (9th Dist.) (reversal on summary judgment entitles the State to judgment in its favor).

During the pendency of the trial on remand, from September 2018 to November 2018, Ohio EPA investigated an approximate 11,000 ft² (0.25 acre) area located on the northeastern portion of the property where drums containing hazardous waste were stored. Based upon the investigation, Ohio EPA determined this area has met the hazardous waste closure performance standard requirements of Ohio Adm. Code 3745-55-11(A) and (B) and no further action is required with regard to this area. Furthermore, from March 2019 to July 2019 Defendants investigated the interior of the maintenance building, removed and properly characterized wastes, and decontaminated equipment and associated structures to meet the hazardous waste closure performance standard requirements of Ohio Adm. Code 3745-55-11(A) and (B) and 3745-55-14. There is no further action required regarding this area.

The Parties have reached an agreement whereby Defendants will address the remaining environmental hazards at the Site. The agreement calls for Defendants to prepare and record an environmental covenant under Ohio Revised Code Section 5301.80 through 5301.92 that restricts future use of the Site, implements a groundwater restriction; file a deed notice that meets the requirements of Ohio Adm. Code 3745-27-11(H)(5), indicating there may be subsurface solid waste or construction and demolition debris at the Site; and pay a \$20,000 civil penalty.

The Parties have consented to the entry of this Order. Therefore, with the consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:

- a. "Kasper Properties, Inc.," or "Kasper" refers to Kasper Properties, Inc., a privately held corporation organized in the State of Ohio which is an asset of Defendant the Estate of Lorne J. Elbert, Jr.
- b. The "Estate of Lorne J. Elbert, Jr." or "Estate" means the probate estate currently pending before the Lorain County Probate Court, Case No, 2012 ES 00548
- c. "Defendants" means the Estate of Lorne J. Elbert, Jr. and Kasper Properties, Inc.
- d. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or his designee.
- e. "Effective Date" means the date the Lorain County Clerk of Courts files this Order.
- f. "Parties" means Plaintiff, the State of Ohio, and Defendants the Estate of Lorne J. Elbert, Jr., and Kasper Properties, Inc.
- g. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- h. "Site" means property owned by Kasper located near 447 Oberlin Elyria Road, Elyria, Lorain County, Ohio 44035, and known as parcel number 10-00-003-112-019.

- i. "State" means Plaintiff State of Ohio, by and through its Attorney General, Dave Yost at the written request of the Director of the Ohio Environmental Protection Agency.
- j. "Order" refers to this Order.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 3734. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. This Order shall apply to and be binding only upon Defendants, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

4. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

5. If insolvency, bankruptcy, or other failure occurs, Defendants must comply with the requirements of the Permanent Injunction and Civil Penalty Sections of this Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. The Plaintiff alleges that Defendants are responsible for violations of Ohio's solid waste, used oil, and hazardous waste pollution control laws codified at R.C. Chapter 3734, Ohio's open

burning laws, construction and demolition debris pollution control laws, and demolition control laws codified at R.C. Chapter 3704 and R.C. Chapter 3714. Defendants deny all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint. Compliance with this Order shall also constitute full satisfaction of Case No. 13CV178948, which was consolidated with Case No. 03CV136143 by the Court's Order of June 11, 2013.

7. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for any claims or violations not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable action against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.
- e. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the

performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Order.

8. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.

9. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

10. Nothing in this Order shall relieve Defendants of its obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

11. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTION

12. Defendants are ordered and permanently enjoined to:

- a. Within 60 days of the Effective Date file an environmental covenant for the Site with the Lorain County Recorder's Office. The environmental covenant shall be recorded in the official records of the Lorain County Recorder pursuant to Ohio

Rev. Code § 5301.82. The environmental covenant shall be consistent with the draft environmental covenant attached to this Consent Order as Exhibit A, shall be signed by a Joseph Elbert, as a representative of Defendant Kasper Properties, Inc., and as the Executor of Defendant the Estate of Lorne J. Elbert, Jr., and shall be approved and signed by Ohio EPA. The activity and use limitations for the Site shall be as described more particularly by the environmental covenant attached hereto at Exhibit A.

- b. Within 30 days of the recording the environmental covenant, submit to Ohio EPA a file and date-stamped copy of the recorded environmental covenant. Thereafter, if either Defendant conveys any interest in the Site, each deed, title, or other instrument shall contain a reference to the recorded environmental covenant. The terms and conditions of the environmental covenant are incorporated into this Consent Order and shall be binding upon Defendants and any subsequent owner(s).
- c. Within 30 days of the Effective Date file a deed notice that meets the requirements of Ohio Adm.Code 3745-27-11(H)(5) indicating there may be subsurface solid waste and/or construction and demolition debris disposed at the Site.

