

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mass Realty, LLC  
2250 Seymour Avenue  
Cincinnati, Ohio 45212

Respondent

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Director's Final  
Findings and Orders

I. JURISDICTION

1. These Director's Final Findings and Orders ("**Orders**") are issued pursuant to the authority vested in the Director of the Ohio EPA under Sections 3734.13, 3734.20, 3745.01, and 6111.03 of the Ohio Revised Code ("**ORC**").

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DIV. OF EMERGENCY & REMEDIAL RESPONSE

II. STATEMENT OF PURPOSE

2. In entering into these Orders, the mutual objective of the Ohio EPA and the Respondent is to prevent the off-Property migration of ground water containing the volatile organic compounds identified in Section VI., Paragraph 12.a. of these Orders, through continued operation of the ground water gradient control system at the Site, and to cease operation of the system when ground-water sampling and analysis indicate that the interim action ground-water compliance standards have been met. Accordingly, the Orders: acknowledge the transfer of ownership of the Site from Evergreen Limited Partnership, now known as Everbrown Limited Partnership, an Ohio limited partnership, and Everbrown Inc., its general partner, to Mass Realty LLC; transfer the obligations of the July 23, 1991 Director's Final Findings and Orders to Mass Realty, LLC; and establish a schedule for completion of the payment of Ohio EPA's Response Costs for the Site.

III. PARTIES BOUND

3. These Orders shall apply to and be binding upon the Respondent. No change in ownership of the Site including, but not limited to, any transfer of assets or real or personal property shall in any way alter Respondent's obligations under these Orders.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: *Zina L. Clements* Date: 2-12-01

4. Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

#### **IV. DEFINITIONS**

5. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in ORC Chapters 3734 and 6111. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:
  - a. "Day" shall mean a calendar day. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.
  - b. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
  - c. "Paragraph" shall mean a portion of these Orders identified by an arabic numeral or an upper or lower case letter.
  - d. "Parties" shall mean the Respondent and the Ohio EPA.
  - e. "Property" shall mean the property located at 614 Shepherd Drive, Lockland, Hamilton County, Ohio.
  - f. "Respondent" shall mean Mass Realty LLC, a limited liability corporation located in Cincinnati, Ohio. "Former Respondents" shall mean Everbrown Limited Partnership, formerly known as Evergreen Limited Partnership, an Ohio limited partnership located in Cincinnati, Ohio, and Everbrown Inc., its general partner, an Ohio corporation located in Cincinnati, Ohio.
  - g. "Response Costs" shall mean all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement - related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
  - h. "Risk Assessment Guidance for Superfund" ("RAGS") shall mean the document

entitled, RAGS: Volume 1 - Human Health Evaluation Manual, Part B, Development of Risk-based Preliminary Remediation Goals, OSWER Directive 9285.7-01B, December, 1991, Interim.

- i. "Section" shall mean a portion of these Orders identified by a roman numeral.
- j. "Site" shall mean the property located at 614 Shepherd Drive, Lockland, Hamilton County, Ohio where treatment, storage, and/or disposal of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such wastes may have migrated or threaten to migrate.
- k. "Waste Material" shall mean (1) any "hazardous waste" under ORC Section 3734.01(J); (2) any "solid waste" under ORC Section 3734.01(E); (3) any "industrial waste" under ORC Section 6111.01(C); and (4) any "other waste" under ORC Section 6111.01(D).
- l. "Work" shall mean all activities Respondent is required to perform under these Orders.

#### **V. FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS OF LAW**

6. All findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to ORC Sections 3734.20, 3734.13 and 6111.03 have been made and are outlined below. Ohio EPA has determined the following:
  - a. Mass Realty, LLC ("**Respondent**"), an Ohio limited liability company, located at 2250 Seymour Avenue in Cincinnati, Ohio, owns and since February 5, 2001, has owned and operated the Site located at 614 Shepherd Drive, Lockland, Hamilton County, Ohio. Respondent purchased the Site from Everbrown, Inc., as general partner of Everbrown Limited Partnership, an Ohio limited partnership ("**Former Respondents**").
  - b. The Director issued Final Findings & Orders to Former Respondents on July 23, 1991 ("**1991 Orders**") requiring the Former Respondents to, among other things, delineate and verify ground-water contamination at the Site, and conduct ground-water extraction/ gradient control through ground-water pumping at the Site. The 1991 Orders were amended by Final Findings and Orders issued to Former Respondents on August 27, 1996 ("**1996 Amended Orders**").

