

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

\_\_\_\_\_)  
In re: ) CERCLA 106(b) Petition No. \_\_\_\_\_  
)  
Joseph J. Piscazzi, Trustee, Joseph )  
J. Piscazzi Revocable Trust, )  
)  
Petitioner )  
)  
\_\_\_\_\_)

**APPENDIX  
TO  
PETITION FOR REIMBURSEMENT OF COSTS, FEES AND  
OTHER EXPENSES PURSUANT TO 42 U.S.C. § 106(b)**

## APPENDIX

1. EPA Unilateral Order June 21, 2010
2. Revised Final Removal Action Completion Report, March 2012
3. EPA Notice of Completion
4. History of Cleveland Trencher Co.
5. Promissory Note
6. Piscazzi Trust Agreement
7. Evidence of Mortgages made by Piscazzi Trust
8. Mortgage
9. Deed in Trust
10. Cognovit Judgment Entry
11. Subordination of other Mortgages, Liens and Interests in favor of Petitioner
12. Judgment Entry regarding Subordination of Liens
13. May 15, 2006 Eviction Judgment against Cleveland Trencher
14. Results of Title Search of Site
15. Consent for Access Agreement
16. Correspondence to EPA, May 26, 2010
17. Realtor Listing Agreement, July 24, 2007
18. Agreement between Thomas and Nationwide for Demolition
19. Agreement between Asbestek and Nationwide regarding Asbestos Abatement
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21. EPA Correspondence regarding Notice of Intent
22. Chow letter regarding work plan submission
23. Evidence of Petitioner's Cost of Compliance with AO
24. Precision Environmental Work Plan
25. Precision Work Plan Revised, Asbestos Abatement
26. July 8, 2011 letter to EPA
27. Final Removal Action Completion Report January 2012
28. Evidence of Confusion regarding Gary Thomas as "Trustee"

# **EXHIBIT 1**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



381137

JUN 21 2010

REPLY TO THE ATTENTION OF

Cleveland Trencher Site

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

The Joseph J. Piscazzi Revocable Trust  
c/o Mark J. Scarpitti, Esq.  
Oldham Kramer  
195 South Main Street, Suite 300  
Akron, OH 44308

Re: Cleveland Trencher Site  
Euclid, Cuyahoga County, Ohio

Dear Sir or Madam:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. § 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Kevin Chow, Associate Regional Counsel, at (312) 353-6181 or Stephen Wolfe, On-Scene Coordinator, at (440) 250-1781.

Sincerely yours,

Richard C. Karl, Director  
Superfund Division

Enclosure

cc: Ms. Cindy Hafner, Chief  
Division of Emergency & Remedial Response  
Ohio Environmental Protection Agency

RESPONDENTS TO UNILATERAL ADMINISTRATIVE ORDER  
CLEVELAND TRENCHER SITE  
EUCLID OHIO

Metin Aydin, President  
Cleveland Trencher Company  
c/o Pauline Aydin  
7100 Whipple Avenue, N.W.  
North Canton, Ohio 44720

The Joseph J. Piscazzi Revocable Trust  
c/o Mark J. Scarpitti, Esq.  
Oldham Kramer  
195 South Main Street, Suite 300  
Akron, OH 44308

Gary L. Thomas  
P.O. Box 1052  
Akron, Ohio 44309

Nationwide Demolition Services, LLC  
c/o Jeffrey N. Kramer  
24 West 3<sup>rd</sup> Street, Suite 300  
Mansfield, OH 44902

Asbestek, Inc.  
c/o Paul J. Coval  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 5

IN THE MATTER OF: ) Docket No. **V-W-10-C-950**  
)  
CLEVELAND TRENCHER SITE ) ADMINISTRATIVE ORDER  
) PURSUANT TO SECTION 106(a)  
) OF THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
Respondents: ) COMPENSATION, AND  
) LIABILITY ACT OF 1980,  
The Cleveland Trencher Company, ) AS AMENDED, 42 U.S.C.  
The Joseph J. Piscazzi Irrevocable Trust, ) § 9606(a)  
Mr. Gary L. Thomas, )  
Nationwide Demolition Services, LLC, and )  
Asbestek, Inc. )  
)

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 20100 St. Clair Avenue, Euclid, Ohio (the Cleveland Trencher Site or the Site). This Order requires the Respondents to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

EPA has notified the State of Ohio of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

**II. PARTIES BOUND**

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents

including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

### **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The Cleveland Trencher Site is located at 20100 St Clair Avenue, Euclid, Cuyahoga County, Ohio. The Site encompasses approximately 14.5 acres of land and contains approximately 140,000 square feet of buildings. Approximately 70,000 square feet of buildings have been demolished previously. Entrance to the site is controlled via a locked gate. The entire property is fenced; however the fence is in poor condition with existing gaps. The Site is located in an industrial neighborhood. The Site is bordered to the north by St. Clair Avenue and railroad tracks. Other active industrial properties surround the Site on all sides. The nearest residential properties are located less than 0.5 miles southeast and northwest of the Site.
2. The Cleveland Trencher Company (CT) manufactured heavy excavating and trenching equipment at the Site since the early 1920s. The company went through several ownership changes throughout its history, and limited production has occurred at the Site since the late 1980s. Hazardous substances at the Site were disposed of during CT's ownership and operation of the Site, including used solvents and paint wastes.
3. In 2002, CT entered into a promissory note and mortgage with the Joseph J. Piscazzi Revocable Trust (Trust), as well as a Deed of Trust in which Mr. Gary L. Thomas was granted as a trustee the right to sell the Site in the event CT defaulted on the note from the Trust. CT defaulted on the note and was eventually evicted in 2006.
4. In 2007, Mr. Thomas entered into an agreement with a demolition contractor, Nationwide Demolition Services, LLC (Nationwide), to demolish buildings on Site in order to prepare the property for sale. The demolition contractor hired a subcontractor, Asbestek, Inc. (Asbestek) for asbestos abatement work. The Cleveland Division of Air Quality (CDAQ) conducted inspections during the demolition activities and cited Mr. Thomas and the contractors for National Emissions Standards for Hazardous Air Pollutants (NESHAP) violations related to improper asbestos abatement prior to demolition. In addition, CDAQ notified the Ohio Environmental Protection Agency (Ohio EPA) of the presence of drums containing unknown materials at the Site.

5. In 2008, Ohio EPA inspected the facility, documented the presence of numerous drums, and issued Notice of Violation (NOV) letters to Mr. Thomas requesting that the wastes be evaluated and disposed. In January 2009, Ohio EPA, EPA and CDAQ inspected the Site with Mr. Thomas and documented the presence of drums, containers, asbestos, and other hazardous materials. Mr. Thomas informed Ohio EPA that he and the Trust were unwilling to evaluate and dispose of the waste. Subsequently, Ohio EPA (with assistance from EPA) returned to the Site on March 5, 2009, to obtain samples.

6. Samples from the site assessment indicated the presence of D001 hazardous wastes (characteristic of ignitability [flashpoint less than 140 degrees Fahrenheit]), D008 hazardous wastes (characteristic of toxicity [lead Toxic Characteristic Leaching Procedure (TCLP) values greater than 5 milligrams per liter]), D035 hazardous waste (characteristic of toxicity [methyl ethyl ketone (MEK) TCLP values greater than 200 milligrams per liter]), polychlorinated biphenyls in electrical transformers, uncontrolled asbestos containing materials (ACM) as documented by the CDAQ, and many open or leaking drums. On April 30, 2009, Ohio EPA issued NOV letters for violations of Ohio hazardous waste laws to Mr. Thomas and to the Trust; however, no response was received. Ohio EPA formally referred the Site to EPA on May 20, 2009.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA determines that:

1. The Cleveland Trencher Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Asbestos, lead, polychlorinated biphenyls (PCBs) and methyl ethyl ketone (MEK) are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent The Cleveland Trencher Company is a person who at the time of disposal of hazardous substances was an "owner" and "operator" of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondents The Joseph J. Piscazzi Revocable Trust and Mr. Gary L. Thomas are the present owners or operators of the Site, or were persons who at the time of disposal of hazardous substances owned or operated the Site, or were persons who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondents Nationwide Demolition Services, LLC, and Asbestek, Inc. are persons who at the time of disposal of any hazardous substances operated the Site, or who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).



5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 CFR Part 300. These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the Site's location, and its susceptibility to trespass. Graffiti is present inside some of the buildings, as well as evidence that some rooms are used as shelter. Children's toys were also present on the property. Animal tracks are also visible on the property. Asbestos has been documented in the demolition debris of the demolished portion of the facility and poses the threat of off-site release. Known drums of hazardous waste (D001, D008, D035) as well as D008 hazardous waste in a partially demolished paint booth, are present on Site. These materials pose a direct threat to any individuals accessing the Site and will continue to be a risk until stabilized.

### ASBESTOS

Both the Cleveland Division of Air Quality's survey and the Ohio EPA's site assessment have confirmed the presence of asbestos containing material (ACM) in rubble piles at the Site. The Site is susceptible to trespass by scrappers and minors, whose actions may lead to a release of ACM threatening human health and the environment.

Asbestos is the name given to a number of naturally occurring fibrous minerals with high tensile strength, the ability to be woven, and resistance to heat and most chemicals. Because of these properties, asbestos fibers have been used in a wide range of manufactured goods, including roofing shingles, ceiling and floor tiles, paper and cement products, textiles, coatings, and friction products such as automobile clutch, brake, and transmission parts. The current federal definition of asbestos is the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite/grunerite); anthophyllite; tremolite; and actinolite.

Exposure to airborne friable asbestos may result in a potential health risk because persons breathing the air may breathe in the asbestos fibers. Continued exposure can increase the amount of fibers that remain in the lung. Fibers embedded in lung tissue over time may cause serious lung diseases including: asbestosis, lung cancer, or mesothelioma. According to the Agency for Toxic Substance and Disease Registry (ATSDR), asbestos mainly affects the lungs and the membrane that surrounds the lungs. Breathing high levels of asbestos fibers for a long time may result in scar-like tissue in the lungs and in

the pleural membrane (lining) that surrounds the lung. This disease is called asbestosis and is usually found in workers exposed to asbestos, but not in the general public. People with asbestosis have difficulty breathing, often a cough, and in severe cases heart enlargement. Asbestosis is a serious disease and can eventually lead to disability and death.

Breathing lower levels of asbestos may result in changes called plaques in the pleural membranes. Pleural plaques can occur in workers and sometimes in people living in areas with high environmental levels of asbestos. Effects on breathing from pleural plaques alone are not usually serious, but higher exposure can lead to a thickening of the pleural membrane that may restrict breathing.

### **LEAD**

The effects of lead exposure are more severe for young children and the developing fetus through exposure to a pregnant woman. The harmful effects of lead include premature births, lower birth weight, decreased mental ability in the infant, learning difficulties, and reduced growth in young children. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. High-level exposure in men can damage the organs responsible for sperm production.

### **MEK (2-butanone)**

Methyl Ethyl Ketone (MEK), also known as 2-butanone, can cause mild respiratory affects on humans when inhaled. These symptoms include irritation of the eyes, nose, throat and lungs. MEK is used as a solvent and when combined with other chemicals may enhance the effects the other chemicals have on the human body. In animals, breathing high levels of MEK has caused nervous system effects such as dizziness, loss of consciousness and death. Drinking water contaminated with MEK has caused kidney damage in animals.

b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of 55-gallon drums, and numerous small containers (5 gallons or less).

Based on the analytical results and field observations obtained during the Ohio EPA site assessment, hazardous substances are present on site in 55-gallon drums, and numerous small containers (5 gallons or less). There is a large transformer, as well as 3 smaller pole

mounted transformers, located on Site. The large transformer was sampled and results indicated it contained PCB oil at 6 parts per million. Many of the drums do not have lids and some are leaking their contents to the environment. These containers contain Resource Conservation and Recovery Act (RCRA) hazardous wastes as defined by the following waste codes: D001 (characteristic of ignitibility [flash point analytical result less than 140 degrees Fahrenheit]), D008 (characteristic of toxicity for lead [TCLP result greater than 5 milligrams per liter]), D035 (characteristic of toxicity for MEK [TCLP result greater than 200 milligrams per liter]) and are present on Site in an uncontrolled manner and pose current and continued risk to anyone accessing the property. In addition, due to the partial demolition, a paint booth is exposed to the elements and samples of the dried paint from the area exhibit the D008 characteristic hazardous waste.

The Site buildings are partially demolished and, due to improper asbestos abatement, are contaminated with friable asbestos. The friable asbestos is uncontrolled and due to weather conditions could be carried by winds to the neighboring active facilities endangering workers.

c. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of the visual evidence of leaking drums and containers which suggests that there is some soil contamination present at the Site. If any soil contamination is not addressed, the possibility exists for airborne or surface water migration of the contaminants.

d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of the portion of the facility that was demolished which is exposing the building and its contents to the elements. Heavy rains could potentially cause the asbestos present in the demolition debris, as well as the paint waste from the paint booth, to be washed out of the building. Rain water could accumulate in the USTs and release any product contained in them to the environment. Most of the drums are located outside of any building and are exposed to the elements. The continuing cycle of freeze/thaw and rains damages the containers and there is visual evidence that some are currently leaking. Exposure to adverse weather conditions will continue to deteriorate the conditions of the drums, which could increase the potential for the migration or further release of the hazardous materials at the Site.

e. Threat of fire or explosion; this factor is present at the Site due to the existence of numerous containers of flammable material located on Site which could catch fire or explode due to the actions of vagrants or trespassers. Any smoke plume associated with an on-Site fire could impact the workers at neighboring facilities.

f. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because Ohio EPA requested assistance from the EPA in conducting an investigation and

a time-critical removal action at the CT Site in a letter dated May 20, 2009. Neither Ohio EPA nor any other local government has adequate finances or resources to respond to a time-critical removal action of this magnitude.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP and CERCLA.

### **V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents perform the following actions:

1. **Notice of Intent to Comply**

Respondents shall notify EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. **Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Respondents shall perform the removal actions themselves or retain (a) contractor(s) to implement the removal actions. Respondents shall notify EPA of Respondents' qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 5 business days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves a selected contractor, Respondents shall retain a different contractor within 2 business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 3 business days of EPA's disapproval.

The contractor(s) retained by the Respondents must demonstrate compliance with American National Standards Institute/American Society for Quality Control (ANSI/ASQC) E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by EPA. Any decision

not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional quality assurance personnel to the Site file.

Within 5 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following EPA's disapproval and shall notify EPA of that person's name and qualifications within 4 business days of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

The EPA has designated Stephen Wolfe of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at 25089 Center Ridge Road, Westlake, Ohio, 44145, Mail Code ME-W, by certified or express mail. Respondents shall also send a copy of all submissions to Kevin Chow, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

### 3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

- a. Develop and implement a Site Health and Safety Plan, Contingency Plan, and Air Monitoring/Sampling Plan;
- b. Remove and dispose of asbestos-contaminated building debris;
- c. Remove and dispose of PCB-contaminated transformers and PCB-contaminated surfaces;
- d. Remove and dispose of all drums and other containers of hazardous materials, contaminants, or pollutants;
- e. Transport and dispose of all hazardous material, or contaminants at an EPA-approved disposal facility in accordance with EPA's Off-Site Rule (40 CFR § 300.440);
- f. Render any large storage tanks unusable at the Site;

- g. Investigate for and remove contaminated surface soil due to leaking containers; and
- h. Take any necessary response action to address any release or threatened release of a hazardous substance, pollutant, or contaminant that the EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

### 3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order. The Work Plan shall include a Quality Assurance Project Plan (QAPP). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17; [the QAPP format can be found at <http://www.epa.gov/fedfac/documents/qualityassurance.htm>];
- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006.

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002;
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of notification. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan.

Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

### 3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondents shall submit a plan for EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable

Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify EPA not less than 3 business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

### 3.4 Reporting

Respondents shall submit a monthly written progress report to EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting

period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

### 3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

### 4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which EPA determines to be necessary. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.



Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA. Any information that Respondents are required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 CFR § 300.440, 58 *Fed. Reg.* 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR § 300.415(j). In accordance with 40 CFR § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or

an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

#### **VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

#### **VII. PENALTIES FOR NONCOMPLIANCE**

Violation of any provision of this Order may subject Respondents to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

### **VIII. REIMBURSEMENT OF COSTS**

Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. EPA's Itemized Cost Summary, or such other summary as certified by EPA, shall serve as the basis for payment.

Respondents shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, Missouri 63197-9000

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Cleveland Trencher Site" and shall reference the payers' name and address, the EPA site identification number B5SJ, and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

### **IX. RESERVATION OF RIGHTS**

Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

### **X. OTHER CLAIMS**

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

### **XI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of its their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

### **XII. NOTICE OF COMPLETION**

After submission of the Final Report, Respondents may request that EPA provide a Notice of Completion of the work required by this Order. If EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for

certain continuing obligations required by this Order (e.g., record retention), EPA will provide written notice to the Respondents. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

### **XIII. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting these removal actions is available for review during normal business hours in the EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondents may contact Kevin Chow, Associate Regional Counsel, at (312) 353-6181 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

### **XIV. OPPORTUNITY TO CONFER**

Within 3 business days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Kevin Chow, Associate Regional Counsel, at (312) 353-6181. Written submittals shall be directed as specified in Section V.2 of this Order.