VI. CIVIL PENALTY

13. In previous filings with this Court, the State requested a substantial civil penalty be ordered from Defendants. However, based upon the State's economic analysis of Defendant's financial condition and taking into consideration its ability to pay a civil penalty within the

guidelines set forth by the Ohio Supreme Court in *Dayton Malleable*, the State has agreed to accept a substantially reduced civil penalty.

14. Under R.C. 3734.13, Defendants are ordered to jointly and severally pay a civil penalty of \$20,000.00, subject to the provisions of this Section. Full payment shall be made within thirty days after this Order is entered. Payment shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

15. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

16. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from the Defendants to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

17. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Defendants shall not be permitted to claim a force majeure as an excuse for any untimely

payment or partial payment of an amount less than the full civil penalty as specified in this Order.

18. If any Defendant files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, non-filing Defendant, for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

19. All funds the state receives as a civil penalty shall be deposited into the environmental remediation protection fund established pursuant to R.C. 3734.281.

VII. STIPULATED PENALTIES

20. If Defendants fails to comply with any of the requirements of this Order, Defendants shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- a. Defendants shall pay fifty dollars (\$50.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendants shall pay one hundred dollars (\$100.00) per day;
- c. For each day any requirement of this Order is violated greater than (90) days of violation, Defendants shall pay one hundred and fifty dollars (\$150.00) per day.

21. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor,

Columbus, Ohio 43215. This penalty shall be deposited into the Environmental Protection Remediation Fund created by R. C. 3734.281.

22. Defendant's payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3734 including civil penalties under R.C. 3734.13; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendant.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

23. Performance of the terms of this Order by Defendants is not conditioned on the receipt of any private, Federal or State grants, or loans. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, or loans by the processing of any applications for the same.

IX. SITE ACCESS

25. As of the Effective Date, Ohio EPA and its representatives and contractors shall have access at reasonable times to the Site, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Monitoring the work or any other activities taking place at the Site;
- b. Verifying any data or information submitted to Ohio EPA;
- c. Conducting investigations relating to contamination at or near the Site;

- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or its agents, consistent with this Order and applicable law; or
- g. Assessing Defendant's compliance with this Order.

24. Nothing in this Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon the Site or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3734.

X. SUBMITTAL OF DOCUMENTS

25. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Environmental Response and Revitalization
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Hazardous Waste Program Compliance Manager

Ohio EPA
Northeast District Office
Division of Emergency Response and Revitalization
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Hazardous Waste Program Manager

XI. EFFECT OF ORDER

26. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any hazardous waste facility, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that stores, discharges, or otherwise manages or hazardous waste not previously approved by Ohio EPA. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

XII. MODIFICATION

27. No modification shall be made to this Order without the written agreement of the Parties and the Court.

XIII. MISCELLANEOUS

28. Nothing in this Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

29. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendants from the obligations created by this Order.

30. Defendants shall inform Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XIV. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XV. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

32. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVI. COURT COSTS

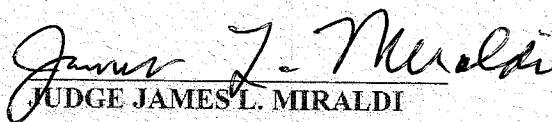
33. Defendants are ordered to pay the full balance of court costs in this action as reflected in the records of the Lorain County Clerk of Courts.

XVII. AUTHORITY TO ENTER INTO THE ORDER

34. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

IT IS SO ORDERED.

8.8.19
DATE


JUDGE JAMES L. MIRALDI

APPROVED AND AGREED TO BY:

DAVID LENEHAN, ESQ.

Counsel for Defendants Estate of Lorne J. Elbert, Jr. and Kasper Properties, Inc.,

ESTATE OF LORNE J. ELBERT JR.

Joseph J. Elbert
By: JOSEPH J. ELBERT, *Executor*

KASPER PROPERTIES, INC.

Joseph J. Elbert
By: JOSEPH J. ELBERT, *Executor of*
The Estate of Lorne J. Elbert Jr.

DAVE YOST
OHIO ATTORNEY GENERAL

Elizabeth R. Ewing
ELIZABETH R. EWING (0089810)

Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766
Elizabeth.Ewing@ohioattorneygeneral.gov
Counsel for Plaintiff, the State of Ohio

APPROVED AND AGREED TO BY:



DAVID LENEGHAN, ESQ.

Counsel for Defendants Estate of Lorne J. Elbert, Jr. and Kasper Properties, Inc.,

ESTATE OF LORNE J. ELBERT JR.

By: JOSEPH J. ELBERT, *Executor*

KASPER PROPERTIES, INC.

**By: JOSEPH J. ELBERT, *Executor of
The Estate of Lorne J. Elbert Jr.***

**DAVE YOST
OHIO ATTORNEY GENERAL**

ELIZABETH R. EWING (0089810)

Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

(614) 466-2766

Elizabeth.Ewing@ohioattorneygeneral.gov

Counsel for Plaintiff, the State of Ohio

EXHIBIT A

ENVIRONMENTAL COVENANT AMENDMENT

This Environmental Covenant is entered into by Kasper 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 Property (as defined herein) to the activity and use limitations and specified obligations set forth herein.