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- c. The Former Respondents have operated a ground water gradient control ("GWGC") system at the Site since June, 1994. The GWGC system currently consists of pumping wells RW2 and RW4 located in the southwest corner of the Site, submersible pumps in each pumping well, flow meters, and piping which discharges recovered ground water under permit to a Hamilton County Metropolitan Sewer District sanitary sewer. The purpose of the GWGC system is to prevent the off-property migration of ground water containing the volatile organic compounds identified in Section VI, Paragraph 12.a. of these Orders sourced at, near, or beneath the building at the western end of the Site.
- d. The Site is located approximately 1,800 feet upgradient of the City of Wyoming's potable drinking water well field.
- e. Respondent is a "person" as defined in ORC Section 3734.01(G).
- f. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that the chemicals and substances identified in Section VI, Paragraph 12.a. of these Orders are "hazardous wastes" as defined under ORC Section 3734.01(J).
- g. The Director has also determined that the Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored, or disposed, and that conditions at the Site continue to constitute a substantial threat to public health or safety or are continuing to cause or contribute to, or to threaten to cause or contribute to, air or water pollution or soil contamination.
- h. Respondent is a "person" as defined in ORC Section 6111.01(I).
- i. The Director has determined that the contaminants found at the Site, and identified in Section VI, Paragraph 12.a. of these Orders are "industrial wastes" or "other wastes" as defined under ORC Section 6111.01.
- j. The ground water at the Site constitutes "waters of the state" as defined in ORC Section 6111.01(H).
- k. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.
- l. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economical reasonableness of complying with these Orders and to evidence relating to conditions

calculated to result from compliance with these Orders, and their relation to benefits to the people of the state to be derived from such compliance.

- m. Based upon information available to the Director as set forth in these Findings of Fact, the Director has determined that the work required by these Orders, set forth below, is in the nature of interim measures only, designed to contain, abate, mitigate and control contamination. The Director has given consideration to the evidence related to documented activities which have occurred and/or will occur at the Site. Based upon the facts presented, the Director believes that issuance of this Consent Order is furthering the intent of the General Assembly, that Ohio EPA will prevent, control or abate pollution of the environment for the protection and preservation of the health, safety, welfare and property of the people of the State.

## **VI. PERFORMANCE OF THE WORK BY THE RESPONDENT**

7. Respondent shall continue to operate and maintain the existing GWGC system described in Section V, Paragraph 6.c. of these Orders until such time as the interim action ground-water compliance (IAGWC) standards described in Section VI., Paragraph 12.a.-d. of these Orders, are met and confirmed by the Ohio EPA.
8. Respondent shall collect and analyze ground-water samples using U.S. EPA Method SW846-8260 from Site pumping well RW4 and monitoring well MW3 on a quarterly basis.
9. Respondent shall collect water level measurements from the following Site pumping and monitoring wells on a quarterly basis: RW2, RW4, MW3, MW4, MW5, MW7, and a minimum of two additional piezometers, to be installed by Respondent at locations and depths to be designated by Ohio EPA, commencing within ninety (90) days of the effective date of these Orders.
10. Respondent may petition Ohio EPA, in writing, to modify any portion of the ground-water monitoring program. Ohio EPA shall evaluate the written petition and notify Respondent, in writing, of its evaluation and determination regarding the Respondent's requested modifications.
11. **IAGWC** standards shall be determined according to the following procedure:
  - a. The Site contaminants of concern ("**COC**") are tetrachloroethene, trichloroethene, 1,1-dichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, vinyl chloride, 1,1,1-trichloroethane, 1,1-dichloroethane, and chloroethane.