### **XV. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

Re: Cleveland Trencher Site  
Euclid, Cuyahoga County, Ohio

**XVI. EFFECTIVE DATE**

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED

BY: Richard C. Karl DATE: 6-21-10  
Richard C. Karl, Director  
Superfund Division  
United States  
Environmental Protection Agency Region 5

# ATTACHMENT A



## U.S. ENVIRONMENTAL PROTECTION AGENCY REMOVAL ACTION

### ADMINISTRATIVE RECORD FOR CLEVELAND TRENCHER SITE EUGLID, CUYAHOGA COUNTY, OHIO

ORIGINAL  
(SDMS ID: 363350)  
MAY 19, 2010

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	00/00/00	Ohio EPA	U.S. EPA	Ohio EPA Time-Critical Removal Action Referral Package w/Attachments for the Cleveland Trencher Site (SDMS ID: 363355)	343
2	09/00/95	ATSDR	File	ToxFAQs Sheet: 2-Butanone CAS #78-93-3 (SDMS ID: 363351)	2
3	09/00/01	ATSDR	File	ToxFAQs Sheet: Asbestos CAS #1332-21-4 (SDMS ID: 363332)	2
4	08/00/07	ATSDR	File	ToxFAQs Sheet: Lead CAS #7439-92-1 (SDMS ID: 363334)	2
5	05/20/09	Savis, H., Ohio EPA	Durno, M., U.S. EPA	Letter re: Ohio EPA Request for U.S. EPA Assistance in Conducting a Removal Action at the Cleveland Trencher Site (SDMS ID: 363352)	4
6	04/06/10	Wolfe, S., U.S. EPA	File	Conversation Record: Call to F. Zingales re: Discussion of Access Issue and EPA's Plan to Move Forward with Removal Action at the Cleveland Trencher Site (SDMS ID: 363353)	1
7	04/07/10	Zingales, F., Ohio EPA	Wolfe, S., U.S. EPA	E-mail Message re: Ohio EPA Response to U.S. EPA Request for ARARS for the Cleveland Trencher Site (SDMS ID: 363354)	1
8	05/19/10	Wolfe, S., U.S. EPA	Karl, R., U.S. EPA	Action Memorandum: Request for a Time-Critical Removal Action at the Cleveland Trencher Site (PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED/SDMS ID: 363346)	18

ATTACHMENT B

LIABILITY FILE INDEX

<u>Date</u>	<u>Author</u>	<u>Recipient</u>	<u>Title/Description</u>	<u>Pages</u>
05/20/09	Sarvis, H.E., Ohio EPA	Durno, M., U.S. EPA	Letter Re: Former Cleveland Trencher Facility, 20100 St. Clair Ave., Euclid, OH, enclosing Ohio EPA Time- Critical Removal Action Referral Package, with eight attachments	939
09/15/09	Messenger, W., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	Request for Information	17
10/06/09;	Piscazzi, J.J., Joseph J. Piscazzi Trust	Ropski, C., U.S. EPA	Response to U.S. EPA Information Request of September 15, 2009	50
10/12/09	Weston Solutions, Inc.	U.S. EPA	Title Search and PRP Search Report for Cleveland Trencher Site, Cuyahoga County, Ohio	421
11/12/09	Messenger, W., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	Letter re: Trust's Inadequate Response to U.S. EPA's September 15, 2009 Information Request	2
11/18/09	Messenger, W., U.S. EPA	Aydin, M., Cleveland Trencher Co.	Request for Information	14
02/10/10	Aydin, P., for Cleveland Trencher Co.	Ropski, C., U.S. EPA	Response to U.S. EPA Information Request of November 18, 2009	3
02/25/10	Messenger, W., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	Letter Requesting Documentation for Claim of Invalid Mortgage	2
03/02/10	El-Zein, J., U.S. EPA	Aydin, M., Cleveland Trencher Co.	General Notice of Potential Liability	4



03/02/10	El-Zein, J., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	General Notice of Potential Liability	4
03/03/10	Messenger, W., U.S. EPA	Asbestek, Inc.	Request for Information	10
03/03/10	Messenger, W., U.S. EPA	Safe Environmental Inc.	Request for Information	10
03/03/10	Messenger, W., U.S. EPA	Nationwide Demolition Services Inc.	Request for Information	10
Undated Postmarked 03/01/2010	Piscazzi, J.J., Joseph J. Piscazzi Trust	Ropski, C., U.S. EPA	Response to U.S. EPA's February 25, 2010, Letter Requesting Documentation for Claim of Invalid Mortgage	5
03/16/10	Lovelace, R., Safe Environmental Corp.	Ropski, C., U.S. EPA	Response to U.S. EPA's Information Request of March 3, 2010	2
03/26/10	Coval, P.J., Vorys Sater Seymour and Pease for Asbestek, Inc.	Ropski, C., U.S. EPA	Response to U.S. EPA Information Request of March 3, 2010	59
03/31/10	El-Zein, J., U.S. EPA	Thomas, G.L.	General Notice of Potential Liability	4
03/31/10	Messenger, W., U.S. EPA	Thomas, G.L.	Request for Information	17
04/20/10	Kawecki, J., U.S. EPA		Affidavit of Personal Service pertaining to personal service of Consent for Access to Property, Request for Information, and General Notice of Potential Liability, to Mr. Gary L. Thomas, Trustee.	1
04/30/10	Messenger, W., U.S. EPA	Nationwide Demolition Services, c/o	Request for Information	10

Jeffrey N. Kramer

05/05/10	Messenger, W., U.S. EPA	Flynn Environmental	Request for Information	7
05/10/10	Brechbuhler, C., Flynn Environmental	Ropski, C., U.S. EPA	Response to U.S. EPA's Information Request of May 5, 2010, including copy of October 26, 2000, Phase I Environmental Site Assessment of Cleveland Trencher Company, 20100 St. Clair Avenue, Euclid, Ohio, prepared by Flynn Environmental. <b>Marked confidential.</b>	119
06 /02/10	El-Zein, J., U.S. EPA	Asbestek, Inc., c/o Paul J. Coval	General Notice of Potential Liability.	4
06/02/10	El-Zein, J., U.S. EPA	Nationwide Demolition Services, LLC c/o Jeffrey N. Kramer	General Notice of Potential Liability	4
06/10/10	Coval, P. Vory's, Sater, Seymore & Pease L.L.P	Ropski, C., U.S. EPA	Response to U.S. EPA's Notice letter of June 2, 2010 to Asbestek.	1

# Implementation of UAO Reform Questionnaire

(form revised 2/10/04)

- § This form should be filled out for each UAO issued pursuant to CERCLA 106 (except those issued for site access only).  
§ Please fill out this form **no later than two weeks** after issuance.  
§ **Once completed, the form should be returned to Mike Northridge, USEPA, mail code 2272A, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.** or through LAN mail.  
§ If you have any questions regarding the questionnaire, please call Mike at (202)564-4263.

<b>Site Name: Cleveland Trencher</b>	<b>Region: 5</b>	<b>Date Prepared: 6/10/2010</b>
<b>Preparer Name: Carol Ropski Position: Enforcement Specialist Phone Number: 312/353-7647</b>		

1) a) Date UAO issued: \_\_\_\_\_ b) UAO Number: \_\_\_\_\_  
(if available) (e.g., UA002)

2) Purpose of UAO (please **Y** appropriate box):  
(Note: Do not include UAOs that are for access only)

Removal	R/FS	RD/RA
x		

3) Number of parties receiving the UAO: 5

4) Number of parties receiving the UAO that were governmental (local, state or federal) entities: 0  
(Note: Please provide names of any governmental parties that received the UAO)

5) Number of parties that did **NOT** receive the UAO: 0

Note: Parties are considered excluded when:

- § There is sufficient evidence to make a preliminary determination of potential liability under 107 of CERCLA; and
- § They have not previously reached full settlement with the government; and
- § They were not issued the UAO.

**STOP** here if the answer to question 5 is zero.

6) If parties were excluded from the UAO, please provide the reason(s) for excluding them in the chart on the next page

Note: Agency policy provides for only several acceptable reasons for excluding PRPs from a UAO. These include:

- 1) lack of evidence of the party's liability;
- 2) the party is financially non-viable;
- 3) the party made only a relatively minor contribution towards the site conditions (e.g., sent only a de minimis amount of waste to the site);
- 4) consideration of work that a PRP has already conducted at the site (or has agreed to conduct), especially where such work is equivalent to that PRP's fair share; and
- 5) the UAO was already being issued to a large number of PRPs and the inclusion of additional parties would have raised manageability concerns.

	Reason for Exclusion	Number of Parties Excluded due to Reason	Identify any Government entities excluded
1	Lack of evidence; litigative risks		
2	Financially non-viable		
3	Minor contribution of waste to the site		
4	Contributed Afair share@		
5	Manageability concerns		
	Other reason (please explain)		

- 7) Did the package presented to the Regional decision-maker identify the PRPs not receiving the UAO, and the reason(s) for their exclusion? *Note: Along with this questionnaire, please submit a copy of the excerpt from the UAO package that identifies the excluded PRP(s) and the reason(s) for exclusion, plus a copy of the cover page for the package (showing, e.g., the name of the decision-maker as the recipient of the package).*
- A) If the information was not in the UAO package but instead was presented to the Regional decision-maker via a different context, then please prepare a memo to the file now and submit a copy to HQ. The memo should document the different means that were used to present this information to the decision-maker (e.g., via written briefing materials separate from the UAO package itself).
- B) If there is no paperwork documenting that the decision-maker was presented with information regarding both the existence of excluded PRP(s) and the reason(s) for exclusion, please now prepare an appropriate memo to the decision-maker and submit a copy to HQ.
- 8) If the reason (or one of the reasons) for excluding a party(ies) was lack of financial viability, did the UAO package contain (or cross-reference) documentation for each PRP that allegedly did not have an ability to pay cleanup costs? *Note: For each PRP excluded due to financial viability, the 8/2/98 procedures call for PRP-specific documentation of financial condition.*

-----Please don't hesitate to contact Mike Northridge at (202) 564-4263 with any questions regarding this questionnaire or suggestions for improving this Reform.-----\$

ENFORCEMENT INSTRUMENT DETAILS SIGN OFF SHEET (Completed form to Deb Potter)

SITE NAME: Cleveland Trencher

EPA ID: \_\_\_\_\_

CERCLA STATUTE (Circle all that apply):

~~104~~

106

107

122

Bankruptcy

SETTLEMENT/ORDER TYPE (Circle appropriate):

Referral

AOC

CD

UAO

Other \_\_\_\_\_

SETTLEMENT/ORDER DETAILS:

Is the settlement/order for response work? YES NO

IF YES: Type of response work PRP will perform \_\_\_\_\_

Estimated value of the response work PRP will perform \$ \_\_\_\_\_

Is the settlement/order for recovery of past costs? YES NO

IF YES: Value of the past costs being recovered in the settlement/order \$ \_\_\_\_\_

Action being reimbursed by the past costs in the settlement/order \_\_\_\_\_

Date of original referral if CD is part of a case for cost recovery that was referred to the Department of Justice in the past \_\_\_\_\_

Is the settlement/order for payment of future costs (cashout)? YES NO

IF YES: Value of the future costs being paid in the settlement/order \$ \_\_\_\_\_

Action being funded by future costs in the settlement/order \_\_\_\_\_

Does the settlement/order include a provision for all or a portion of the past or future costs to be deposited into a Special Account? YES NO

IF YES: Value that will be deposited into a Special Account \$ \_\_\_\_\_

Does the settlement/order include a provision for a Disbursement Account? YES NO

Does the settlement/order include disbursements from a Special Account? YES NO

IF YES: Value that will be disbursed from a Special Account \$ \_\_\_\_\_

Does the settlement/order include compensation for an orphan share offer? YES NO

IF YES: Value of the compensation due to orphan share \$ \_\_\_\_\_

Date original orphan share offer made to the PRP \_\_\_\_\_

Does the settlement/order include a provision for Ability to Pay? YES NO

Attach list of PRPs who signed or were issued the settlement/order.

Include addresses when available

Identify each as (T) Transporter, (G) Generator, (O) Owner, (P) Operator Cleveland Trencher (O) (P), Joseph C. Piscazzi Irrevocable Trust (O), Gary Thomas (P), Nationwide Demolition Services, LLC (P), ASBESTEK (P)

Is the settlement/order a De Minimis settlement? YES NO  
Distinguish De Minimis parties from non-De Minimis parties

Completed By (*Please print*): Carol Ropski  
5/10/2010

Date Completed:

## Implementation of UAO Reform Questionnaire

(form revised 2/10/04)

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\$ If you have any questions regarding the questionnaire, please call Mike at (202)564-4263.

**Site Name: Cleveland Trencher      Region: 5      Date Prepared: 7/22/10**

**Preparer Name: Carol Ropski      Position: Enforcement Specialist      Phone Number: 312-353 7647**

- 1) a) Date UAO issued: 6-21-10      b) UAO Number: Docket No. V-W-10-C-950  
(if available)      (e.g., UA002)  
c) Date UAO amendment issued:

- 2) Purpose of UAO (please Y appropriate box):  
(Note: Do not include UAOs that are for **access only**)

Removal	R/FS	RD/RA
X		

- 3) Number of parties receiving the UAO: **1 (recipient of UAO amendment to add PRP)**
- 4) Number of parties receiving the UAO that were governmental (local, state or federal) entities: 0  
(Note: Please provide names of any governmental parties that received the UAO)
- 5) Number of parties that did **NOT** receive the UAO: 0  
Note: Parties are considered excluded when:  
\$ There is sufficient evidence to make a preliminary determination of potential liability under '107 of CERCLA; and  
\$ They have not previously reached full settlement with the government; and  
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**STOP** here if the answer to question 5 is zero.

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- 4) consideration of work that a PRP has already conducted at the site (or has agreed to

- 5) *conduct), especially where such work is equivalent to that PRP=s Afair share;@ and the UAO was already being issued to a large number of PRPs and the inclusion of additional parties would have raised manageability concerns.*

	Reason for Exclusion	Number of Parties Excluded due to Reason	Identify any Government entities excluded
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5	Manageability concerns		
	Other reason (please explain)		

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- B) If there is no paperwork documenting that the decision-maker was presented with information regarding both the existence of excluded PRP(s) and the reason(s) for exclusion, please now prepare an appropriate memo to the decision-maker and submit a copy to HQ.
- 8) If the reason (or one of the reasons) for excluding a party(ies) was lack of financial viability, did the UAO package contain (or cross-reference) documentation for each PRP that allegedly did not have an ability to pay cleanup costs? *Note: For each PRP excluded due to financial viability, the 8/2/96 procedures call for PRP-specific documentation of financial condition.*

\*\*\*\*\*Please don=t hesitate to contact Mike Northridge at (202) 564-4263 with any questions regarding this questionnaire or suggestions for improving this Reform.\*\*\*\*\*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 5

IN THE MATTER OF:	)	Docket No. V-W-10-C-950
	)	
CLEVELAND TRENCHER SITE	)	ADMINISTRATIVE ORDER
	)	PURSUANT TO SECTION 106(a)
	)	OF THE COMPREHENSIVE
	)	ENVIRONMENTAL, RESPONSE,
Respondents:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
	)	AS AMENDED, 42 U.S.C. § 9606(a)
The Cleveland Trencher Company,	)	
Joseph J. Piscazzi Revocable Living	)	
Trust U/A Dated January 7, 1997	)	
Mr. Gary L. Thomas,	)	ORDER AMENDMENT
Nationwide Demolition Services, LLC,	)	
Asbestek, Inc., and	)	
Safe Environment Corporation	)	

FIRST AMENDMENT OF ADMINISTRATIVE ORDER ISSUED ON JUNE 21, 2010

This is an amendment of the Administrative Order ("Order"), Docket No. V-W-10-C-950, issued by the U.S. Environmental Protection Agency ("U.S. EPA") on June 21, 2010; to The Cleveland Trencher Company, the Joseph J. Piscazzi Revocable Living Trust U/A Dated January 7, 1997, Mr. Gary L. Thomas, Nationwide Demolition Services, LLC, and Asbestek, Inc., pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9606(a).

U.S. EPA herewith determines that Safe Environment Corporation is a "liable party" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Additionally, it is determined that "Joseph J. Piscazzi Revocable Living Trust U/A Dated January 7, 1997" is the proper name of the respondent referred to as the "Joseph J. Piscazzi Irrevocable Trust" or the "Joseph J. Piscazzi Revocable Trust" in the Order as issued.

IT IS HEREBY ORDERED that the following amendments be made to the Order to reflect these determinations:

1. The caption of the Order is hereby amended to add the name "Safe Environment Corporation" to the list of Respondents, and to change the name "The Joseph J. Piscazzi Irrevocable Trust" to "Joseph J. Piscazzi Revocable Living Trust U/A Dated January 7, 1997".
2. Paragraph 3 of Section III (FINDINGS OF FACT) of the Order is hereby amended to read as follows:

“3. In 2002, CT entered into a promissory note and mortgage with the Joseph J. Piscazzi Revocable Living Trust U/A Dated January 7, 1997 (Trust), as well as a Deed of Trust in which Mr. Gary L. Thomas was granted as a trustee the right to sell the Site in the event CT defaulted on the note from the Trust. CT defaulted on the note and was eventually evicted in 2006.”

2. Paragraph 4 of Section III (FINDINGS OF FACT) of the Order is hereby amended to read as follows:

“4. In 2007, Mr. Thomas entered into an agreement with a demolition contractor, Nationwide Demolition Services, LLC (Nationwide), to demolish buildings on Site in order to prepare the property for sale. Nationwide contracted with Asbestek, Inc. (Asbestek) and Safe Environment Corporation for asbestos abatement work. The Cleveland Division of Air Quality (CDAQ) conducted inspections during the demolition activities and cited Mr. Thomas and the contractors for National Emissions Standards for Hazardous Air Pollutants (NESHAP) violations related to improper asbestos abatement prior to demolition. In addition, CDAQ notified the Ohio Environmental Protection Agency (Ohio EPA) of the presence of drums containing unknown materials at the Site.”

3. Paragraph 4 of Section IV (CONCLUSIONS OF LAW AND DETERMINATIONS) of the Order is hereby amended to read as follows:

“4. Respondent The Cleveland Trencher Company is a person who at the time of disposal of hazardous substances was an “owner” and “operator” of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondents Joseph J. Piscazzi Revocable Living Trust U/A Dated January 7, 1997 and Mr. Gary L. Thomas are the present owners or operators of the Site, or were persons who at the time of disposal of hazardous substances owned or operated the Site, or were persons who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondents Nationwide Demolition Services, LLC, Asbestek, Inc., and Safe Environment Corporation are persons who at the time of disposal of any hazardous substances operated the Site, or who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).”


4. The first paragraph of Section XIV (OPPORTUNITY TO CONFER) of the Order is hereby amended to read as follows:

“Within 3 business days after issuance of this Order, Respondents may request a conference with U.S. EPA, except that Respondent Safe Environment Corporation has 3 business days after issuance of the First Amendment of Administrative Order Issued on June 21, 2010, to request a conference. Any such conference shall be held within 5

business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.”

All remaining portions of the Order shall remain in full force and effect as stated therein. This First Amendment of the Administrative Order Issued June 21, 2010 is hereby incorporated into the Order as if it were originally a part of the Order; all terms, conditions, and stipulations of the Order shall apply to this amendment.