WHEREAS, the State of Ohio and Owner have entered into a Consent Order, *State of Ohio v. Elbert*, Case No. 03CV136143 on [XXXX XX, 2019], to facilitate settlement and the performance of the environmental response project consisting of hazardous waste and solid waste closure of a facility located on the Property in accordance with hazardous waste and solid waste requirements contained in ORC Chapters 3714 and 3734 and where solid waste or construction and demolition debris may still be buried. As part of solid waste or construction and demolition debris closure, Owner has agreed to place certain restrictions on the future use of the Property, as described herein.

The administrative record for the environmental response project is contained in the Elbert files for the facility located at the Ohio EPA's Northeast District Office located at 2110 East Aurora Road, Twinsburg, Ohio 44087, (330) 963-1200.

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 approximately 32.6 acres of land, current parcel number 1000003112019, located at Oberlin Road, Elyria, Lorain County, Ohio, and more particularly described in Exhibit A-1 attached hereto and hereby incorporated by reference herein (the "Property").
3. Owner. The Property is owned by Kasper Properties, Inc which is an asset of the Estate of Lorne J. Elbert, Jr. The Owner no longer operates a business on the Property. Joseph Elbert is the executor of the Estate of Lorne J. Elbert, Jr, and is the contact for Kasper Properties, Inc. Joseph's mailing address is 155 Yorkshire Court, Elyria, Ohio 44035.
4. Holder. Pursuant to ORC § 5301. 81, Owner identified herein is the Holder of this Environmental Covenant.

5. Activity and Use Limitations. To prevent potential exposure as part of the solid waste or construction and demolition debris closure of the facility in accordance with the requirements in ORC Chapters 3714 and 3734 and the rules promulgated thereunder, Owner hereby imposes and agrees to comply with the following activity and use limitations:

Industrial or Commercial Land Use – The Property shall be limited to commercial or industrial land use and shall not be used for residential activities. “Residential activities” include but are not limited to: Day care centers and preschools; correctional activities; transient or other residential activities; and production of food-chain products by agricultural means for animal or human consumption.

Ground Water Prohibition - Ground water shall not be extracted or used for any purpose at the Property.

In 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, as applicable, 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 time frame as may be agreed to by Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon Owner, during the time that Owner owns the Property or any portion thereof, 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 or other applicable law. 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 and the Lorain County Health Department (“Health Department”), their respective employees, agents, and assigns, and any Holder the right of access to the Property for implementation or

enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.

9. Compliance Reporting. Owner or any Transferee, if applicable, shall submit to Ohio EPA and the Health Department by the first (1st) of June of each year 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 either the Property or any portion thereof, 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 LORAIN COUNTY RECORDER ON _____, 20____, IN [DOCUMENT _____, or BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Industrial or Commercial Land Use – The Property shall be limited to commercial or industrial land use and shall not be used for residential activities. “Residential activities” include but are not limited to: Day care centers and preschools; correctional activities; transient or other residential activities; and production of food-chain products by agricultural means for animal or human consumption.

Ground Water Prohibition - Ground water shall not be extracted or used for any purpose at the Property.

Any Owner or Transferee, if applicable, shall notify Ohio EPA and the Health Department 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 a 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 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; and
- E. 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.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or Transferee; the Holder; and the Director of Ohio EPA, pursuant to ORC § 5301.82 and 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, if applicable, and any existing 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 Lorain County Recorder's Office, and shall provide a file- and date- stamped copy of the recorded instrument to Ohio EPA and any existing Holder.

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 each shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Lorain 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 Lorain County Recorder.

17. Distribution of Environmental Covenant. Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the Health Department; such unit of local government in which the Property is located; any other signatories to the Environmental Covenant; and the City of Elyria.

18. Notice. Unless otherwise notified in writing by the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Ohio EPA – Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Solid Waste Manager

As to Owner:

Kapser Properties, Inc.
Attn: Joseph Elbert
155 Yorkshire Court
Elyria, Ohio 44035

The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Kapser Properties, Inc

Signature of Owner's Representative

Joseph Elbert, Executor
of the Estate of Lorne J. Elbert

Date

State of Ohio

County of Lorain

)
)

ss:

Before me, a notary public, in and for said county and state, personally appeared Joseph Elbert, Executor of the Estate of Lorne J. Elbert, Jr, who acknowledged to me that he or she did execute the foregoing instrument on behalf of Kapser Properties, Inc.

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

Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

Laurie A. Stevenson, Director

Date

State of Ohio

County of Franklin

)
)

ss:

Before me, a notary public, in and for said county and state, personally appeared Laurie A. Stevenson, the Director of Ohio EPA, who acknowledged to me that she did execute the foregoing instrument on behalf of Ohio EPA.

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

Notary Public

Exhibit A-1

[to be attached]