- b. For each COC, identify the corresponding maximum contaminant level ("MCL") if one exists, and calculate the residential water carcinogenic effects remediation goal ( $10^{-5}$ ) and the residential water non-carcinogenic effects remediation goal (Hazard Index = 1) using equations 1' and 2' on pages 21 and 22 of the Risk Assessment Guidance for Superfund, Part B, referenced in Section IV., Paragraph 5.h. of these Orders. When using equation 1', substitute a target excess individual lifetime cancer risk value of ( $10^{-5}$ ) into the equation. The remediation goal for each COC will be calculated individually and the remediation goals will not consider the cumulative effect of more than one COC in the groundwater.
  - c. For each COC, select the lowest concentration from among the MCL, the carcinogenic risk-based remediation goal, and the non-carcinogenic risk-based remediation goal.
  - d. The value obtained in Paragraph 12.c. becomes the IAGWC standard unless the value is less than 1.0 part per billion, in which case 1.0 part per billion becomes the IAGWC standard.
12. Respondent may petition the Ohio EPA to cease operation of the GWGC system should ground-water sampling and analysis indicate that IAGWC standards have been met. Respondent shall resample the ground-water approximately one week following receipt of the initial sampling results to confirm whether IAGWC standards have, in fact, been met. Following receipt of written concurrence from the Ohio EPA that IAGWC standards have been met, Respondent may cease operation of the GWGC system.
13. Following the Ohio EPA-approved cessation of the GWGC system, Respondent shall continue to maintain the GWGC system in such a manner as to allow for the resumed operation of the GWGC system, if required by the Ohio EPA due to any exceedance of the IAGWC standards.
14. Following Ohio EPA-approved cessation of operation of the GWGC system, Respondent shall continue ground-water analytical sampling on a quarterly basis for Site pumping well RW4 and monitoring well MW3. If Respondent's sampling results indicate that IAGWC standards have been exceeded during any sampling event, Respondent shall resample the ground water approximately one week following receipt of the initial sampling results to confirm whether IAGWC standards have been exceeded. If the resampling results confirm that the IAGWC standards have been exceeded, Respondent shall resume operation of the GWGC system, including the resumption of quarterly water level measurements, and continue quarterly ground-water analytical sampling.

15. These Orders shall not be eligible for termination pursuant to Section XIX., Termination, until eight (8) consecutive quarters of ground-water sampling and analysis have demonstrated continued compliance with the IAGWC standards. Compliance with the IAGWC standards may also be achieved by a demonstration by the Respondent that there was no statistically significant or consistent rebound of COC concentrations above the IAGWC standards during the eight consecutive quarters of groundwater sampling.

#### **VII. SAMPLING AND DATA AVAILABILITY**

16. Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the Work.
17. Within seven (7) days of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders.
18. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

#### **VIII. ACCESS**

19. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:
  - a. Monitoring the Work;

- b. Conducting sampling;
  - c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
  - d. Conducting investigations and tests related to the implementation of these Orders;  
and
  - e. Verifying any data and/or other information submitted to Ohio EPA.
20. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA.
21. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.
22. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations.

#### **IX. DESIGNATED SITE COORDINATORS**

23. Within five (5) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number of its designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to Ohio EPA at least five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.
24. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these

Orders for the duration of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Respondent's Site Coordinator or Alternate Site Coordinator shall be present on the Site or on call during all hours of Work at the Site.

25. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to the following:
- a. Taking samples and directing the type, quantity and location of samples to be taken by Respondent pursuant to an approved work plan;
  - b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
  - c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
  - d. Conducting investigations and tests related to the implementation of these Orders;
  - e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
  - f. Assessing Respondent's compliance with these Orders.

#### **X. PROGRESS REPORTS AND NOTICE**

26. Unless otherwise directed by Ohio EPA, Respondent shall provide quarterly progress reports to Ohio EPA concerning the work performed by Respondent during the previous quarter. The quarters shall be divided into the following reporting periods: the First Quarter shall be months January through March; the Second Quarter shall be months April through June; the Third Quarter shall be months July through September; and the Fourth Quarter shall be months October through December. The quarterly progress reports shall be submitted by the tenth (10) day of the first month following the reporting period. The quarterly progress reports shall include, at a minimum, the following information:
- a. a description of the status of the work and progress to date;