IT IS SO ORDERED

BY:  \_\_\_\_\_  
for Richard C. Karl, Director  
Superfund Division  
United States  
Environmental Protection Agency Region 5

DATE: 7/27/10

ATTACHMENT B

LIABILITY FILE INDEX

<u>Date</u>	<u>Author</u>	<u>Recipient</u>	<u>Title/Description</u>	<u>Pages</u>
05/20/09	Sarvis, H.E., Ohio EPA	Durno, M., U.S. EPA	Letter Re: Former Cleveland Trencher Facility, 20100 St. Clair Ave., Euclid, OH, enclosing Ohio EPA Time- Critical Removal Action Referral Package, with eight attachments	939
09/15/09	Messenger, W., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	Request for Information	17
10/06/09;	Piscazzi, J.J., Joseph J. Piscazzi Trust	Ropski, C., U.S. EPA	Response to U.S. EPA Information Request of September 15, 2009	50
10/12/09	Weston Solutions, Inc.	U.S. EPA	Title Search and PRP Search Report for Cleveland Trencher Site, Cuyahoga County, Ohio	421
11/12/09	Messenger, W., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	Letter re: Trust's Inadequate Response to U.S. EPA's September 15, 2009 Information Request	2
11/18/09	Messenger, W., U.S. EPA	Aydin, M., Cleveland Trencher Co.	Request for Information	14
02/10/10	Aydin, P., for Cleveland Trencher Co.	Ropski, C., U.S. EPA	Response to U.S. EPA Information Request of November 18, 2009	3
02/25/10	Messenger, W., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	Letter Requesting Documentation for Claim of Invalid Mortgage	2
03/02/10	El-Zein, J., U.S. EPA	Aydin, M., Cleveland Trencher Co.	General Notice of Potential Liability	4

03/02/10	El-Zein, J., U.S. EPA	Piscazzi, J.J., Joseph J. Piscazzi Trust	General Notice of Potential Liability	4
03/03/10	Messenger, W., U.S. EPA	Asbestek, Inc.	Request for Information	10
03/03/10	Messenger, W., U.S. EPA	Safe Environ- mental Inc.	Request for Information	10
03/03/10	Messenger, W., U.S. EPA	Nationwide Demolition Services Inc.	Request for Information	10
Undated Postmarked 03/01/2010	Piscazzi, J.J., Joseph J. Piscazzi Trust	Ropski, C., U.S. EPA	Response to U.S. EPA's February 25, 2010, Letter Requesting Documentation for Claim of Invalid Mortgage	5
03/16/10	Lovelace, R., Safe Environ- mental Corp.	Ropski, C., U.S. EPA	Response to U.S. EPA's Information Request of March 3, 2010	2
03/26/10	Coval, P.J., Vorys Sater Seymour and Pease for Asbestek, Inc.	Ropski, C., U.S. EPA	Response to U.S. EPA Information Request of March 3, 2010	59
03/31/10	El-Zein, J., U.S. EPA	Thomas, G.L.	General Notice of Potential Liability	4
03/31/10	Messenger, W., U.S. EPA	Thomas, G.L.	Request for Information	17
04/20/10	Kawecki, J., U.S. EPA		Affidavit of Personal Service pertaining to personal service of Consent for Access to Property, Request for Information, and General Notice of Potential Liability, to Mr. Gary L. Thomas, Trustee.	1
04/30/10	Messenger, W., U.S. EPA	Nationwide Demolition Services, c/o	Request for Information	10

Jeffrey N. Kramer

05/05/10	Messenger, W., U.S. EPA	Flynn Environmental	Request for Information	7
05/10/10	Brechbühler, C., Flynn Environmental	Ropski, C., U.S. EPA	Response to U.S. EPA's Information Request of May 5, 2010, including copy of October 26, 2000, Phase I Environmental Site Assessment of Cleveland Trencher Company, 20100 St. Clair Avenue, Euclid, Ohio, prepared by Flynn Environmental. <b>Marked confidential.</b>	119
06/02/10	El-Zein, J., U.S. EPA	Asbestek, Inc., c/o Paul J. Coval	General Notice of Potential Liability	4
06/02/10	El-Zein, J., U.S. EPA	Nationwide Demolition Services, LLC c/o Jeffrey N. Kramer	General Notice of Potential Liability	4
06/10/10	Coval, P. Vory's, Sater, Seymore & Pease L.L.P	Ropski, C., U.S. EPA	Response to U.S. EPA's Notice letter of June 2, 2010 to Asbestek.	1
06/09/10	James Henson, Common Pleas Judge		Judgment Entry, <u>Nationwide Demolition Services, LLC v. Asbestek, Inc., et al.</u> , Case No. 2008 CV 2002, Court of Common Pleas, Richland County, Ohio	3
03/31/10	Kramer, J.N., Esq.	Ct. of Common Pleas, Richland County, Ohio	Nationwide Demolition Services, LLC's Notice of Filing Original Affidavit of Tomas Amaya, in the matter of <u>Nationwide Demolition Services, LLC v. Asbestek, Inc., et al.</u> , Case No. 2008 CV 2002	2
03/24/10	Amaya, T.		March 24, 2010 Affidavit of Tomas Amaya in the matter of <u>Nationwide Demolition Services, LLC v. Asbestek, Inc., et al.</u> , Case No. 2008 CV 2002, Court of Common Pleas, Richland County, Ohio	2

03/31/10	Kramer, J.N., Esq.	Ct. of Common Pleas, Richland County, Ohio	Nationwide Demolition Services, LLC's Notice of Filing Original Affidavit of Michael Collins, in the matter of <u>Nationwide Demolition Services, LLC v. Asbestek, Inc., et al.</u> , Case No. 2008 CV 2002	2
03/27/10	Collins, M.		March 27, 2010 Affidavit of Michael Collins in the matter of <u>Nationwide Demolition Services, LLC v. Asbestek, Inc., et al.</u> , Case No. 2008 CV 2002, Court of Common Pleas, Richland County, Ohio (with three exhibits)	15
07/13/10	El-Zein, J., U.S. EPA	Lovelace, R., Safe Environ- ment Corp.	General Notice of Potential Liability	4
07/20/10	Janik, S., Janik LLP	Chow, K. and Wolfe, S., U.S. EPA	Letter re: General Notice of Potential Liability to Safe Environment Corporation	2

## **EXHIBIT 2**





MARK J. SCARPITTI, ESQ.  
mjscarpitti@day-ketterer.com  
Direct Dial: 330-458-2160

March 16, 2012

Via US Mail and Email

Mr. Kevin Chow, Esq.  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
C-14J - Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

RE: Matter: *In re: Cleveland Trencher Facility*, Unilateral Order Docket No.  
V-W-10-C-950  
My Client: Joseph J. Piscazzi, Trustee, Joseph J. Piscazzi Revocable Living  
Trust

Dear Mr. Chow:

I am enclosing a the original revised Final Completion Report incorporating Mr. Wolfe's suggested changes and answering his final questions. I would appreciate it if you would forward this to Mr. Wolfe and make it a part of our filings with respect to the UAO.

Please let me know if you need anything further and if EPA accepts the report.

Very truly yours,

A handwritten signature in black ink that reads 'Mark'. The signature is written in a cursive style and is positioned above the printed name 'Mark J. Scarpitti'.

Mark J. Scarpitti

MJS:cap  
cc: Joseph J. Piscazzi, Trustee

FINAL REMOVAL ACTION COMPLETION REPORT

FOR

CLEVELAND TRENCHER  
EUCLID, OHIO

PREPARED BY  
Day Ketterer, Ltd.  
Canton, Ohio

January 2012

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## **1.0 INTRODUCTION**

### **1.1 PURPOSE AND OBJECTIVES**

In accordance with the requirements of the June 2010 Unilateral Administrative Order (UAO), Docket V-W-10-C-950, and the July 2010 Amended Order (AO) docketed at the same, for the Cleveland Trencher Site located in Euclid, Ohio, this Final Removal Action Completion Report (the "Report") has been prepared by Day Ketterer, Ltd. for the United States Environmental Protection Agency (EPA), Region V, on behalf of Respondent The Joseph J. Piscazzi Irrevocable Trust (Respondent Piscazzi). The UAO is attached hereto at Appendix A. This report presents the results of the on-site removal action conducted October – December 2011 and documents that all tasks required by the UAO and AO have been met.

This Final Removal Action Completion Report summarizes the procedures and methodologies followed during the removal activities and provides the analytical results that verify that all performance standards have been met.

### **1.2 SITE LOCATION AND BACKGROUND**

The Cleveland Trencher Site (the "Site") includes the property located at 20100 St. Clair Avenue, Euclid, Cuyahoga County, Ohio. The Site encompasses approximately 14.5 acres of land and contain approximately 140,000 square feet of buildings. Approximately 70,000 square feet of buildings had been demolished previously.

The Cleveland Trencher Company (CT) manufactured heavy excavating and trenching equipment at the Site since the early 1920s. The company went through several ownership changes, and limited production has occurred at the Site since the late 1980s. In 2002, CT entered into a promissory note and an attempted "mortgage" with Respondent Piscazzi, as well as a Deed of Trust in which Mr. Gary L. Thomas (Mr. Thomas) was granted as a trustee the right to sell the Site in the event CT defaulted on the note from Respondent Piscazzi. CT defaulted on the note and was eventually evicted in 2006.

In 2007, Mr. Thomas entered into an agreement with a demolition contractor, Nationwide Demolition Services, LLC (Nationwide) to demolish the buildings on Site in order to prepare the property for sale. Nationwide hired a subcontractor, Asbestek, Inc. (Asbestek) for asbestos abatement work. Asbestek was found to have violated regulations related to improper asbestos abatement prior to demolition by the EPA. Various unidentified drums and containers were also found on the Site.

Subsequently, the EPA issued the UAO, which required specific work be performed at the Site, including: 1) removal and disposal of asbestos-contaminated building debris; 2) removal and disposal of potentially PCB-contaminated transformers and PCB-contaminated surfaces; 3) removal and disposal of all drums and other containers of hazardous materials, contaminants, or

pollutants; 4) transportation and disposal of all hazardous material or contaminants at an EPA-approved disposal facility in accordance with EPA's Off-Site Rule; 5) render any large storage tanks unusable at the Site; and 6) investigate for and remove contaminated surface soil due to leaking containers.

### 1.3 DESCRIPTION OF THE PROJECT

The removal activities were conducted by Precision Environmental Co. ("Precision"). The bulk of the project involved removal and disposal of asbestos-contaminated pipe insulation, hanging roof materials, debris piles, and decontamination of interior building structures, and exterior concrete slabs, located throughout the project site. A separate Final Removal Action Completion Report detailing the completion of the asbestos abatement work will be prepared and submitted by Precision on behalf of respondent Nationwide.

Pursuant to the UAO requirements, Respondent Piscazzi submitted a draft Work Plan for performing specific removal activities unrelated to the asbestos abatement on October 21, 2010 (a separate Work Plan for asbestos abatement and cleanup was submitted on June 30, 2011 by Precision). The EPA disapproved the original Work Plan, but later approved an Amended Work Plan submitted by Respondent Piscazzi, which incorporated the standards and protocols Precision set forth in the Work Plan attached hereto at Appendix B. The scope of said Work Plan and of this Report is limited to the following actions, for which Respondent Piscazzi was responsible:

- **Onsite Drum Removal:** Sorting, packaging, transport and disposal of approximately seventy-nine (79) drums located at the Site; analysis of material collected at the Site.
- **Old Drum Pad Removal:** Packaging and disposal of a debris pile located east of drum pad; scraping up of additional paint at drum pad; analysis of material collected at the Site.
- **Removal of Tank Contents:** Vacuuming of product from smaller tank and disposal of contents at an EPA approved facilities; fill cap of smaller tank plugged with concrete upon completion of extraction and cleaning of tank; larger tank opened with excavator, and contents pumped out and disposed of; hole in the side of larger tank essentially rendered tank unusable.
- **Electrical Transformer Removal:** Several pole-mounted electrical transformers that were identified as non-TSCA were removed; sent to transformer recycler for appropriate handling.

### 1.4 PERFORMANCE STANDARDS

Precision prepared a Removal Action Work Plan which was approved by the EPA. Precision employed the performance standards and those cleanup standards presented in the UAO and AO to control risks proposed by direct contact, ingestion, and inhalation of contaminated materials at the Cleveland Trencher property. Safety precautions included:

- Hard-hats, work boots, gloves, and safety glasses. If drums had to be opened for any reason, personnel wore air-purifying respirators with combination cartridges. White Tyvek suits were employed when necessary, especially if/when waste was pumped or poured from one container to another.
- Any hand tools and non-disposable equipment that came into direct contact with hazardous waste was washed, if necessary, with a mild detergent and water then rinsed with clean water. All wash/rinse waters along with any clothes, brushes, and/or paper products used for cleaning/drying were collected in appropriate containers for disposal.
- All used disposable equipment was collected and discarded into appropriate containers.
- Photo-ionization Detector (“PID”) was used to monitor the air around the drums and containers during the sampling and subsequent material removal activities.

## **2.0 ON-SITE REMOVAL ACTIVITIES**

### **2.1 MOBILIZATION AND PREPARATION**

On August 22, 2011, Precision mobilized personnel and equipment to the Site and began preliminary set up and preparation activities in accordance with the approved Work Plan. As stated above, the bulk of the project involved asbestos abatement and removal, which is outside the scope of this Final Removal Action Completion Report (and will be detailed in a separate report). Precision employed the same health and safety protocols and procedures with respect to the portion of the removal outlined in this Report as it did for the asbestos abatement portion of the project. Such procedures and protocols are outlined in detail in the Health & Safety Submittals submitted to the EPA on June 30, 2011, attached hereto at [Appendix B](#).

### **2.2 CONTAINERIZED MATERIALS**

Approximately seventy-nine (79) containers were identified by the EPA for removal. These containers were found to contain the following materials: oil; oily water; grease; non-hazardous solid grease; sodium hydroxide; paint/thinners pumpable; and paint/thinners solid. Some of this material is considered hazardous waste under RCRA based on its characteristics and/or composition.

Field observations and subsequent verification was used to characterize and classify listed containers and appropriate TSD facility profiles were completed. Information used for characterization included generator knowledge, obvious odors, obvious labels, visual inspection of color and texture, pH, MSDS sheets, and previous analysis (if any). Additional analysis (as necessary) was performed to provide a complete and full characterization of all materials. Completed profiles were presented for review and signed profiles were submitted to TSDs for disposal approval. Laboratory analysis reports are attached hereto at [Appendix C](#).

Each container was evaluated for structural integrity. All containers which were not in DOT shippable condition were repaired (i.e. replace lid, rings, bung/s), consolidated, over packed or repackaged. All containers were collected in a staging area in preparation for transportation off-site to an EPA approved disposal facility.

Each container was properly labeled/marked as required. Appropriate shipping papers, manifests, and LDRs were prepared for each container. Containers were loaded to licensed transportation vehicles provided by Enviroserve, J.V., and transported off-site to EPA-approved disposal facilities, including EQ Detroit, Inc. located in Detroit, MI, and Chemical Solvents, Inc., located in Cleveland, OH. All bills of lading, manifests, and receipts related to the transportation and disposal of all waste collected by Precision are attached hereto at Appendix C.

Following removal of the containerized materials from the Site, the drum pad underlying the debris pile was scrapped for removal of any potentially hazardous seepage from the containers and debris. Material collected from the drum pad was analyzed for lead-based substances. Laboratory analysis reports are attached hereto at Appendix C.

### 2.3 ELECTRICAL TRANSFORMERS

Approximately four (4) pole-mounted electrical transformers were identified on-site for removal by the EPA. The transformers were identified as non-TSCA, and therefore, were sent to a transformer recycler for appropriate handling. The recycler verified the findings of non-TSCA PCB levels prior to recycling the transformers.

### 2.4 TANK PLUGGING

A couple of tanks were identified by the EPA as potentially hazardous. Precision vacuumed product from the tanks, containerized the product so as to comply with DOT shipping requirements, and disposed of the contents at an EPA approved facility in the manner described above. Analysis of the tank contents was performed. At completion of the draining and disposal, the smaller tank was plugged with concrete, while a hole on the side of the larger tank essentially rendered it unusable.

### 2.5 QUANTITIES REMOVED

The following outlines the types and quantities of materials removed from the Site:

- **Bulk Material Removal:**
  - Non-TSCA PCB oil pumped from four transformers – one load/366 gallons
  - Hazardous paint related waste – two loads/5,736 gallons
  - Non-hazardous Petroleum impacted water from UST – one load/903 gallons
  - Non-hazardous soil/wood from old drum pad – one load/8.45 tons

- **Containers Removal:**
  - Non-hazardous paints & coatings – thirty drums
  - Hazardous drums containing paints, aerosols, acids, caustics – thirty-seven drums
  - RCRA empty containers – twelve drums
  - Hazardous paints – loose pack of small containers – two cubic yard Gaylord boxes

### **3.0 REPORTING AND SCHEDULE**

#### **3.1 FIELD DOCUMENTATION**

Field documentation for removal activities performed at the Site included logging field progress, describing any difficulties that occurred on-site, tracking sampling activities, recording production rates for treatment, and completing daily safety logs. Field logbooks were maintained by each of the QA/QC officers to record daily sampling activities, calibration data, field maps, and descriptions of other field activities. The daily field journal and logbooks maintained by the QA/QC officer were archived along with all the Site documentation in a secure location at the Precisions offices.

#### **3.2 PROJECT SCHEDULE**

The removal activities described in this Report were completed on November 14, 2011. Field work was deemed complete during the final walk-through conducted by the U.S. EPA, with the PRPs and their representatives, on the same date, November 14, 2011.

#### **3.3 FINAL RA COMPLETION REPORT**

This Final Removal Action Completion Report documents and certifies the completion of the removal action activities required under the Order.

### **4.0 CERTIFICATION OF COMPLETION**


#### **4.1 PROJECT COST ESTIMATE**

The estimated project cost for completion of removal activities performed by Respondent Piscazzi at the Site in accordance with the UAO and AO was approximately \$34,000.00. The estimated project cost includes the collective costs incurred by the Respondent Piscazzi for project planning activities, Work Plan preparation, removal activities at the Site (including off-site transport, testing, and disposal costs), reporting costs and administrative and project coordination costs. The estimated project cost does not include salaries or expenses incurred by Respondent Piscazzi's employees or by consultants or counsel representing Respondent Piscazzi, or costs for services performed by the EPA.



#### 4.2 SIGNATORY CERTIFICATION OF COMPLETION

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

  
\_\_\_\_\_  
Mark Scarpitti  
*Attorney for Respondent Piscazzi*

3/16/2012  
Date

**APPENDIX A**

**UNILATERAL ADMINISTRATIVE ORDER**

**APPENDIX B**

**WORK PLAN**

**PREPARED BY PRECISION ENVIRONMENTAL COMPANY**

**APPENDIX C**

**LABORATORY ANALYSIS REPORTS, WASTE MANIFESTS,  
BILLS OF LADING**

# **EXHIBIT 3**



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
RESPONSE SECTION 1  
25089 CENTER RIDGE ROAD  
WESTLAKE, OHIO 44145

April 6, 2012

Mark Scarpitti, Esq.  
Day Ketterer  
Millenium Centre  
200 Market Avenue North, Suite 300  
Canton, OH 44702

RE: Notification of Completion - Unilateral Administrative Order, Docket No. V-W-10-C-950, for the Cleveland Trencher Site, Cuyahoga County, Ohio (Site ID #B5SJ).

Dear Mr. Scarpitti:

The U.S. Environmental Protection Agency (EPA) has completed its review of the "Final Removal Action Completion Report" (revised March 16, 2012) you submitted on behalf of your client, the Joseph J. Piscazzi Revocable Living Trust (Respondent). By this letter, EPA gives acknowledgement of completion of the requirements of the Unilateral Administrative Order (UAO) listed below.

EPA issued the UAO on June 21, 2010 to the Respondent and other parties. Safe Environmental Corporation of Indiana (Safe) was added to the UAO under an amendment issued by EPA on July 27, 2010. The UAO was issued to conduct a time critical removal action at the Cleveland Trencher Site (Site), 20100 St. Clair Avenue, Euclid, Cuyahoga County, Ohio, which EPA determined presented an imminent and substantial endangerment to public health and the environment.

Specific factors considered in the determination were the presence of friable asbestos in building debris, the presence of transformers containing polychlorinated biphenyls, and the presence of abandoned drums and containers (containing D001, D008, and D035 wastes) at the Site. Releases of hazardous substances at the Site were documented by the Ohio Environmental Protection Agency and the Cleveland Department of Public Health, during various Site investigations. The hazardous substances posed potential threats through the following routes as outlined in the National Oil and Hazardous Substances

Pollution Contingency Plan (NCP) 40 Code of Federal Regulations (CFR)  
300.415(b)(2):

- (1) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants;
- (2) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers that pose a threat of release;
- (3) High levels of hazardous substances in soils largely at or near the surface, that may migrate;
- (4) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
- (5) Threat of fire or explosion; and
- (6) The unavailability of other appropriate Federal or State response mechanisms to respond to the release.

On July 8, 2011, Respondent indicated in a Notice of Intent to Comply that it intended to remove and dispose of the drums and containers of hazardous wastes. Pursuant to the UAO, the Respondent in concert with Safe submitted: (1) a document titled "Cleveland Trencher; Asbestos Abatement & Hazardous/Regulated Cleanup; Euclid, OH; Health & Safety Submittals" (Removal Action Work Plan) prepared by Precision Environmental Co. (Precision), dated July 26, 2011, and (2) a document titled "Site Specific Work Plan and Health and Safety Plan: Asbestos Abatement and Hazardous/Regulated Waste Cleanup" prepared by Precision and submitted to EPA on August 1, 2011, as a revision to the Removal Action Work Plan. On August 5, 2011, EPA approved the Removal Action Work Plan and its revision.

On March 19, 2012, the Respondent submitted, as required by the Order, the revised Final Removal Action Completion Report on its activities at the Site pertaining to the drums and containers. Based on my oversight of the Respondent's activities at the Site, an inspection of the Site conducted on November 23, 2011, and my review of the revised Final Removal Action Completion Report, I have concluded that the Respondent has completed the following work required by the UAO:

- a. Development and implementation of a Site Health and Safety Plan, Field Sampling Plan, and a Removal Work Plan;

- b. Removal of drums and containers containing hazardous waste, pollutants, or contaminants;
- c. Removal of material (hazardous, pollutant or contaminant) from on-Site storage tanks, and rendering the tanks unusable;
- d. Disposal of material at an EPA-approved off-Site disposal facility in accordance with the U.S. EPA Off-Site Rule (40 CFR ' 300.440); and,
- e. Decontamination of remaining structures and large concrete pads left on Site.

This letter merely reflects EPA's determination that the above-mentioned work performed by Respondent as required by the UAO was completed. This notice in no way releases the Respondent from any potential future obligations to perform additional work to address the same, or other, conditions at the Site.

This notice does not release the Respondent from any record keeping, payment, or other obligations under the UAO that extend beyond the date of this notice.

Please contact me at (440) 250-1718 if you have any questions concerning this letter.

Sincerely,



Stephen Wolfe  
OSC, ERB-1, ERS-1

cc: Stephen Wolfe, OSC, ERS-1  
Mark Durno, Section Chief, ERB-1, ERS-1  
Kevin Chow, ORC  
Carol Ropski, ESS



# **EXHIBIT 4**

#### Personal tools

- [Log in / create account](#)

#### Views

- [Page](#)
- [Discussion](#)
- [Edit](#)
- [History](#)
- [email to friend](#)

# Cleveland Trencher Co.

## From RitchieWiki

Related Categories: [Companies](#) > [Manufacturers](#)

The **Cleveland Trencher Co.**, formed in 1923, is one of the oldest trenching machine manufacturers in the world. It produces and manufactures trenching equipment—mostly wheel ditchers—for pipeline construction.

### Contents

- 1 History
  - 1.1 The Birth of a Company
  - 1.2 The Baby Digger
  - 1.3 Changing Hands
- 2 The Company Today
- 3 Equipment List
- 4 References
- 5 External Links

## History

When trenching first occurred in the construction industry, it was done, as in all excavation applications, mostly with primitive hand tools and shovel-like devices. Trenching machines did not really take on a life of their own until the age of mechanization, and when they did, manufacturers such as Cleveland Trencher Co. stepped on in a big way.

## **The Birth of a Company**

Cleveland Trencher Co. was established after the production of a wheel ditcher by the A.J. Penote Co. in 1921. A.J. Penote, a water and sewer contractor, was based in Detroit, Michigan, and used the ditcher for its own purposes. The founders of the Cleveland Trencher Co. noticed the machine and decided it was a worthy investment and good grounds for a longstanding successful manufacturing company; the company was established two years later in 1923. Cleveland Trencher Co. aimed at producing and manufacturing an assortment of trenching machines for contractors.

Gone were the days of backbreaking excavation work; the Cleveland Trencher Co. now produced machinery capable of digging trenches in a continuous operation with the use of basic mechanization.

## **The Baby Digger**

The first machine Cleveland produced was the Baby Digger in 1924, a wheel trencher consisting of 10 buckets that were connected to the machine's wheel. The trencher operated through a series of mechanized chains and spur gears that drove the wheel and a set of wound cables that hoisted and lowered the buckets. The machine also comprised a conveyor powered by a chain from the wheel's drive shaft, so that whenever the wheel turned, so did the conveyor, resulting in a fully mechanized, continuous operation. Running on crawler tracks that were functioned by chains and sprockets powered by a differential drive and wrap-around brake steering, the machine had the capacity to dig trenches from 10 to 23 inches (25.4 to 58.4 cm) to five feet and six inches (1.5 m and 15 cm) deep. Other features included a Hercules 27 horsepower engine and an operating weight of 7,400 pounds (3,357 kg).<sup>[1]</sup>

The Baby Digger was sold to the People's Natural Gas Co., a contractor based in Pittsburgh, Pennsylvania, in 1924. The success of the machine led the company to continue producing the Baby Digger, all the while increasing its capacity and power. The Baby Digger continued production up to the 1950s.

## **Changing Hands**

In 1968, Cleveland Trencher was sold to American Hoist & Derrick Co., a crane manufacturing company in St. Paul, Minnesota. American Hoist & Derrick Co. managed the company until 1984. During this time, Cleveland Trencher suffered in sales, resulting from poor management and lack of focus. The company experienced a turnaround when a management team bought it out in 1986. The following year, its distributor to manufacture machines in the Middle East and Far East purchased the company. Although the machines were manufactured and distributed abroad, the company continued to produce machines at its base in the original Cleveland plant.<sup>[2]</sup>

Cleveland Trencher struggled with boosting its sales in the 1980s, but persevered after being purchased by Metin Adyin in 1987.<sup>[3]</sup>

## **The Company Today**

To date, Cleveland Trencher Co. continues to operate out of its original base in Cleveland, Ohio.

It continues to produce trenching equipment such as the Model 9600-S, Model 9624, and the Model HRS-32.<sup>[4]</sup> All trenching equipment is produced for pipeline construction and other applications and come with a variety of features suitable for many working conditions.

## Equipment List

- Wheel ditcher
- Wheel trencher

## References

1. ↑ Cleveland Trencher. Construction Equipment. 2008-09-22. (<http://www.constructionequipment.com/article/CA6402712.html>)
2. ↑ Cleveland trencher Company. Construction Equipment. 2008-09-22. (<http://www.constructionequipment.com/article/CA6402712.html>)
3. ↑ Haddock, Keith. Giant Earthmovers. MBI Publishing Company: St. Paul's, 1998.
4. ↑ New and Used. Cleveland Trencher Company. 2008-09-22. (<http://www.cleveland-trencher.com/newused1.htm>)

## External Links

- Official Cleveland Trencher Co. website (<http://www.cleveland-trencher.com>)

<comments />

Retrieved from "[http://www.ritchiewiki.com/wiki/index.php/Cleveland\\_Trencher\\_Co.](http://www.ritchiewiki.com/wiki/index.php/Cleveland_Trencher_Co.)"

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- This page was last modified on 17 September 2009, at 00:46.

# **EXHIBIT 5**

**PROMISSORY NOTE**  
**SECURED BY MORTGAGE ON PROPERTY**  
**At 20100 St. Claire Ave. CLEVELAND OHIO**  
**AND 1755 W. MARKET ST. AKRON OHIO**

ORIG NOTE  
SAVE  
COPY  
ATTY  
HAS AN

\$205,000.00

DATE February 14, ~~2001~~ <sup>2002</sup>

1. BORROWERS PROMISE TO PAY, INTEREST RATE, AND PAYMENTS.

FOR THE VALUE RECEIVED, CLEVELAND TRENCHER and METIN AND PAULINE AYDIN, A MARRIED COUPLE (hereinafter called "Borrower") promise to pay to JOSEPH J. PISCAZZI REVOCABLE TRUST U/A DATED JAN., 7 1997 JOSEPH J. PISCAZZI, TRUSTEE (hereinafter called "Lender"); or order at 2860 Marcia Blvd, CUYAHOGA FALLS, OH 44223, the sum of TWO HUNDRED AND FIVE THOUSAND DOLLARS (\$205,000.00), with interest from DATE NOTED ABOVE on unpaid principal at the rate of EIGHTEEN (18%) per annum compounded monthly; interest payable in installments of \$3100.00 on the FIRST day of each MONTH beginning on the FIRST day of APRIL, 2002. THIS IS A SIX MONTH NOTE AND IT MATURES ON AUGUST 14, 2002 If on AUGUST 14, 2002, Borrower still owes amounts under this Note, Borrower will pay those amounts in full on that date, which is called the "Maturity Date", unless an extension as described in Section 5 of this Note has been granted. The interest rate required by Section 1 is the rate Borrower will pay both before and after any default described in Section 4 of this Note. Borrower understands that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive the payments under this Note is called the "Note Holder".

TIME IS OF THE ESSENCE.

2. TRANSFER OF BENEFICIAL INTEREST IN BORROWER

Lender shall have the right, at it's option, to declare any indebtedness and obligations secured hereby, irrespective of the maturity date specified in any note or agreement evidencing the same, due and payable within 30 days after such declaration if: (a) Borrower or any successor in interest to Borrower of such property sell, enters into a contract of sale, conveys or alienates such property, or part thereof, or suffers his title or any interest therein to be divested, whether wholly, or any part thereof, or suffers his title or any interest therein to be divested, whether voluntarily or involuntarily, or changes or permits to be changed the character or use of such property, or drills or extracts or enters into a lease for the drilling for or extracting of oil, gas, or any other hydrocarbon substance or any mineral of any kind or of any character on such property; or (b) Borrower is a partnership and the interest of a general partner is assigned or transferred;

Initial pm

or (c) Borrower is a corporation and more than 25% of the corporations stock thereof is sold, transferred or assigned during a 12 month period; or (d) Borrower is a trust and there is a change of beneficial interest with respect to more than 25% of such property; or (e) Borrower has made any material misrepresentation or failed to disclosed any material fact in those certain financial and other written representations and disclosures made by Borrower in order to induce Lender to enter into the transaction. Should any of the above Section 2 item(s) a, b, c, d and/or e conditions occur, either individually or in any combination, without Lender's prior consent, Lender may, at its option, require immediate payment in full of all sums secured by this Note

However, this option shall not be exercised by Lender if the exercise is prohibited by state or federal law as of the date of this Note. If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Note. If Borrower fails to pay these sums prior to the expiration of this period, *Lender may invoke any and all remedies permitted by this Note without further notice or demand on Borrower.*

**3. SERVICE FEE-END OF LOAN — THERE WILL BE A SERVICE FEE OF 3% OF THE FACE VALUE OF THIS NOTE OR \$6150.00 AT THE END OF THIS LOAN**

**FURTHERMORE—IF THIS LOAN GOES BEYOND THE SIX MONTH MATURITY DATE OF AUGUST 14, 2002 THERE WILL BE AN ADDITIONAL \$20,000.00 FEE. NO EXCEPTION.**

#### **<4. BORROWERS FAILURE TO PAY AS REQUIRED**

**In the event any payment is more than 5 days past due for any current monthly payment, a 10% late charge will be assessed and shall be due and payable together with that current monthly payment. The 10% penalty is to be based on the monthly payment amount due. In addition to the 10% penalty, a \$5.00 PER DAY late charge will be assessed and shall be due and payable together with that current monthly payment.**

If Borrower does not pay the full amount of each monthly payment on the date it is due, the Borrower will be in default.

If Borrower is in default, the Note Holder may send a written notice telling Borrower that if the Borrower does not pay the overdue amount by a certain date, the Note Holder may require Borrower to pay the full amount of principal which has not been paid to include all the interest and penalties that Borrower owes on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to Borrower.

Initial

*pm*

*Net*

Even if, at a time when Borrower is in default, the Note Holder does not require the Borrower to pay immediately in full as described above, the Note Holder will still have the right to do so if Borrower is in default at a later time.

If the note Holder has required Borrower to pay immediately in full as described above, the Note Holder will have the right to be paid back by Borrower for all costs and expenses expended by Note Holder in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees.

In the event this note is placed in the hands of an attorney for collection after default, the undersigned agrees to pay the reasonable attorneys fees of the holders of either ten percent (10%) of the unpaid principal balance of this note or \$4,000.00, whichever is greater, together with all court costs and unpaid interest from the date of default.

Each payment shall be credited first on interest then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited. Should default be made in payment of any installment when due, the whole sum of principal and interest shall become immediately due at the option of the holder of this note. Principal and interest payable in lawful money of the United States. If action be instituted on this note, I promise to pay attorney's fees. This note is secured by a Mortgage on (see Exhibit A attached hereto and incorporated herein by this reference.

## 5. EXTENSION OF TERMS

Borrower has the right to request an extension of this Note, thus altering and delaying the Maturity Date ("Extension"). Should both Borrower and Lender agree, in writing, to an Extension of the payment period, thus delaying the Maturity Date, such Extension shall be subject to and governed by the terms of this Note. A fee not in excess of the original loan origination fees will be charged to Borrower by Lender or negotiated at lenders discretion for the purpose of granting such Extension.

## 6. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to the other persons who have not been paid.

Initial



7. JOINT AND SEVERAL LIABILITY

I, or we, and each of us, whether principal, surety, guarantor, endorser, or other party hereto, agree to be jointly and severally bound and I, or we, severally waive any homestead or exemption rights as against this debt.

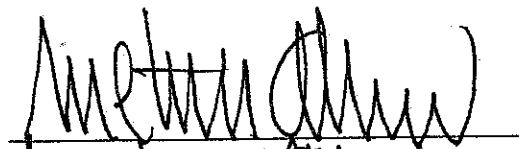
8. COGNOVIT PROVISION

I or we, Borrower further hereby authorize any attorney at law to appear in any court of record in the State of Ohio, or in any other State in the United States, after the above described obligation becomes due and waive the issuing and service of due process, and confess judgement against Borrower or any one or more of them in favor of the holder hereof, for the amount appearing due, together with the costs of suit, and thereupon release all errors and waive all right of appeal and stay of execution. The undersigned are jointly and severally liable hereon, and this warrant of attorney to confess judgement is a joint and several warrant of attorney.

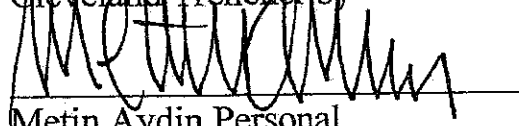
THIS PROMISSORY NOTE Executed in Cuyahoga County, State of Ohio.

WARNING - By signing this paper you give up your right to notice and court trial. If you do not pay on time a court judgement can be taken against you without your prior knowledge and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause.

WITNESS THE HAND of the undersigned.



Cleveland Trencher by

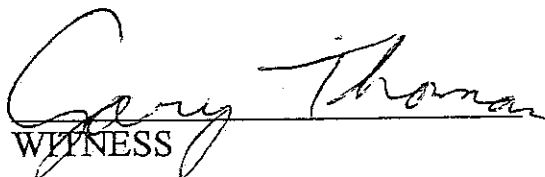


Metin Aydin Personal

Date Feb. 14, 2002



Pauline Aydin Personal

  
WITNESS



# WARNING


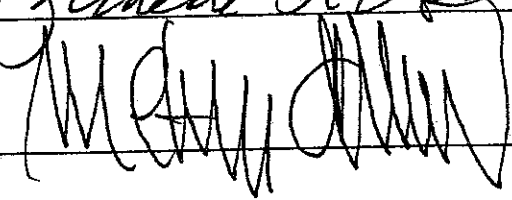
DELETED J.P.

INSURANCE COVERAGE MUST REMAIN IN EFFECT WITH JOSEPH J. PISCAZZI AS THE LOSS PAYEE UNTIL THE LOAN IS PAID IN FULL.

SHOULD THERE BE A LAPSE IN COVERAGE, THE LOAN WILL BECOME DUE IN FULL.

IF THIS NOTE GOES 30 DAYS PAST DUE WITHOUT ANY RENEGOTIATION, IT WILL CAUSE YOUR PROPERTY TO GO INTO FORCLOSURE. ALL EXPENSES INCURRED IN THE FORCLOSURE WILL BE ADDED TO THE ORIGINAL LOAN AMOUNT PLUS A PENALTY OF \$2000.00

HAVING READ THE ABOVE, I FULLY UNDERSTAND AND AGREE TO THESE TERMS.

SIGNED   
SIGNED 

# **EXHIBIT 6**

TRUST AGREEMENT

THIS TRUST AGREEMENT made on <sup>JAN 07 1997</sup> between JOSEPH J. PISCAZZI, of the County of SUMMIT, State of OHIO, herein designated as Trustor, and JOSEPH J. PISCAZZI, herein designated as Trustees. The term "Trustee" shall include Co-Trustees.

IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE I

TRUST PROPERTY

A. Original Trust Estate. The Trustor hereby transfer to the Trustee, without consideration from the Trustee, the sum of one hundred dollars (\$100.00), receipt of which is hereby acknowledged, upon the conditions herein provided.

B. Name of Trust. The name of this trust is the JOSEPH J. PISCAZZI REVOCABLE LIVING TRUST U/A DTD <sup>JAN 07 1997</sup>.

C. Additions to Trust Estate. Additional property may be added to the trust estate at any time by the Trustor or either of them, or by any person or persons, by inter vivos or testamentary transfer. Such additions and title to any property so added may be, but need not be, evidenced by amendment to this agreement or by schedule, deed, assignment, or other writings transferring property to the Trustee. All such original and additional property is referred to herein collectively as the trust estate and shall be held, managed and distributed as herein provided.