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- b. summaries of all changes made in the interim measures during the reporting period;
  - c. summaries of all contacts with representatives of the City of Lockland, local community and public interest groups, local, county and state agencies, and federal government officials during the reporting period concerning the Work performed pursuant to these Orders;
  - d. summaries of all relevant findings including, but not limited to, water level measurements, flow maps, analytical sampling results, etc., from Site wells listed in Section VI., Paragraphs 8-10 of these Orders;
  - e. an evaluation of the current effectiveness of the GWGC system in preventing off-property migration of ground water containing the volatile organic compounds identified in Section VI., Paragraph 12.a. of these Orders sourced at, near, or beneath the building at the western end of the Site.
  - f. a description of the difficulties encountered during the reporting period;
  - g. a description of the actions taken to rectify any difficulties encountered;
  - h. a description of activities planned for the next quarter; and
  - i. an identification of changes in key project personnel.
27. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent by certified mail, return receipt requested, or equivalent, to the following address, or to such other address as directed by Ohio EPA:
- a. Ohio Environmental Protection Agency  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
ATTN: DERR Records Room
  - b. Ohio EPA  
Southwest District Office  
401 East Fifth Street  
Dayton, Ohio 45402-2911  
ATTN: Site Coordinator (Joe Smindak or successor), DERR

## **XI. RESERVATION OF RIGHTS**

28. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including seeking penalties against Respondent for noncompliance with these Orders. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of Section IX., Reimbursement of Costs, of the 1991 Orders, as amended by the 1996 Amended Orders, as against the Former Respondents, in the event that Respondent fails to comply with the requirements of Paragraph 43., Section XVII., Reimbursement of Costs, of these Orders.
29. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.
30. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination of these Orders pursuant to Section XIX., Termination, Respondent shall have resolved its liability to Ohio EPA for only the Work performed pursuant to these Orders.

## **XII. ACCESS TO INFORMATION**

31. Respondent shall provide to Ohio EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.
32. Respondent may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders is confidential under the provisions of Ohio Administrative Code Rule 3745-50-30(A) or ORC Section 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to the Ohio EPA, it may be made available to the public without notice to Respondent.
33. Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent makes such an assertion, Respondent shall provide Ohio EPA with the following:

- a. the title of the document or information;
  - b. the date of the document or information;
  - c. the name and title of the author of the document or information;
  - d. the name and title of each addressee and recipient;
  - e. a general description of the contents of the document or information; and
  - f. the privilege being asserted by Respondent.
34. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical monitoring, or laboratory or interpretive reports.
35. Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after the termination of these Orders, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

### **XIII. DISPUTE RESOLUTION**

36. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work or document submitted pursuant to these Orders, the Site Coordinators shall have seven (7) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This seven (7) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.
37. Following the exchange of written positions, the Site Coordinators shall have an additional seven (7) days to resolve the dispute. If Ohio EPA concurs with the position of Respondent, then the work or document submitted pursuant to these Orders shall be modified accordingly.

38. If Ohio EPA does not concur with Respondent, the Ohio EPA Site Coordinator will notify Respondent in writing. Upon receipt of such notice, Respondent shall have ten (10) days to submit to Ohio EPA's Division of Emergency and Remedial Response a request for resolution of the dispute, along with a written statement of the dispute. The designee of the Chief of Ohio EPA's Division of Emergency and Remedial Response will resolve the dispute based upon and consistent with these Orders, and applicable Federal and State law, including ORC Chapters 6111 and 3734, and the regulations promulgated thereunder. The Chief of DERR will promptly notify Respondent of the resolution of the dispute. Once an issue in dispute has been resolved, that issue shall no longer be subject to dispute resolution. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under this Section shall not be available to Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

#### **XIV. INDEMNITY**

39. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, events or conditions at the Site. Ohio EPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against the Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

#### **XV. OTHER CLAIMS**

40. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders for any liability arising from, or related to, events or conditions at the Site.

#### **XVI. LAND USE AND CONVEYANCE OF TITLE**

41. Within thirty (30) days of the effective date of these Orders or after acquiring an interest in property which is part of the Site, Respondent shall record a notice on the deed to property that is part of the Site and owned by the Respondent with the County Recorder's Office for

Hamilton County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring and containment devices present on the property. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to these Orders and shall reference any restrictions applicable to the property under these Orders.