ARTICLE II

TRUSTORS' RIGHTS AND PRIVILEGES

A. Amendment. While the Trustor is living, this trust may be altered or amended by written instrument signed by the Trustor and filed with the Trustee.

B. Revocation. While the Trustor is living, the Trustor may revoke this trust in whole or in part and restore to Trustor their respective rights of testamentary disposition by written instrument filed with the Trustor and the Trustee.

C. Conservatorship or Guardianship. In the event that the Trustor shall be legally declared a Conservatee or a Ward of the court, and the income from the trust shall be insufficient to provide for the proper health support and maintenance of such Trustor, the Conservator or Guardian of such Trustor shall have the right, with the approval of the

appropriate court, to invade the trust for the benefit of such Trustor to the extent that such Trustor could have invaded the trust had such Trustor not been, at that time, subject to a Conservatorship or Guardianship. The powers of the Trustor to revoke or amend this trust are personal to him and shall not be exercisable on his behalf by any Conservator or Guardian or other person, except that revocation or amendment may be authorized, after notice to the Trustee, by the court that appointed the Conservator or Guardian.

D. Investment of Trust Estate. The Trustor may, at any time or times, direct the Trustee in writing to invest the trust estate in specific securities, properties or investments, to retain as part of the trust estate any securities, properties or investments for such length of time as such directions may provide, or to sell, encumber, lease, manage, control or dispose of any property of the trust estate. The Trustee shall not be liable for any loss sustained or incurred by reason of compliance by such Trustee with any such written directions of the Trustor.

E. Character of Property. Regardless of the location of such property, any personal property transferred to this trust shall remain personal property, and any real property transferred to this trust shall remain real property.

### ARTICLE III

#### DISPOSITIVE PROVISIONS DURING LIFETIME

A. Payment of Expenses. The Trustee shall pay or reserve sufficient funds to pay all expenses incident to the establishment, management and administration of the trust estate, including the compensation of the Trustee, all or any part of which may, in the discretion of the Trustee, be charged either to income or principal of the trust estate. The remaining income shall be and is hereinafter referred to as "net income".

B. Distribution of Income and Principal of Trust Estate. During the lifetime of the Trustor, the Trustee shall pay to the Trustor, or shall apply for the Trustors' benefit, the net income of the trust estate in quarter-annual or more frequent intervals. If the Trustee considers the net income insufficient, the Trustee shall pay to the Trustor or apply for the benefit of the Trustor as much of the principal of the trust estate as is necessary, in the Trustee's discretion, for the Trustor's proper health, education, support, maintenance, comfort and welfare, in accordance with their accustomed manner of living at the date of this instrument. The Trustor shall have the same duty to use trust income and principal received under this instrument for the benefit of Trustor as they have with respect to any other trust property.

C. Liberal Exercise of Power of Invasion. The Trustee shall exercise in a liberal manner the power to invade principal contained in Subparagraphs B of this ARTICLE III.

## ARTICLE IV

### DISPOSITIVE PROVISIONS AFTER DEATH OF TRUSTOR

A. Payment of Debts. On the death of the Trustor, hereinafter called the "Deceased Trustor", the Trustee may, in the Trustee's discretion, pay, out of the trust, debts of the Deceased Trustor; the estate and inheritance taxes, including interest and penalties, arising because of the Deceased Trustor's death; the last illness and funeral expenses of the Deceased Trustor; attorneys' fees and other costs incurred in administering the Deceased Trustor's estate. The Trustee may pay any such taxes directly or, alternatively, in the sole discretion of the Trustee, distribute such sums to the Executor as shall be necessary to pay all or any portion of such taxes.

B. Creation of Credit Shelter Trust. Upon the death of the Grantor, and after any separate distributions have been made upon the death of the first Grantor, the Trustee may establish a separate fund to be known as the Credit Shelter Trust; this Trust shall from time to time be referred to as "Trust B." The amount of funding of this Credit Shelter Trust shall be that amount disclaimed by the Surviving Spouse. The Grantor encourages at least a partial disclaimer in order to minimize the risk of Federal estate tax being payable upon the death of the second to die of the Grantor and Surviving Spouse; however, the amount funding this Credit Shelter Trust shall in no event exceed the largest amount which passes free from the Federal estate tax on the death of the first to die of the Grantors by reason of the unified credit and state death tax credit (provided use of this credit does not require an increase in state death taxes paid) allowable to such Grantor's estate and after taking into account all other property passing under the Will and otherwise for which no deduction can be claimed in computing Federal estate tax.

1. Income Distribution. The Trustee shall pay to, or for the benefit of the Surviving Spouse during her lifetime, all of the net income of the Credit Shelter Trust calculated from the date of death of the Grantor, in quarterly or other convenient installments. All income accrued or undistributed at the death of the Surviving Spouse shall be paid to the Surviving Spouse's Estate.

2. Principal Distribution. The Trustee may also pay to, or for the benefit of the Surviving Spouse, the Grantor's lineal descendants and any other beneficiary of this Trust, such portions of the principal of the Credit Shelter Trust as the Trustee shall determine to be necessary in its sole discretion for their health, maintenance, support and education, according to their standard of living, giving due regard to the amount known by the Trustee of income available to them from all sources. The Trustee is directed, when it is practicable to do so, to make any payments of principal to or for the benefit of the Surviving Spouse from the Marital Deduction Trust, when allowed to do so, before making any payments of principal from the Credit Shelter Trust. It is the Grantor's intention that the health, maintenance and support of the Surviving Spouse be of primary concern while other beneficiaries of this Credit Shelter Trust considering as secondary. As such, the Trustee shall incur no liability to any beneficiary for the use of principal for

the Surviving Spouse. Upon the death of the Surviving Spouse, this Trust shall be held, managed, and disposed of pursuant to Article V of the Trust Agreement.

3. Surviving Spouse's Power of Appointment. The Surviving Spouse, during her lifetime, shall have the power to appoint the principal and undistributed income of Trust B, or any part thereof, to herself, or to any person or persons; however, the Surviving Spouse may exercise said power of appointment during any calendar year only to the extent of Five Thousand Dollars (\$5,000) or five percent (5%) of the aggregate value of Trust B, whichever amount shall be greater. Any such power of appointment shall not be construed to be cumulative and if not exercised in any calendar year, such power shall be terminated as to that year. Such power of appointment shall be exercised only by means of written direction executed by the Surviving Spouse and delivered to the Trustee during the lifetime of the Survivor. If the Surviving Spouse executes and delivers more than one such written direction to the Trustee, the last one shall control unless, by its context, the surviving spouse clearly indicates otherwise. For purposes of such power of appointment, the value of Trust B shall be determined on the basis of the Trustee's most recent market valuation of Trust B which precedes such request, or, if there has been no such valuation, then at the value thereof on the date when such request is received by the Trustee.

4. Payment of Taxes and Expenses. The Credit Shelter Trust shall be liable for the payment of all estate or inheritance taxes, debts, funeral expenses, administrative expenses, and other obligations, and the Trustee may pay, lend or advance such funds as provided for in this Trust.

5. Disposition of Credit Shelter Trust. Upon the death of the Grantor's surviving Spouse, this Trust's assets shall be disposed of pursuant to the provisions of Article V of the Trust Agreement.

C. Creation of Marital Deduction Trust. Upon the death of the first to die of the Grantor and the Grantor's spouse and if the Grantor's spouse survives or is presumed to survive the Grantor, the Trustee shall set aside in a separate fund, to be known as the Marital Deduction Trust, which shall from time to time be referred to as Trust A, all of the remaining assets received by said Trustee to be held, managed and distributed as set forth in paragraph C.

1. Distribution of Income and Principal. During the life of the Surviving Spouse, the Trustee shall pay to or apply for the benefit of such Surviving Spouse the entire net income of the trust in quarter-annual or more frequent intervals. Additionally, the Trustee may distribute such portion of the principal of the trust, up to and including the whole thereof, as the Trustee deems to be in the best interest of the Surviving Spouse.

2. Appointment Exercisable During Life. During the life of the Surviving Spouse, such Surviving Spouse may, by a written instrument filed with the Trustee and

signed by the Surviving Spouse, direct the Trustee to distribute any amount of income and/or principal of the trust, up to and including the whole thereof, to herself, or to her estate, her creditors, or the creditors of her estate, or to any other individual designated by such Surviving Spouse.

3. Appointment Exercisable at Death. Upon the death of the Surviving Spouse, the Trustee shall distribute the principal of the trust and any accrued or undistributed net income thereon to such person or persons, including the estate, the creditors, or the creditors of the estate of the Surviving Spouse, outright or in trust, or upon such conditions and estates, and with such powers, in such manner and at such time or times, as appointed and directed by the last unrevoked written instrument executed by the Surviving Spouse and on file with the Trustee at the date of death of the Surviving Spouse or, if no such written instrument exists, as appointed and directed by such Surviving Spouse's Last Will, with such Will specifically referring to this power of appointment. Unless within ninety (90) days after the death of the Surviving Spouse the Trustee has actual notice of the existence of such a written instrument or Will, it shall be deemed for all purposes hereunder that such power of appointment was not exercised (but the provisions of this paragraph shall not affect any right which an appointee or beneficiary in default of appointment may have against any distributee).

4. Payment of Expenses of Surviving Spouse's Estate. After the death of the Surviving Spouse, the Trustee may, in the Trustee's discretion, pay out of the trust the estate and inheritance taxes and any debts and expenses of the Surviving Spouse.

5. Disclaimers. the Surviving Spouse may disclaim this gift to Trust A in whole or in part, and in addition to any other method of disclaimer recognized by law, by advising the Trustee in writing of the amount, property or fractional part of this gift which she elects to disclaim. Any amount, property or fractional part of this gift so disclaimed by the Surviving Spouse shall be used to create Trust B and thereafter administered and disposed of as if originally constituting a part thereof. The Surviving Spouse shall not be deemed to have predeceased the Grantor for the purposes of such addition. I suggest that my Surviving Spouse consider an appropriate Partial disclaimer to minimize the death taxes due upon both of our deaths.

6. Accrued Income and Assets. All income of this Marital Deduction Trust accrued or undistributed at the time of death of the last to die of the Grantors shall be paid to the Surviving Spouse's estate.

This Marital Deduction Trust shall consist of assets of such kind, character and interest only as shall qualify for the marital deduction. In addition, the assets allocated to this Marital Deduction Trust shall be selected in such manner that the cash and other property allocated will be fairly representative of such Trust's proportionate share of the appreciation and depreciation in the value of all property which may occur while such property is held in the Trust Estate.



ARTICLE V

DISPOSITIVE PROVISIONS AFTER DEATH OF SURVIVING SPOUSE

Upon the death of the Surviving Spouse, the Trustee shall distribute the remaining principal and any accumulated income which was not distributed by power of appointment referred to in ARTICLE IV C. hereinabove or continue the trust for the benefit of the beneficiaries hereinafter named under terms and conditions as follows:

A. Payment of Expenses. The Trustee shall pay or reserve sufficient funds to pay all expenses of management and administration of the trust estate, including the compensation of the Trustee and the attorney, all or any part of which shall be charged, in the Trustee's discretion, to income and/or principal of the trust estate. The remaining income shall be and is hereinafter referred to as "net income".

B. Distribution of Gifts. The Trustee shall distribute gifts of trust property, subject to the provisions of ARTICLE V E. hereinbelow, to beneficiaries as follows:

My 1957 Thunderbird I give to my son Rocco Piscazzi. -

My 1972 Lambroghini I give to my son Joseph Piscazzi, Jr.

I give to each of my sons, Rocco Piscazzi and Joseph Piscazzi a cash bequest in the amount of \$100,000 each.

If any beneficiary named in this ARTICLE V B. is not then living, the gift to such deceased beneficiary shall lapse and shall become a portion of the remainder of the trust estate.

C. Distribution of Remainder of Trust Estate. Upon the death of the Surviving Spouse, the Trustee shall, after paying or reserving for all amounts payable, as provided in ARTICLE V A. and B., shall hold, administer and distribute the residue of the trust estate for the benefit of our children by allocating one-fourth (1/4) for the benefit of JOSEPH J. PISCAZZI, JR. , one-fourth (1/4) for the benefit of ROCCO S. PISCAZZI, one-fourth (1/4) for the benefit of ALISA M. TOLLIVER, and one-fourth (1/4) for the benefit of TINA L. PISCAZZI, according to the provisions of ARTICLE V E. hereinbelow.

D. Distribution of Deceased Beneficiary's Share. In the event a beneficiary named in Paragraph C. of this ARTICLE V is not then living, the share of such deceased beneficiary shall GO TO THE CHILDREN OF MY DECEASED BENEFICIARY IN A PER STIRPES DISTRIBUTION EXCEPT FOR DIANA PISCAZZI AND SARAH PISCAZZI. IT IS MY INTENTION THAT DIANA PISCAZZI AND SARAH PISCAZZI SHALL ONLY RECEIVE A CASH BEQUEST OF \$20,000 TO EACH OF THEM UPON THEIR ATTAINING THE AGE OF 21 YEARS.

E. Distributions of Income and Principal

1. The Trustee may pay to or apply for the benefit of each beneficiary for whom a trust is then held who has not yet attained the age of twenty-one (21) years as much of the net income of said trust as the Trustee shall determine to be in the best interest of and tending to promote the welfare of such beneficiary, after taking into consideration, to the extent the Trustee deems advisable, any other income or resources of such beneficiary. Any income not distributed shall be accumulated and added to and become part of the principal of said trust. After a beneficiary for whom a trust is then held attains the age of twenty-one (21) years, the Trustee shall pay to or apply for the benefit of such beneficiary the net income of said trust in convenient intervals not less frequently than quarter-annually.

2. If the Trustee deems the net income available hereunder not sufficient to provide for the reasonable health support, maintenance and education of any beneficiary for whom a trust is then held, taking into consideration any other income and financial resources of such beneficiary, so far as known to the Trustee, it may, as often as it deems necessary, pay to or apply for the use and benefit of such beneficiary such part of the principal of the respective trust of such beneficiary, up to and including the whole thereof, as is necessary for the reasonable health support, maintenance and education of such beneficiary.

3. The Trustee, in its discretion, may make net income or principal payments to a minor or a beneficiary under disability by making such payments to the guardian or conservator of his or her person, to a custodian under a Uniform Transfers to Minors Act or similar statute applicable in the State of OHIO, or to any suitable person with whom he or she resides, or the Trustee may apply such payments directly for the beneficiary's benefit. The Trustee may make net income or principal payments directly to a minor child if, in the Trustee's discretion, such child is of sufficient maturity to manage such distribution.

4. Upon the death of a beneficiary for whom a trust is then held prior to final distribution to such beneficiary, if said decedent is survived by issue, that portion of such trust (including both principal and any accrued or undistributed income) which is not exempt from the generation-skipping transfer tax imposed by Chapter 13 of the Internal Revenue Code of 1986 (or any successor provisions) shall be distributed to such one or more persons or entities, including the decedent's estate, and on such terms and conditions, either outright or in trust, as the decedent shall have appointed by the last dated instrument delivered to the Trustee, including a Will (whether or not admitted to probate), specifically referring to and exercising this power of appointment. Any of such portion of the trust as is not appointed, together with that portion of the trust that is exempt from the generation-skipping transfer tax, shall be distributed according to the terms of ARTICLE V D. hereinabove as though said beneficiary had predeceased the Surviving Spouse.

5. There need be no physical segregation or division of the various trust shares except as segregation or division may be required by the termination of any of the trusts, but the Trustee shall keep separate accounts for the different undivided interests.

6. Subject to a possible retention of some or all of the assets of the trust estate by the Trustee pursuant to ARTICLE VII S., whenever any beneficiary for whom a trust is then held shall have attained the age of TWENTY FIVE (25) years, the Trustee shall distribute to such beneficiary, free of trust, FORTY PERCENT (40%) of the principal and accumulated income, if any, of his or her separate trust. Whenever any beneficiary for whom a trust is then held shall have attained the age of THIRTY (30) years, the Trustee shall distribute to such beneficiary, free of trust, an additional FORTY PERCENT (40%) of the principal and accumulated income, if any, of his or her separate trust. Whenever any beneficiary for whom a trust is then held shall have attained the age of THIRTY FIVE (35) years, the Trustee shall distribute to such beneficiary the entire remaining principal and accumulated income, if any, of his or her separate trust.

7. In the event that there shall be no surviving named beneficiaries, including issue as set forth herein, the trust shall terminate and the proceeds shall be distributed one-half (1/2) to the then surviving heirs at law of each Trustor, as determined by the laws of intestate succession then existing in the State of OHIO; excluding, however, any provision for distribution to heirs of a predeceased trustor.

8. The term "issue", unless otherwise designated herein, shall include adopted "issue" of descendants and lineal descendants, both natural and legally adopted indefinitely. Such term shall specifically exclude individuals adopted out of the family of Trustor or out of the family of a descendant of Trustor. The word "living" shall include unborn persons in the period of gestation.

## ARTICLE VI

### ADDITIONAL DISPOSITIVE PROVISIONS

A. Discretionary Termination. If the value of the trust estate or of any segregated share held as a separate trust is determined by the Trustee to be valued at \$20,000.00 or less, then such trust may, in the discretion of the Trustee, be terminated and the remainder of such trust shall be distributed to the person then entitled to the income therefrom.

B. Rule Against Perpetuities. Unless sooner terminated in the manner herein before provided, each trust shall cease and terminate one day prior to twenty-one (21) years from the death of the Surviving Spouse, or the death of the survivor of the named beneficiaries who are living at the date of death of the Surviving Spouse, whichever death shall last occur. Upon such termination, the entire trust estate, including principal and any accrued or undistributed net income thereon, shall be distributed to the persons

for whom said trust estate is then held, in proportion to the trusts then held for such persons.

C. Spendthrift Provision. No beneficiary of this trust, other than a Trustor, shall have any right to alienate, encumber or hypothecate his interest in the trust to claims of his creditors, or to render such interest liable to attachment, execution, or other process of law. The income of this trust shall not be pledged, assigned, transferred, sold or accelerated, anticipated or encumbered in any manner whatsoever by any beneficiary, nor shall any income of the trust be in any manner subject or liable in the hands of the Trustee for the debts, contracts or encroachments of any beneficiary or be subject to any assignments or any other voluntary or involuntary alienation or disposition whatsoever. If the creditor of any beneficiary, other than a Trustor, who is entitled to any distributions from a trust established under this instrument shall attempt by any means to subject to the satisfaction of his claim such beneficiary's interest in distribution, then, notwithstanding any other provision herein, until the release of the writ of attachment or garnishment or other process, the distribution set aside for such beneficiary shall be disposed of as follows:

1. Distribution to Beneficiary. The Trustee shall pay to or apply for the benefit of such beneficiary such sums as the Trustee shall determine to be necessary for the reasonable health, education (including study at institutions of higher learning) and support of the beneficiary according to his or her accustomed mode of life.

2. Disposition of Excess. The portion of the distribution that the Trustee shall determine to be in excess of the amount necessary for such health, education (including study at institutions of higher learning) and support shall, in the Trustee's discretion, either be added to and become principal of the trust share of such beneficiary or be paid to or applied for the benefit of the other beneficiaries then entitled to receive payments from any trust established under this instrument, in proportion to their respective interests in the trust estate; or, if there be no other beneficiaries, the excess income may be paid to or applied for the benefit of the person or persons presumptively entitled to the next eventual interest, in proportion to their respective interests.

D. Simultaneous Death.

1. Trustor. In the event that the Trustor and spouse shall die simultaneously, or if there is insufficient evidence to establish that Trustor and spouse died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Trustor, as defined for federal estate tax purposes, shall have predeceased the other, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption. Should there be no separate property either in the trust or passing into trust after the Trustor's deaths, all property shall pass as though the Wife shall have survived.

corporate obligations of every kind, precious metals such as gold or silver, and stocks, preferred or common, and to buy stocks, bonds, commodities and similar investments on margin or other leveraged accounts and to short sell such accounts, and to buy, sell and write stock and other security options, and to enter into commercial partnership as a partner, limited or general, and to operate any business as a sole proprietor. To open, operate and maintain a securities brokerage account wherein any securities may be bought and/or sold on margin, and to hypothecate, borrow upon, purchase and/or sell existing securities in such account as the Trustee may deem appropriate or useful.

D. Power to Retain Trust Property without Diversification. To retain, without liability for loss or depreciation resulting from such retention, original property, real or personal, at any time received by the Trustee, for such time as the Trustee shall deem best, even though such property may not be of the character prescribed by law or by the terms of this trust for the investment of trust funds, and although it may represent a large percentage of the total trust or estate property, and without being required to observe the principle of diversification of trust investments.

E. Power to Retain Unproductive Property. To retain uninvested all or any part of the trust estate from such time, and from time to time, as the Trustee may deem advisable; provided that unproductive property shall not be held as an asset of the trust for more than a reasonable time during the life of the Surviving Spouse without his or her consent.

F. Power to Borrow. To borrow money for any trust purpose upon such terms and conditions as the Trustee may deem proper, and to obligate the trust estate by mortgage, deed of trust, pledge, or otherwise, using such procedure to consummate the transaction as the Trustee may deem advisable and to pledge the assets of the trust estate to secure the guarantee by the Trustor of the debts of third parties.

G. Power to Manage Securities. To have, respecting securities, all the rights, powers and privileges of an owner, including the power to pay assessments and other sums deemed by the Trustee necessary for the protection of the trust estate; to participate in voting trusts, pooling agreements, foreclosures, recapitalizations, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscription or conversion rights, to accept and retain as an investment any securities or other property received through the exercise of the foregoing powers.

H. Power to Partition, Allot and Distribute. Upon any division or distribution of the trust estate, to partition, allot and distribute the trust estate in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution. The power of the Trustee to make distributions in kind shall include the power to make

2. Surviving Spouse and Beneficiaries. If any beneficiary of the trust other than a Trustor shall die simultaneously with the Surviving Spouse, or if there is insufficient evidence to establish that such beneficiary and the Surviving Spouse died other than simultaneously, it is hereby deemed that the Surviving Spouse shall have survived the beneficiary.

## ARTICLE VII

### TRUSTEE'S POWERS

In addition to all other powers and discretions granted to or vested in the Trustee by law or by this instrument, the Trustee shall have full power to do everything it deems to be in the best interests of the beneficiaries of the trust, including, but not limited to, the following powers and discretions:

A. Power to Retain Trust Property and Comply with Existing Agreements. To continue to hold any property received in trust, including undivided interests in real property, and to operate any property or any business received in trust as long as the Trustee, in the Trustee's discretion, may deem advisable, notwithstanding the fact that any or all of the investments retained are of a character or size which, but for this express authority, would not be considered proper for the Trustee. In the event either Trustor shall be a party to a Buy-Sell Agreement, Cross-Purchase Agreement, Stock Redemption Agreement, Option or any agreement providing for the disposition of such Trustor's interest in property, whether such agreement has been executed by Trustor individually or as Co-Trustee of this Trust Agreement, and which property is owned by the trust, then upon the death of such Trustor, the then acting Trustee of this trust is hereby directed to transfer as much of Trustor's interest in such property then held in the trust as is necessary to carry out the provisions of any such agreement and to execute all documents and take all further actions necessary or appropriate to carry out the terms of such agreement.

B. Power to Manage Trust Property. To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payments; to lease for terms within or extending beyond the duration of the trust, for any purpose, including exploration for and removal of oil, gas and other minerals; to enter into oil, gas and mineral leases, assignments, farmouts, farmins and joint ventures; to purchase and sell gas, oil and mineral royalties, to create restrictions, easements, and other servitudes; to compromise, arbitrate, or otherwise adjust claims in favor of or against the trust; to institute, compromise and defend actions and proceedings; to construct, alter or demolish any buildings; and to carry such insurance as the Trustee may deem advisable.

C. Power to Invest. To invest and reinvest the principal and to purchase or acquire therewith every kind of property, real or personal, and every kind of investment, specifically including, but not by way of limitation, commodities of every nature,

non-pro rata distributions in kind without regard to the income tax basis of assets so distributed.

I. Power to Determine Principal and Income. Except as otherwise specifically provided in this Trust Agreement, the determination of all matters relating to principal and income and receipts and expenses shall be governed by the provisions of the Uniform Principal and Income Act or similar statute applicable in the State of OHIO from time to time existing. Any such matter not provided for either in this instrument or in the Uniform Principal and Income Act or similar statute applicable in the State of OHIO shall be determined by the Trustee in the Trustee's discretion. The Trustee's powers shall be subject, at any time that a beneficiary shall be a Trustee hereunder, to the Trustee's duty to treat income and remainder beneficiaries equitably.

J. Power to Distribute Income. To make payments, if any, of the net income of the trust in quarterly or more frequent intervals as may be convenient to the Trustee. Upon the death of the income beneficiary of the trust during its continuance, any accumulated income which would have been paid to such beneficiary had he or she survived shall not be payable to his or her estate but shall be paid to his or her successors or successor in interest in the trust as hereinabove provided.

K. Power to Employ Counsel. To employ counsel and corporate or other agents in the discharge of their duties and to pay them a reasonable compensation out of either income or principal, in the Trustee's discretion, and to rely upon the advice of counsel and to suffer no liability resulting from any action taken or withheld pursuant to such advice.

L. Power to Pay Taxes and Expenses Relative to Trust Property. To pay from time to time all taxes, assessments, including corporate assessments, and other charges levied or accruing against or on account of the trust property, and to pay all expenses of the trust, including reasonable compensation to the Trustee. To deduct all said taxes, assessments, charges and expenses from the income or principal of the trust as the Trustee may deem proper, giving consideration to whether it was income or principal or an allocation between them which gave rise to such taxes, charges and expenses.

M. Power to Hold Trust Property in the Name of a Nominee. To take title to any property in its name as Trustee hereunder or in its own name or in the name of a nominee without disclosing the trust, or, in the case of securities, to take and keep the same unregistered and to retain them in such manner that title may pass by delivery; or, in the case of real estate, to keep deeds unrecorded; or to deposit cash in a checking or savings account without indication of any fiduciary capacity.

N. Power to Distribute to or for the Benefit of Minor or Disabled Beneficiary. In any case in which a trust share is distributable to a beneficiary who has not reached majority in the state of his or her residence, or in any case where mandatory or discretionary payments of income or principal are to be made to such a minor or other

beneficiary under legal disability, the Trustee may, in its discretion, distribute income or principal directly to the beneficiary, to the guardian or parent of the beneficiary, to a bank account in trust, to a custodianship for the beneficiary or to a person with whom the beneficiary resides. The receipt of the beneficiary, guardian, parent or person shall discharge the Trustee from its responsibility for the proper expenditure of income or principal.

O. Power to Pay Taxes. To pay out of the trust shares or income interests giving rise to such taxes, all state, federal and local property taxes, income taxes and all other taxes relating to the trust estate.

P. Power to Lend. To lend money to any person, including the probate estate of either Trustor, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest.

Q. Power to Insure. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the trust, to protect the trust estate and the Trustee personally against hazard.

R. Power to Commence or Defend Litigation and to Compromise. To commence or defend, at the expense of the trust, such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable, and to compromise or otherwise adjust claims or litigation against or in favor of the trust.

S. Power to Withhold Payment Pursuant to Conflicting Claims. To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this trust, without the payment of interest, all or any part of the property, so long as the Trustee shall determine, in the Trustee's discretion, that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the trust estate. The Trustee is under no obligation to make such retentions and shall be under no liability whatever for the exercise or the failure to exercise such discretion. The interests of the beneficiaries hereunder shall be vested regardless of whether or not such assets are so retained, and all income required to be distributed shall be payable to such beneficiaries in convenient intervals not less frequently than quarter-annually.

T. Power to Adjust for Tax Consequences. To take any action and to make any election, in the Trustee's discretion, in order to minimize the tax liabilities of this trust and its beneficiaries or to extend the time for payment of any tax liabilities. The Trustee shall allocate the benefits from such action or election among the various beneficiaries. The Trustee shall make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election, investment, or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.



U. Power to Subject Trust Property to Probate. It is the Trustor' intention to avoid probate through the use of this Trust Agreement. If, however, the Trustee of this trust and the Executor of the estate of either Trustor shall mutually determine that it shall be in the best interests of the beneficiaries of the trust, and the beneficial interests of the beneficiaries shall not thereby be altered, the Trustee may subject any asset to probate to accomplish a result unavailable without probate. This power shall be strictly construed and shall only be used to secure any tax or other benefit otherwise unavailable to the trust.

V. Power to Delegate. To perform or to delegate to any trustee or non-trustee any non-discretionary power, including the power to singularly or jointly open, close or transfer any type of bank account and savings and loan association account, sign checks, drafts, withdrawal slips or other documents, give instructions for the receipt or delivery of securities or other property, give instructions for the payment or the receipt of money and, singularly or with others, have access to any safe deposit box or other place containing property of this trust.

## ARTICLE VIII

### LIMITATION OF POWERS OF TRUSTEE

A. Management of Principal and Income. No powers, enumerated herein or accorded to Trustee generally by law, shall be construed to enable any person appointed as Trustee or otherwise, or any other person, to purchase, exchange or otherwise deal with or dispose of the principal or income of this trust for less than an adequate consideration in money or money's worth or to enable any person appointed as Trustee or otherwise to borrow the principal or income of this trust directly or indirectly without adequate interest or security. This limitation shall not apply to a Trustor acting as Co-Trustee or sole Trustee, nor shall it apply to a Trustor who is the Surviving Spouse and serving as Co-Trustee or sole Trustee of the trust after the death of the Deceased trustor.

B. Fiduciary Capacity of Trustee. Any Trustee or Co-Trustee of an irrevocable trust hereunder shall act at all times in his or her fiduciary capacity and shall treat the income and remainder beneficiaries equitably, and no Trustee shall have any power which would cause includability of such irrevocable trust share in his or her estate for federal estate tax purposes. Should any condition arise, including a change in the law, which would prevent any such Trustee or Co-Trustee of such irrevocable trust from acting as Trustee hereunder without causing includability of such trust share in his or her estate for federal estate tax purposes merely by reason of such trusteeship, such Trustee or Co-Trustee shall resign, and the next successor Trustee, as designated herein, who shall not be subject to such includability shall be appointed in his or her stead.

C. Invasion of Principal by Trustee. No Trustee or Co-Trustee who is also a beneficiary of an irrevocable trust share hereunder shall have the power to invade the

trust principal for his or her benefit prior to the termination of the trust, except pursuant to the ascertainable standards set forth in this Trust Agreement.

## ARTICLE IX

### RECORDS AND ACCOUNTING

The Trustee shall keep and maintain adequate books and records reflecting all income and principal transactions, which books and records shall be open at all reasonable times to the inspection of the Trustor and to their duly authorized representatives. The Trustee shall furnish at least annual statements for all transactions to the then income beneficiaries of the trust or to the natural or legal guardians of such beneficiaries.

## ARTICLE X

### COMPENSATION OF TRUSTEE

The Trustee shall receive as compensation for its services, unless waived, such amount of commissions as are customarily being charged by commercial trust companies for services as a trustee of an inter vivos trust in the State of OHIO.

## ARTICLE XI

### TRUSTEES AND SUCCESSORS

A. Trustor as Trustees and Successors. Upon the death, resignation or incapacity of JOSEPH J. PISCAZZI as Trustee, the successor Trustee shall be JUDITH M. PISCAZZI. Upon the death, resignation or incapacity of both JOSEPH J. PISCAZZI and JUDITH M. PISCAZZI, the successor Trustee shall be ROCCO S. PISCAZZI and ALISA M. TOLLIVER. Upon the death, resignation or incapacity of ROCCO S. PISCAZZI or ALISA M. TOLLIVER the next alternate successor Trustee shall be JOSEPH J. PISCAZZI, JR. Upon the death, resignation or incapacity of any named Trustee, the next alternate successor Trustee shall be TINA L. PISCAZZI.

B. Powers and Responsibility of Successor Trustee. Upon the appointment of any successor Trustee, such Trustee shall not be required to conduct an audit or account of the fiduciary conduct of any previous Trustee and shall incur no liability whatsoever by its failure to examine the prior trust record. Every successor Trustee shall have all the powers given the originally named Trustee. No successor Trustee shall be personally liable for any act or omission of any predecessor.

C. Guardianship or Conservatorship of Trustee. The establishment of a Guardianship or Conservatorship of the Trustee, whether it is of the Estate or the Person, shall cause the trusteeship of such individual to terminate and to pass to the successor Trustee. Additionally, should two physicians, neither of whom is a beneficiary hereunder, related to either Trustor or to the Trustee within the second degree, nor related to any beneficiary of this trust or beneficiary under the Will of either Trustor within the second degree, certify that the Trustee is incompetent to act as Trustee, such trusteeship shall terminate and pass to the successor Trustee upon notification of such certification to the Trustor, or the surviving Trustor, the Trustee, and each then income beneficiary. Should any Trustor, Trustee or income beneficiary object to such certification, such objecting party may seek a legal determination of incompetence in any court of competent jurisdiction.

D. Resignation of Trustee. Any Trustee or Co-Trustee of this Trust Agreement may resign as Trustee after written notice of such resignation is delivered to the Trustor, or the surviving Trustor, or, if both Trustor are deceased, to all of the beneficiaries then receiving income interests, and upon the acceptance of the successor Trustee to act. The resignation of a Trustee can be effected by the attorney-in-fact for a Trustee exercising such power pursuant to a valid power of attorney. An accounting of the assets, income and expenses shall be delivered by the resigned Trustee to the successor Trustee as soon thereafter as is reasonably practical.

E. Removal of Trustee. The Trustor shall have full power and authority and, after the death of either Trustor, the surviving Trustor shall have full power and authority, at any time or times, to remove the Trustee hereunder and to appoint a successor Trustee, including any corporation or banking institution, and shall do so by delivering to the Trustee to be removed a written notice of such removal, a written appointment of the successor Trustee, and a written acceptance by the successor Trustee. Upon delivery of such instruments to the Trustee, said Trustee shall, after deducting all charges and amounts due it as Trustee, and upon receipt of such proper indemnity as it may require, transfer and deliver the trust estate to the successor Trustee. Thereafter, said removed Trustee shall have no further powers, discretions, rights, obligations or duties with reference to the trust, and all such powers, discretions, rights, obligations or duties given the Trustee by this instrument shall inure to and be binding upon said successor Trustee. After the death of either Trustor, the surviving Trustor shall have full power and authority to alter the succession of trustees, as provided herein, by written Designation of Successor Trustee(s) filed with the then acting Trustee.

F. Delegation of Power to Co-Trustee(s) and Other Agents. Any acting Co-Trustee may, from time to time, delegate to one or more of the remaining acting Co-Trustees any powers, duties or discretions. Every such delegation shall be in writing, delivered to the delegate or delegates and shall remain in effect for the period of time specified in such written delegation or until earlier revocation in writing is delivered to such delegate or delegates. The certification of any Trustee as to the name and authority of any Trustee acting by reason of delegation or otherwise shall be sufficient evidence

and shall indemnify any person relying upon such certification. Additionally, a Trustor acting as a Trustee may, by the execution of a Power of Attorney, delegate to a third party the power and authority to act for such Trustor in his or her capacity as a Trustee in any way in which said Trustee could act if personally present and able to act, subject to the provisions and any limitations set forth in such executed Power of Attorney.

G. Required Consent of Co-Trustees. Subject to the provisions of ARTICLE XI F., whenever there are more than two (2) acting Co-Trustees, a majority of such Co-Trustees, whether individual or corporate, shall have the power to make any decision, undertake any action or execute any documents affecting the trusts created herein, and the dissenting Co-Trustee or Co-Trustees shall thereupon be released from all liability resulting from the decision of the majority. If there are two (2) acting Co-Trustees, they must act unanimously. If an individual Co-Trustee and a corporate Co-Trustee are acting, the decision of the individual Co-Trustee shall be binding.

H. Vacancy in Trusteeship. In the event that all of the named Trustees and successors shall die, resign, or be incapacitated, and in the event that the right to appoint or designate a successor Trustee is not exercised by the Trustor or by the surviving Trustor, as provided in ARTICLE XI E. hereinabove, then, and in that event, the successor Trustee shall be chosen by a majority in interest of the then living beneficiaries, with a parent or guardian voting for each minor beneficiary.

I. Foreign Assets. In the event that the trust shall own real property (hereinafter referred to as "Foreign Assets") in some state other than OHIO and the Trustee hereunder shall be a corporate or individual Trustee not authorized to do business in that state, such corporate or individual Trustee shall select an individual ancillary Trustee located anywhere within the United States of America, providing such individual Trustee shall be legally able to act in such state, or a corporate ancillary Trustee located within the state of situs of such real property, and such ancillary Trustee shall be vested with, and only with, title to and management of each Foreign Asset, and such ancillary Trustee shall have the same rights and powers over the real property within such state as the regularly appointed Trustee under this trust would have had it been able to act as Trustee within that state. The ancillary Trustee shall pay over to the Trustee hereunder, at least annually, the net income attributable to such Foreign Assets. The Trustee selecting such ancillary Trustee shall be held harmless for any wrongdoing on the part of the ancillary Trustee which it shall select. No individual ancillary Trustee may be selected who would, merely through selection as such ancillary Trustee, be subject to estate or inheritance tax on any trust assets upon his or her death.