42. Respondent shall ensure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Site or violate any restrictions applicable to the Site under these Orders, including without limitation any institutional controls applicable to the Site. In no event shall the conveyance of any interest in the property that includes, or is a portion of, the Site release or otherwise affect the liability of Respondent to comply with these Orders.

### **XVII. REIMBURSEMENT OF COSTS**

43. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. With respect to Response Costs incurred from January 1, 1991 until December 31, 1999, which total \$77,330.04, and Response Costs incurred from January 1, 2000 until journalization of these Orders, which total \$11,966.46, Respondent shall:
  - a. within thirty (30) days of the effective date of these Orders, remit a check to the Ohio EPA in the amount of \$55,000.00; and
  - b. commencing within thirty (30) days of the effective date of these Orders, and continuing monthly thereafter until the balance (\$34,296.50) is paid in full, remit a check to the Ohio EPA in the amount of \$1000.00.
44. With respect to Response Costs incurred after the journalization of these Orders, Ohio EPA will submit to Respondent an annual itemized statement of its Response Costs. Within thirty (30) days of receipt of such itemized statement, Respondent shall remit payment for all of Ohio EPA's Response Costs for the statement period.
45. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:
  - a. Payment shall be made by certified check payable to "Treasurer of the State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049, ATTN: Vicki Galilei, or her successor.
  - b. Respondent shall send a copy of the transmittal letter and check to the Fiscal Officer, DERR, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049,

DERR, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049,  
ATTN: Patricia Campbell or her successor, and to the Ohio EPA Site Coordinator  
as indicated in Section X., Paragraph 27. (b) of these Orders.

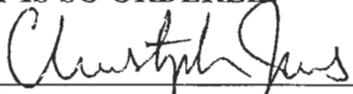
**XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

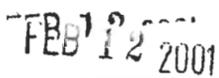
46. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of the Ohio EPA.
47. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

**XIX. TERMINATION**

48. These Orders shall terminate upon Ohio EPA's acceptance in writing of Respondent's written certification to Ohio EPA that all Work required to be performed under these Orders, including payment of Response Costs, has been completed. Any such termination of these Orders shall not affect the terms and conditions of Section XI., Reservation of Rights, Section XII., Access to Information, Section XIV., Indemnity, Section XV., Other Claims, and Section XVI., Land Use and Conveyance of Title.
49. With the exception of the following portions of the 1991 Orders, i.e., Section VII., Other Claims, Section IX., Reimbursement of Costs, and Section XII., Reservation of Rights, the 1991 Orders issued to the Former Respondents are hereby terminated. Upon performance of the obligations set forth in Paragraph 43. of these Orders, and Ohio EPA's written acknowledgment of such performance, Section IX., Reimbursement of Costs, of the 1991 Orders, as well as the 1996 Amended Orders, shall be terminated. The termination of the 1991 Orders shall not affect the terms and conditions of the following portions of the 1991 Orders, i.e., Section VII., Other Claims, Section IX., Reimbursement of Costs, or Section XII., Reservation of Rights.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Christopher Jones, Director

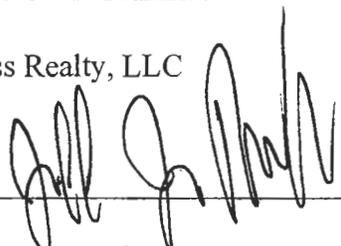
  
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Date

**XV. WAIVER AND AGREEMENT**

- A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.
- B. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waives any and all rights that it may have to seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.
- C. Notwithstanding the limitations herein on Respondent's rights to appeal or seek administrative or judicial review, the Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

Mass Realty, LLC

  
\_\_\_\_\_

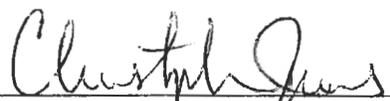
Title

MEMBER

\_\_\_\_\_ DECEMBER 1, 2000

Date

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_

Christopher Jones, Director

\_\_\_\_\_ FEB 12 2001

Date