## ARTICLE XII

### BOND

No Trustee or successor Trustee named herein shall be required to furnish any bond or bonds for the performance of Trustee's duties hereunder.

ARTICLE XIII

GOVERNING LAW

The validity of this trust with respect to real property shall be governed by the state of its situs. The validity of this trust with respect to personal property, and the construction, interpretation and administration of this trust with respect to all property, shall be governed by the laws of the State of OHIO in force from time to time.

ARTICLE XIV

MERGER

The trust created hereby shall not terminate or be held to have terminated upon any theory of merger based on the fact that the same persons are, by the terms of this instrument, made sole beneficiaries and Trustee of said trust; and said beneficiaries are expressly given the right and privilege to participate in the property and business and the profits, dividends, earnings and increase thereof without regard to the relation as Trustee which such beneficiaries may bear to said trust.

ARTICLE XV

NO-CONTEST CLAUSE

In the event that any beneficiary under this trust shall, singly or in conjunction with any other person or persons, contest in any court the validity of this trust or of a deceased Trustor's Last Will or shall seek to obtain an adjudication in any proceeding in any court that this trust or any of its provisions, or that such Will or any of its provisions, is void, or seek otherwise to void, nullify, or set aside this trust or any of its provisions, then the right of that person to take any interest given to him by this trust shall be determined as it would have been determined had the person predeceased the execution of this Trust Agreement. The Trustee is authorized to defend, at the expense of the trust estate, any contest or other attack of any nature on this trust or any of its provisions.

ARTICLE XVI

VALIDITY OF TRUST AGREEMENT

A. Conflict with Jurisdictional Law. This trust shall be construed in such a manner as to uphold its validity in the event that any provision would otherwise appear to conflict with the law of the jurisdiction governing such trust provision in question.

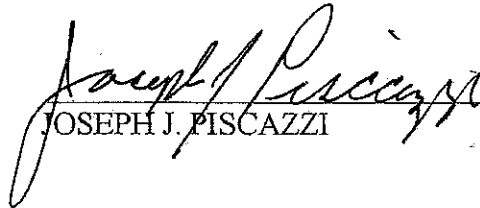
B. Distribution Required by Court. In the event that any court of competent jurisdiction shall make a final determination that some individual or institution other than a named beneficiary hereunder is, in fact, to be a recipient of a portion or all of this trust estate, the Trustee shall distribute to such court-determined beneficiary such share as such court shall order, and the Trustee and attorney for the trust shall be absolved from any liability whatever for carrying out such trust on the date limited by such rule or law and, thereupon, the property held in such trust shall be distributed to the persons then entitled to share in the income therefrom, in the proportions in which they are entitled to share the income, notwithstanding any provision of this trust to the contrary.

D. Exercise of Power of Appointment in Violation of Law. No power of appointment granted hereunder shall be so exercised as to violate any such applicable rule or law, and attempted exercise of any such power which violates such rule or law shall be void, notwithstanding any provision of this trust to the contrary.

E. Headings. The headings, titles and subtitles used herein are for the convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meanings of the provisions contained herein and shall not affect the construction hereof.

IN WITNESS WHEREOF, JOSEPH J. PISCAZZI, Trustor, and JOSEPH J. PISCAZZI, as evidence of his acceptance of the responsibilities of Trustee hereunder, have signed this Trust Agreement.

TRUSTOR:

  
\_\_\_\_\_  
JOSEPH J. PISCAZZI

CO-TRUSTEES:

  
\_\_\_\_\_  
JOSEPH J. PISCAZZI

STATE OF OHIO )

: ss.

COUNTY OF SUMMIT )

On JAN 07 1997, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JOSEPH J. PISCAZZI, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
R.J. GOGUL  
ATTORNEY AT LAW  
NOTARY PUBLIC  
NON EXPIRING COMMISSION

# **EXHIBIT 7**



<a href="#">Home</a>	<a href="#">Search Database</a>	<a href="#">History</a>	<a href="#">Documents</a>	<a href="#">Information</a>	<a href="#">Public Outreach</a>	<a href="#">Links</a>	<a href="#">Veteran Grave Sites</a>	<a href="#">Forms</a>	<a href="#">Survey</a>	<a href="#">Fees &amp; Filings</a>	<a href="#">Microfilming Center</a>
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BEWARE CUYAHOGA COUNTY RESIDENTS There are c

Your search of **piscazzi** return 11 result(s)

Row	AFN	Doc. Type	Name	Assoc. Name	Date Recorded	Reference	Legal Description	Book/Page
1	200210152025	MORT	JOSEPH CAHLIK	PISCAZZI JOSEPH J REVOCABLE TR	10/15/2002	200405120799	133-19-073 113 100 ACRE 315 WORLEY	/
2	200210152027	MORT	JOSEPH CAHLIK	PISCAZZI JOSEPH J REVOCABLE TR	10/15/2002	200408310952	125-01-046 55 100 ACRE 328 BUTLER	/
3	200210152027	MORT	JOSEPH CAHLIK	PISCAZZI JOSEPH J REVOCABLE TR	10/15/2002	200409030480	125-01-046 55 100 ACRE 328 BUTLER	/
4	200210152028	MORT	JOSEPH CAHLIK	PISCAZZI JOSEPH J REVOCABLE TR	10/15/2002	200410250759	IND EAST OF RIVER EXETER	/
5	200306161634	MORT	RICHARD WHILE	PISCAZZI JOSEPH J REVOCABLE TR	6/16/2003		123-21-103 *63 100 ACRE 324 DAKOTA	/
6	200312010003	RELS	CLEVELAND TRENCHER	JOSEPH PISCAZZI	12/1/2003	00587473		/
7	200405120799	RELS	PISCAZZI JOSEPH J REVOCABLE TR	JOSEPH CAHLIK	5/12/2004	200210152025		/
8	200409030480	RELS	JOSEPH PISCAZZI	JOSEPH CAHLIK	9/3/2004	200210152027		/
9	200410250759	RELS	PISCAZZI JOSEPH J REVOCABLE TR	JOSEPH CAHLIK	10/25/2004	200210152028		/
10	200511090098	MORT	ENCORE HOMES LLC	PISCAZZI ENTRPS LLC	11/9/2005		117-25-005 104 EUCLID 50	/
11	200804080454	RELS	PISCAZZI ENT LLC	ENCORE HOMES LLC	4/8/2008	200511090098		/

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Click here to read our [Policy Statement](#).

Developed and Designed By Cuyahoga County Recorder's Office.

# **EXHIBIT 8**

PROSPECT TITLE AGENCY INC.  
4686 DOUGLAS CIRCLE, N.W.  
CANTON, OHIO 44718  
22002009

**That.** THE CLEVELAND TRENCHER COMPANY

a corporation incorporated under the laws of the State of OHIO the Grantor,  
for the consideration of One Dollar + other valuable consideration--Dollars

( \$ 1.00 + ovc ) received to its full satisfaction of

Joseph J. Piscazzi, Trustee

Joseph J. Piscazzi Revocable Trust u/a Jan. 7, 1997

the Grantee , do give, grant, bargain, sell and convey unto the said Grantee and

its heirs or assigns, the following described premises, situated in the

of Euclid , County of Cuyahoga and State of Ohio

See Attached Exhibit "A" Legal Description of Property

Permanent Parcel No.: 646-03-001-646-04-001-646-04-002

CUYAHOGA COUNTY RECORDER  
PATRICK J. O'MALLEY  
MORT 02/15/2002 10:44:35 AM  
200202150062

AAA

## EXHIBIT "A" CUYAHOGA COUNTY RECORDER

200202160062 PAGE 2 of 8

## Parcel No. 1:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14, bounded and described as follows: Beginning on the center line of St. Clair Avenue (60 feet wide) at the Northwesterly corner of land conveyed to The Cleveland Trencher Co. by Deed dated September 14, 1926 and recorded in Volume 3479, Page 449 of Cuyahoga County Records (said beginning point being distant North 52 deg. 09'00" East 594.24 feet measured along said center line of St. Clair Avenue from its point of intersection with center line of East 200th Street); thence South 0 deg. 02'20" West along the Westerly line of land so conveyed to The Cleveland Trencher Co., 462.85 feet to the Southwesterly corner thereof; thence due East along the Southerly line of land so conveyed to The Cleveland Trencher Co., 205 feet to a Southeasterly corner thereof; thence due North along an Easterly line of land so conveyed to The Cleveland Trencher Co., 71.33 feet to an angle; thence due East along a Southerly line of land so conveyed to The Cleveland Trencher Co., 33 feet to the Westerly line of the first parcel of land conveyed to The Steel Car Co. by Deed dated July 25, 1921 and recorded in Volume 2557, Page 180 of Cuyahoga County Records; thence due South along said Westerly line of land so conveyed to The Steel Car Co., 778.49 feet to the center line of a private right of way (21 feet wide) created by Deed dated July 2, 1927 and recorded in Volume 3570, Page 202 of Cuyahoga County Records; thence North 25 deg. 41'00" West along said center line of said private right of way 287.24 feet to a point of curvature; thence Northwesterly continuing along said center line on a curved line deflecting to the left 174.60 feet to a point of tangency (said curved line having a radius of 410.28 feet and a chord of whose arc bears North 37 deg. 52'30" West 173.29 feet); thence continuing along said center line North 50 deg. 04'00" West 87.74 feet to the Easterly line of land conveyed to Charles Bernstein and Harry Ratner by deed dated July 2, 1927 and recorded in Volume 3570, Page 202 of Cuyahoga County Records; thence North 0 deg. 02'20" East along said Easterly line of land so conveyed to Charles Bernstein and Harry Ratner about 13.62 feet to the Southwesterly corner of land conveyed to Charles Bernstein and Harry Ratner by deed dated July 2, 1927 and recorded in Volume 3515, Page 215 of Cuyahoga County Records; thence South 50 deg. 04'00" East along the Southwesterly line of land so conveyed to Charles Bernstein and Harry Ratner as last aforesaid (said Southwesterly line being also the Northeasterly line of said private right of way) 51 feet to the Southeasterly corner thereof; thence Northwesterly along the Northeasterly line of land so conveyed to Charles Bernstein and Harry Ratner to said Easterly line of land so conveyed to Charles Bernstein and Harry Ratner by deed recorded in Volume 3570, Page 202 of Cuyahoga County Records as first aforesaid; thence North 0 deg. 02'20" East along said Easterly line of land so conveyed to Charles Bernstein and Harry Ratner by deed recorded in Volume 3570, Page 202 of Cuyahoga County Records 642.73 feet to said center line of St. Clair Avenue; thence North 52 deg. 09'00" East along said center line of St. Clair Avenue 76.03 feet to the place of beginning according to a survey of The F.A. Pease Engineering Co. dated June 1925 be the same more or less, but subject to all legal



EXHIBIT "A"  
CONTINUEDCUYAHOGA COUNTY RECORDER  
200202160062 PAGE 3 of 8

highways.

## Parcel No. 2:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14 and bounded and described as follows: Beginning at a point in the center line of St. Clair Avenue, 60 feet wide, at its intersection with the Northwesterly prolongation of the Southwesterly line of land conveyed to Frank Zajc and Anna Zajc by Deed dated November 17, 1916 and recorded in Volume 1877, Page 420 of Cuyahoga County Records; thence South 37 degrees 51'00" East along said line prolonged and along said Southwesterly line of land so conveyed 79.65 feet to an iron pin set at a point of curve; thence continuing Southeasterly along the Southwesterly line of land so conveyed on a curved line deflecting to the right 132 feet, said curved line having a radius of 255.04 feet and a chord whose arc bears South 23 deg. 02'22" East 130.39 feet; thence North 78 deg. 42'30" East along the Southerly line of land so conveyed 110.74 feet to the Westerly line of the first parcel of land conveyed to The Steel Car Co. by deed dated July 25, 1921 and recorded in Volume 2557, Page 180 of Cuyahoga County Records; thence Southerly along the Westerly line of said first parcel of land so conveyed 253.96 feet to the Northeasterly corner of a 33 foot strip of land described in an agreement between The Steel Car Co. and The Superior Tractor Co. dated February 3, 1920 and recorded in Volume 2550, Page 1 of Cuyahoga County Records; thence Westerly along the Northerly line of land so described in said agreement 33 feet to the Northwesterly corner thereof; thence Southerly along the Westerly line of land so described in said agreement 71.33 feet; thence Westerly at right angles to the last described course 205 feet to an iron pin; thence Northerly on a line making an included angle of 89 deg. 57'40" with the last described course 463.85 feet to said center line of St. Clair Avenue; thence North 52 deg. 09'00" East along said center line of St. Clair Avenue 36.93 feet to the place of beginning, be the same more or less, but subject to all legal highways.

## Parcel No. 3:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Sublot No. 4 in Aldrich and Currier's Subdivision of part of Original Euclid Township Tract No. 14 as shown by the recorded plat in Volume 5 of Maps, Page 24 of Cuyahoga County Records, bounded and described as follows: Beginning in the Southeasterly line of St. Clair Avenue N.E. (60 feet wide) at its intersection with the Easterly line of said Sublot No. 4; thence South 0 deg. 02'30" East along the Easterly line of said Sublot No. 4, 275 feet; thence South 78 deg. 40'00" West 110.74 feet; thence Northwesterly along a curved line deflecting to the left having a radius of 255.04 feet, a chord which bears North 23 deg. 04'52" West 130.39 feet, an arc distance of 132 feet; thence North 37 deg. 53'30" West 50 feet to the Southeasterly line of St. Clair Avenue N.E.; thence North 52 deg. 06'30" East along said Southeasterly line 114.29 feet to an angle therein; thence North 56 deg. 10'00" East along said Southeasterly line of St. Clair Avenue 120.71 feet to the place of beginning, be the same more or less, but

*Walter*

EXHIBIT "A"  
CONTINUEDCUYAHOGA COUNTY RECORDER  
200202160062 PAGE 4 of 8

subject to all legal highways.

## Parcel No. 4:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14 and bounded and described as follows: Beginning on the Southeasterly line of St. Clair Avenue, 60 feet wide, as shown by the dedication plat in Volume 31 of Maps, Page 29 of Cuyahoga County Records, at the Northwesterly corner of land conveyed to Glascote Products Inc. by Deed recorded in Volume 4591, Page 29 of Cuyahoga County Records; thence Southwesterly along the Southeasterly line of St. Clair Avenue, 36.12 feet to the Easterly line of land conveyed to August Laufer by Deed recorded in Volume 681, Page 45 of Cuyahoga County Records; thence Southerly along the Easterly line of land so conveyed to August Laufer, 1330.66 feet to the Northeasterly line of land conveyed to The Cleveland Trust Company by Deed recorded in Volume 4809, Page 518 of Cuyahoga County Records; thence Southeasterly along the Northeasterly line of land so conveyed to The Cleveland Trust Company, 100 feet to the Northwesterly line of Tungsten Road, 50 feet wide; thence Northeasterly along the Northwesterly line of Tungsten Road, 73.58 feet to the Southwesterly corner of land conveyed to B & M Realty Inc. by Deed recorded in Volume 11365, Page 157 of Cuyahoga County Records; thence Northwesterly along the Southwesterly line of land so conveyed to B & M Realty Inc., 106.20 feet to a point of curve; thence along the arc of a curve deflecting to the right, 153.68 feet, said curve having a radius of 394.75 feet and a chord which bears North 14 deg. 13'41" West, 152.71 feet to the Northwesterly corner of land so conveyed to B & M Realty Inc.; thence Northeasterly along the Northwesterly line of land so conveyed, to the Southwesterly corner of land conveyed to Zatko Metal Products Company by deed recorded in Volume 12588, Page 457 of Cuyahoga County Records; thence North 0 deg. 18'20" West along a Westerly line of land so conveyed to Zatko Metal Products Company, 294.41 feet; thence South 89 degrees 41'40" West along a Southerly line of land so conveyed, 58 feet; thence North 0 deg. 18'20" West along a Westerly line of land so conveyed, 340 feet to a point on the Southerly line of land conveyed to Zatko Metal Products Co. by Deed recorded in Volume 8231, Page 149 of Cuyahoga County Records; thence Westerly along the Southerly line of land so conveyed to Zatko Metal Products Co., 185.8 feet to the Southwesterly corner thereof; thence Northerly along the Westerly line of land so conveyed 75 feet to a point on the Southerly line of land conveyed to Glascote Products Inc. as first aforesaid; thence Westerly along the Southerly line of land so conveyed to Glascote Products Inc. 163.23 feet to the Southwesterly corner thereof; thence Northerly along the Westerly line of land so conveyed to Glascote Products Inc., 173.70 feet to the place of beginning, be the same more or less, but subject to all legal highways.

## EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PREMISES:

That portion of the above described parcel conveyed to Frank Berzin (married) and Indiflex Properties by the Warranty Deed filed for record June 26, 1987

EXHIBIT "A"  
CONTINUED

in Volume 87-4269, Page 59 of the Cuyahoga County Records and being more particularly bounded and described as follows:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14 and further bounded and described as follows: Beginning at the point of intersection of the Westerly line of land conveyed to The Cleveland Trencher Company by deed dated October 25, 1945 as recorded in Volume 6004, Page 330 of Cuyahoga County Records with the Northwesterly sideline of Tungsten Road (50 feet wide); thence North 57 degrees 08'00" East along said Northwesterly sideline of Tungsten Road (50 feet wide) a distance of 334.90 feet to a point, said point being the Southeast corner of land conveyed to James J. Kleiman by Quit Claim Deed as recorded in Volume 14674, Page 245 of Cuyahoga County Deed Records; thence North 32 degrees 52'00" West along Kleiman's North-easterly line a distance of 250.00 feet to an iron pin and the principle place of beginning of the premises herein intended to be described; Course I: thence North 32 degrees 52'00" West continuing along the Northwesterly prolongation of said Northeasterly line of Kleiman, a distance of 60.00 feet to an iron pin; Course II: thence South 57 degrees 08'00" West a distance of 156.48 feet to an iron pin; Course III: thence along the arc of a curve deflecting to the left, 73.46 feet, said curve having a radius of 394.75 feet and a chord which bears South 2 degrees 15'18" West, 73.36 feet to an iron pin; Course IV: thence North 57 degrees 08'00" East, a distance of 198.68 feet to an iron pin and the principal place of beginning, be the same more or less, but subject to all legal highways.

CUYAHOGA COUNTY RECORDER  
201202180062 PAGE 5 of 8

*Mer 1/10/21*

CUYAHOGA COUNTY RECORDER  
200202150062 PAGE 8 of 8

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

**To Have and to Hold** the above granted and bargained premises, with the appurtenances thereunto belonging, unto the said Grantee, its heirs and assigns, forever. And the said Grantor does for itself and its successors and assigns covenant with the said Grantee, its heirs and assigns, that at and until the ensealing of these presents it is well seized of the above described premises as a good and indefeasible estate in fee simple and has good right to bargain and sell the same in manner and form as above written; that the same are free and clear from all incumbrances whatsoever,

and that it will warrant and defend said premises, with the appurtenances thereunto belonging, to the said Grantee, its heirs and assigns, forever, against all lawful claims and demands whatsoever.

The Grantor herein especially agrees to keep the building on premises herein described insured in a sum of not less than tbd Dollars, (loss, if any, payable to the Grantee, as its interest may appear) in insurance companies satisfactory to the Grantee; policies of insurance to be left in the custody of the Grantee; shall have the



its certain promissory note dated

sum of

Dollars

payable in ~~one year~~ <sup>six months</sup> from the date thereof with interest at the rate of 18% ~~per centum~~

per annum, payable ~~annually~~ <sup>monthly</sup> on the first day of each month, beginning on the first day of \_\_\_\_\_, 2002, (see NOTE for further details)

until paid, the principal of said note to become due on failure to pay the interest punctually as above stipulated; now, if the said

THE CLEVELAND TRENCHER COMPANY

its successors or assigns, shall well and truly pay the aforesaid PROMISSORY NOTE

according to the tenor thereof, to the said

Joseph J. Piscazzi Revocable Trust, Joseph J. Piscazzi, Trustee,

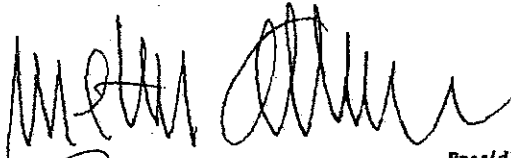

its heirs or assigns, then the above deed shall be void; otherwise the same shall

remain in full force and virtue in law.

In Testimony Whereof, the said Grantor has caused its corporate seal to be hereto affixed and these presents to be subscribed by its President and Secretary, this

day of 19 2002

Signed in presence of

By  President  
 Secretary

The State of Ohio, ) I, Stephen Janni  
) ss. a Notary Public in and for said county, do hereby certify  
Stark County, ) that Metin Aydin  
President, and Pauline Aydin Secretary of

whose names respectively are signed to the foregoing instrument, have this day acknowledged the signing and execution of the said instrument, for themselves respectively, and for and on behalf of said Company, and acknowledged that they affixed the corporate seal of said Company to said instrument, and otherwise executed the same, by direction of a resolution of the directors of said Company, and have acknowledged that the same, in all respects, is their free act and deed as such officers respectively, and the free act and deed of said corporation. And I further certify that

the said and are known to me to be the individuals and officers described in and who executed said instrument.

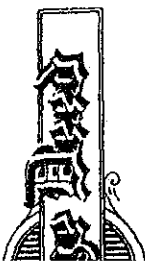
In Testimony Whereof, I have hereunto set my hand and official seal at this 14th day

*MA*  
*PM*

, 19

*The conditions of this mortgage have been complied with, and the same is hereby satisfied and discharged.*

CUYAHOGA COUNTY RECORDER  
200202160062 PAGE 8 of 8



TRENCHER COMPANY

SCAZZI REVOCABLE

J. PISCAZZI,

for Record

19

o'clock M.

19

County Records

Page

RECORDER.

ent prepared by

## **EXHIBIT 9**

6

WORLDWIDE  
PROPERTY TITLE AGENCY INC.  
4000 DOUGLAS CIRCLE, N.W.  
CANTON, OHIO 44718  
2002009

CUYAHOGA COUNTY RECORDER  
PATRICK J. OMALLEY  
DEED 02/15/2002 10:44:35 AM  
200202150061

DEED IN TRUST

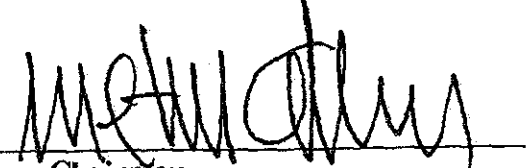
THIS DEED, made this 12th day of February, 2002, under the powers vested in the Chairman of the Board through the Corporation's "Corporate Resolution of Stockholders Giving Select Directors and Officers General Power to Borrow Money, Mortgage and Pledge Property, and Deed Property and Title in Trust" dated February 11, 2002, between The Cleveland Trencher Company, an Ohio Corporation having its principal place of business at 20100 St. Clair Avenue, Cleveland, Ohio 44117 (herein called "Grantor"), party on the one part, and Gary Thomas, of P.O. Box 1052, Akron, Ohio 44309 (herein called "Trustee") party of the other part, WITNESSETH:

- Grantor does grant unto the Trustee the property attached as Exhibit "A", being Permanent Parcel No.: 646-03-001-646-04-001-646-04-002, incorporated herein by reference as if fully rewritten herein, IN TRUST to secure the payment due to Joseph J. Piscazzi, Trustee, of Joseph J. Piscazzi Revocable Trust U/A Dated January 7, 1997, of 2860 Marcia Blvd., Cuyahoga Falls, Ohio 44223, owed by Grantor to Joseph J. Piscazzi Revocable Trust as is evidenced by the PROMISSORY NOTE SECURED BY MORTGAGE ON PROPERTY At 20100 St. Claire Ave. CLEVELAND OHIO dated February 14, 2002, for the amount of \$ 205,000.00, which note is incorporated herein by reference as if fully rewritten herein (hereinafter "the note.").
- Grantor does hereby expressly grant to Trustee the right and power to commence and secure the sale of the property in the event that the Grantor defaults on the note, in order to secure payment on the note, including coordination with Subordinated Creditors to release all claims and encumbrances to facilitate sale with clean title.
- Upon the full payment of the note and the performance of all promises and covenants contained therein, and upon evidence of the same being presented to the Trustee, the Trustee shall execute to Grantor a Deed of Release, reciting that the evidence of the debt marked paid has been exhibited to the Trustee.

WITNESS the following duly authorized signatures and corporate seals of the parties the day and year above written.

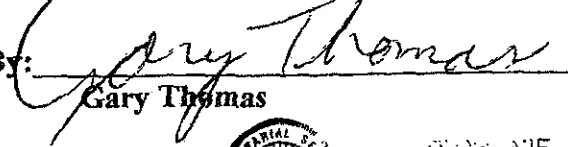
**THE CLEVELAND TRENCHER COMPANY:**

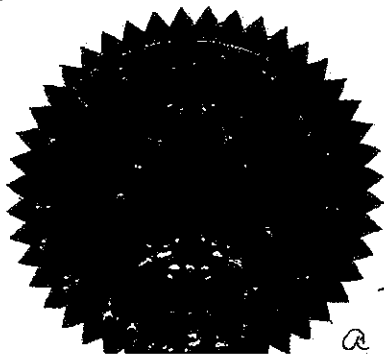
  
Secretary of the Corporation

By:   
Chairman

CUYAHOGA COUNTY RECORDER  
200202150061 PAGE 1 of 5

**GARY THOMAS, Trustee:**

By:   
Gary Thomas



STEPHANIE HANNI  
Notary Public, State of Ohio, Stark City.  
My Commission Expires March 20, 2006

I, Stephanie Hanni, a Notary Public in and for Cuyahoga County, Ohio, do hereby certify that the foregoing signatures have been signed by the parties to this deed.

EXHIBIT "A"

CUYAHOGA COUNTY RECORDER

200202180061 PAGE 2 of 5

## Parcel No. 1:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14, bounded and described as follows: Beginning on the center line of St. Clair Avenue (60 feet wide) at the Northwesterly corner of land conveyed to The Cleveland Trencher Co. by Deed dated September 14, 1926 and recorded in Volume 3479, Page 449 of Cuyahoga County Records (said beginning point being distant North 52 deg. 09'00" East 594.24 feet measured along said center line of St. Clair Avenue from its point of intersection with center line of East 200th Street); thence South 0 deg. 02'20" West along the Westerly line of land so conveyed to The Cleveland Trencher Co., 462.85 feet to the Southwesterly corner thereof; thence due East along the Southerly line of land so conveyed to The Cleveland Trencher Co., 205 feet to a Southeasterly corner thereof; thence due North along an Easterly line of land so conveyed to The Cleveland Trencher Co., 71.33 feet to an angle; thence due East along a Southerly line of land so conveyed to The Cleveland Trencher Co., 33 feet to the Westerly line of the first parcel of land conveyed to The Steel Car Co. by Deed dated July 25, 1921 and recorded in Volume 2557, Page 180 of Cuyahoga County Records; thence due South along said Westerly line of land so conveyed to The Steel Car Co., 778.49 feet to the center line of a private right of way (21 feet wide) created by Deed dated July 2, 1927 and recorded in Volume 3570, Page 202 of Cuyahoga County Records; thence North 25 deg. 41'00" West along said center line of said private right of way 287.24 feet to a point of curvature; thence Northwesterly continuing along said center line on a curved line deflecting to the left 174.60 feet to a point of tangency (said curved line having a radius of 410.28 feet and a chord of whose arc bears North 37 deg. 52'30" West 173.29 feet); thence continuing along said center line North 50 deg. 04'00" West 87.74 feet to the Easterly line of land conveyed to Charles Bernstein and Harry Ratner by deed dated July 2, 1927 and recorded in Volume 3570, Page 202 of Cuyahoga County Records; thence North 0 deg. 02'20" East along said Easterly line of land so conveyed to Charles Bernstein and Harry Ratner about 13.62 feet to the Southwesterly corner of land conveyed to Charles Bernstein and Harry Ratner by deed dated July 2, 1927 and recorded in Volume 3515, Page 215 of Cuyahoga County Records; thence South 50 deg. 04'00" East along the Southwesterly line of land so conveyed to Charles Bernstein and Harry Ratner as last aforesaid (said Southwesterly line being also the Northeasterly line of said private right of way) 51 feet to the Southeasterly corner thereof; thence Northwesterly along the Northeasterly line of land so conveyed to Charles Bernstein and Harry Ratner to said Easterly line of land so conveyed to Charles Bernstein and Harry Ratner by deed recorded in Volume 3570, Page 202 of Cuyahoga County Records as first aforesaid; thence North 0 deg. 02'20" East along said Easterly line of land so conveyed to Charles Bernstein and Harry Ratner by deed recorded in Volume 3570, Page 202 of Cuyahoga County Records 642.73 feet to said center line of St. Clair Avenue; thence North 52 deg. 09'00" East along said center line of St. Clair Avenue 76.03 feet to the place of beginning according to a survey of The F.A. Pease Engineering Co. dated June 1925 be the same more or less, but subject to all legal

*NA*

EXHIBIT "A"  
CONTINUEDCUYAHOGA COUNTY RECORDER  
200202150061 PAGE 3 of 5

highways.

## Parcel No. 2:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14 and bounded and described as follows: Beginning at a point in the center line of St. Clair Avenue, 60 feet wide, at its intersection with the Northwesterly prolongation of the Southwesterly line of land conveyed to Frank Zajc and Anna Zajc by Deed dated November 17, 1916 and recorded in Volume 1877, Page 420 of Cuyahoga County Records; thence South 37 degrees 51'00" East along said line prolonged and along said Southwesterly line of land so conveyed 79.65 feet to an iron pin set at a point of curve; thence continuing Southeasterly along the Southwesterly line of land so conveyed on a curved line deflecting to the right 132 feet, said curved line having a radius of 255.04 feet and a chord whose arc bears South 23 deg. 02'22" East 130.39 feet; thence North 78 deg. 42'30" East along the Southerly line of land so conveyed 110.74 feet to the Westerly line of the first parcel of land conveyed to The Steel Car Co. by deed dated July 25, 1921 and recorded in Volume 2557, Page 180 of Cuyahoga County Records; thence Southerly along the Westerly line of said first parcel of land so conveyed 253.96 feet to the Northeasterly corner of a 33 foot strip of land described in an agreement between The Steel Car Co. and The Superior Tractor Co. dated February 3, 1920 and recorded in Volume 2550, Page 1 of Cuyahoga County Records; thence Westerly along the Northerly line of land so described in said agreement 33 feet to the Northwesterly corner thereof; thence Southerly along the Westerly line of land so described in said agreement 71.33 feet; thence Westerly at right angles to the last described course 205 feet to an iron pin; thence Northerly on a line making an included angle of 89 deg. 57'40" with the last described course 463.85 feet to said center line of St. Clair Avenue; thence North 52 deg. 09'00" East along said center line of St. Clair Avenue 36.93 feet to the place of beginning, be the same more or less, but subject to all legal highways.

## Parcel No. 3:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Sublot No. 4 in Aldrich and Currier's Subdivision of part of Original Euclid Township Tract No. 14 as shown by the recorded plat in Volume 5 of Maps, Page 24 of Cuyahoga County Records, bounded and described as follows: Beginning in the Southeasterly line of St. Clair Avenue N.E. (60 feet wide) at its intersection with the Easterly line of said Sublot No. 4; thence South 0 deg. 02'30" East along the Easterly line of said Sublot No. 4, 275 feet; thence South 78 deg. 40'00" West 110.74 feet; thence Northwesterly along a curved line deflecting to the left having a radius of 255.04 feet, a chord which bears North 23 deg. 04'52" West 130.39 feet, an arc distance of 132 feet; thence North 37 deg. 53'30" West 50 feet to the Southeasterly line of St. Clair Avenue N.E.; thence North 52 deg. 06'30" East along said Southeasterly line 114.29 feet to an angle therein; thence North 56 deg. 10'00" East along said Southeasterly line of St. Clair Avenue 120.71 feet to the place of beginning, be the same more or less, but

EXHIBIT "A"  
CONTINUED

subject to all legal highways.

CUYAHOGA COUNTY RECORDER

200202160061 PAGE 4 of 6

## Parcel No. 4:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14 and bounded and described as follows: Beginning on the Southeasterly line of St. Clair Avenue, 60 feet wide, as shown by the dedication plat in Volume 31 of Maps, Page 29 of Cuyahoga County Records, at the Northwesterly corner of land conveyed to Glascote Products Inc. by Deed recorded in Volume 4591, Page 29 of Cuyahoga County Records; thence Southwesterly along the Southeasterly line of St. Clair Avenue, 36.12 feet to the Easterly line of land conveyed to August Laufer by Deed recorded in Volume 681, Page 45 of Cuyahoga County Records; thence Southerly along the Easterly line of land so conveyed to August Laufer, 1330.66 feet to the Northeasterly line of land conveyed to The Cleveland Trust Company by Deed recorded in Volume 4809, Page 518 of Cuyahoga County Records; thence Southeasterly along the Northeasterly line of land so conveyed to The Cleveland Trust Company, 100 feet to the Northwesterly line of Tungsten Road, 50 feet wide; thence Northeasterly along the Northwesterly line of Tungsten Road, 73.58 feet to the Southwesterly corner of land conveyed to B & M Realty Inc. by Deed recorded in Volume 11365, Page 157 of Cuyahoga County Records; thence Northwesterly along the Southwesterly line of land so conveyed to B & M Realty Inc., 106.20 feet to a point of curve; thence along the arc of a curve deflecting to the right, 153.68 feet, said curve having a radius of 394.75 feet and a chord which bears North 14 deg. 13'41" West, 152.71 feet to the Northwesterly corner of land so conveyed to B & M Realty Inc.; thence Northeasterly along the Northwesterly line of land so conveyed, to the Southwesterly corner of land conveyed to Zatko Metal Products Company by deed recorded in Volume 12588, Page 457 of Cuyahoga County Records; thence North 0 deg. 18'20" West along a Westerly line of land so conveyed to Zatko Metal Products Company, 294.41 feet; thence South 89 degrees 41'40" West along a Southerly line of land so conveyed, 58 feet; thence North 0 deg. 18'20" West along a Westerly line of land so conveyed, 340 feet to a point on the Southerly line of land conveyed to Zatko Metal Products Co. by Deed recorded in Volume 8231, Page 149 of Cuyahoga County Records; thence Westerly along the Southerly line of land so conveyed to Zatko Metal Products Co., 185.8 feet to the Southwesterly corner thereof; thence Northerly along the Westerly line of land so conveyed 75 feet to a point on the Southerly line of land conveyed to Glascote Products Inc. as first aforesaid; thence Westerly along the Southerly line of land so conveyed to Glascote Products Inc. 163.23 feet to the Southwesterly corner thereof; thence Northerly along the Westerly line of land so conveyed to Glascote Products Inc., 173.70 feet to the place of beginning, be the same more or less, but subject to all legal highways.

## EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PREMISES:

That portion of the above described parcel conveyed to Frank Berzin (married) and Induflex Properties by the Warranty Deed filed for record June 26, 1987

EXHIBIT "A"  
CONTINUED

in Volume 87-4269, Page 59 of the Cuyahoga County Records and being more particularly bounded and described as follows:

Situated in the City of Euclid, County of Cuyahoga and State of Ohio and known as being part of Original Euclid Township Tract No. 14 and further bounded and described as follows: Beginning at the point of intersection of the Westerly line of land conveyed to The Cleveland Trencher Company by deed dated October 25, 1945 as recorded in Volume 6004, Page 330 of Cuyahoga County Records with the Northwesterly sideline of Tungsten Road (50 feet wide); thence North 57 degrees 08'00" East along said Northwesterly sideline of Tungsten Road (50 feet wide) a distance of 334.90 feet to a point, said point being the Southeast corner of land conveyed to James J. Kleiman by Quit Claim Deed as recorded in Volume 14674, Page 245 of Cuyahoga County Deed Records; thence North 32 degrees 52'00" West along Kleiman's North-easterly line a distance of 250.00 feet to an iron pin and the principle place of beginning of the premises herein intended to be described; Course I: thence North 32 degrees 52'00" West continuing along the Northwesterly prolongation of said Northeasterly line of Kleiman, a distance of 60.00 feet to an iron pin; Course II: thence South 57 degrees 08'00" West a distance of 156.48 feet to an iron pin; Course III: thence along the arc of a curve deflecting to the left, 73.46 feet, said curve having a radius of 394.75 feet and a chord which bears South 2 degrees 15'18" West, 73.36 feet to an iron pin; Course IV: thence North 57 degrees 08'00" East, a distance of 198.68 feet to an iron pin and the principal place of beginning, be the same more or less, but subject to all legal highways.

646-03-001  
646-04-001  
646-04-002

CUYAHOGA COUNTY RECORDER  
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PARCEL NO. \_\_\_\_\_  
CONVEYANCE IS IN COMPLIANCE WITH SEC. 319.202 O.R.C.  
PAID

FEB 15 2002

Conveyance Fee 0 Receipt No. 4252KB  
TYPE \_\_\_\_\_ ARMS LENGTH YES ( ) NO ( )  
Frank Russo, Cuyahoga County Auditor By \_\_\_\_\_ Deputy

*Frank Russo*  
CUYAHOGA COUNTY AUDITOR

ROBERT KLAISER P.E., P.A.  
Legal Description complies with  
Cuyahoga County Conveyance  
Standards and is approved for  
transfer.

*[Signature]*  
Agent FEB 15 2002 Date