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Records - ORC § 317.08

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Environmental Covenant
for
The Former Kittinger Trucking Property (aka - Killian Latex, Inc.)
2064 Killian Road, Akron, Summit County, Ohio 44312
Summit County Permanent Parcels No. 5100074 and No. 5100073

This Environmental Covenant is entered into by Killian Latex, Inc. ("Owner") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations and to the rights of access set forth herein.

WHEREAS, Killian Latex, Inc., 2064 Killian Road, Akron, Ohio 44312 has undertaken a voluntary action with respect to the Property described herein under Ohio's Voluntary Action Program ("VAP"), pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code Chapter 3745-300; and

WHEREAS, the Property is owned by Killian Latex, Inc.; and

WHEREAS, the voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant. Certified Professional (CP) Jim C. Smith, C.P. No. 121, issued a NFA Letter for the Property on September 1, 2009, and on November 5, 2009 submitted the NFA Letter to Ohio EPA, with a request for a covenant not to sue ("NFA Letter No. 09NFA377"); and

WHEREAS, the activity and use limitations support the issuance of the NFA Letter and a covenant not to sue for the Property. The activity and use limitations protect against exposure to the hazardous substances and petroleum in soil or groundwater on or underlying the Property; and

WHEREAS, an overview of the voluntary action is contained in the NFA Letter Executive Summary. The Covenant Not to Sue, Executive Summary, and complete NFA Letter for the Property may be reviewed by contacting the Records Management Officer, Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program, P.O. Box 1049, Columbus, OH 43216-1049, or by telephone at (614) 644-2924; or the Ohio EPA/DERR Northeast District Office, 2110 Aurora Road, Twinsburg, OH 44087, or by telephone at (330) 963-1200.

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Killian Latex, Inc., as Owner and Holder (as defined herein) and the Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns an approximately 15.0313 acre tract of real property owned by Killian Latex, Inc. and located at 2064 Killian Road, Akron, Summit County, Ohio and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. Killian Latex, Inc. ("Owner") 2064 Killian Road, Akron, Ohio 44312, is the owner of the Property.

4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.

5. Activity and Use Limitations. As part of the voluntary action described in the NFA Letter, Owner on behalf of itself, its successors and assigns, hereby imposes and agrees to comply with the following activity and use limitations:

Limitation for Commercial or Industrial Land Uses. The entire Property, as described in Exhibit A, is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(C)(2)(c)(ii) and (C)(2)(c)(iii) (effective March 1, 2009). A site plan showing the metes and bounds of the Property subject to the limitation for commercial or industrial land use is included as Figure 1 within Exhibit A.

OAC 3745-300-08(C)(2)(c)(ii) defines commercial land use as "land use with potential exposure of adult workers during a business day and potential exposure of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include but are not limited to warehouses; retail gasoline stations; retail establishments; professional offices; hospitals and clinics; religious institutions; hotels; motels; and parking facilities."

OAC 3745-300-08(C)(2)(c)(iii) defines industrial land use as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use

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has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.”

Limitation Prohibiting Ground Water Extraction and Use. Ground water underlying that portion of the Property designated as Ground Water Restriction Area and described in Exhibit B shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water; or for temporary dewatering during construction activities, and during the installation and/or maintenance of utilities.

A figure showing the metes and bounds of the portion of the Property subject to ground water extraction and use limitations is included as Figure 2 within Exhibit B.

Limitation Prohibiting Excavation Activities. Soil material located in the portion of the Property designated as Excavation Restriction Area described in Exhibit B shall not be disturbed by excavation, drilling, mining, piercing, digging or other disturbance with the exception of construction activities for the installation or maintenance of utilities. The exclusion to this exception includes the portion of the Property affected by buried waste (Fill Placement Area), which is subject to Ohio EPA solid waste rule OAC 3745-27-13. There shall be no excavation activities permitted for any reason in this area of the Property unless authorized by the Director of Ohio EPA in accordance with OAC 3745-27-13.

A figure showing the metes and bounds of the portion of the Property subject to excavation restriction is included as Figure 2 within Exhibit B.

Restrictions on ground water use and excavation activities apply to the same area of the Property as described in Exhibit B.

Limitation Prohibiting Inhabitable or Enclosed Structures. Enclosed or inhabitable structures shall not be constructed on the area of the Property designated as Inhabitable or Enclosed Structure Restriction Area described in Exhibit B.

A figure showing the metes and bounds of the portion of the Property subject to inhabitable or enclosed structure restrictions is included as Figure 2 within Exhibit B.

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6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law. Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC § 3746.12 is void on and after the date of the commencement of the non-complying use.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant. The right of access granted under this Paragraph 8 shall be irrevocable while this Environmental Covenant remains in full force and effect.

9. Compliance Reporting. Upon the request of the Ohio EPA, Owner or any Transferee shall submit to Ohio EPA written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 201__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SUMMIT COUNTY RECORDER ON _____, 201__, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: LIMITATIONS FOR COMMERCIAL OR INDUSTRIAL LAND USES, LIMITATION PROHIBITING GROUND WATER EXTRACTION AND USE, LIMITATION PROHIBITING EXCAVATION

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ACTIVITIES, AND LIMITATION PROHIBITING INHABITABLE OR ENCLOSED STRUCTURES.

Owner shall notify Ohio EPA and any "Holders" other than the Owner within thirty (30) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

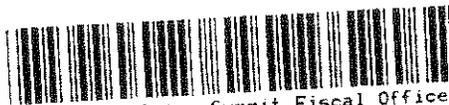
11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- that the Owner is the sole owner of the Property and holds fee simple title to the Property, which is free, clear and unencumbered except as listed in Exhibit C;
- that the Owner has indentified all other persons that hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
- that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party of by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or

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Transferee shall file such instrument for recording with the Summit County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Summit County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Summit County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA and Summit County.

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

Records Management Officer
Voluntary Action Program
Division of Emergency and Remedial Response
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

and

Mr. Tim Killian
Killian Latex, Inc.
2064 Killian Road
Akron, Ohio 44312

19. Captions. All paragraph captions are for the convenience of reference only and

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Environmental Covenant
Former Kittinger Trucking Property (aka Killian Latex, Inc.)
June 9, 2010
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shall not affect the construction of any provision of this Environmental Covenant.

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

IT IS SO AGREED:

Owner:
Killian Latex, Inc.

By: Timothy J. Killian
Signature of Owner

Timothy J. Killian, CEO
Printed Name and Title

June 14, 2010
Date

State of Ohio)

ss:

County of Summit)

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

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 14th day of June, 20 10.

Sheila K. Pucella
Notary Public

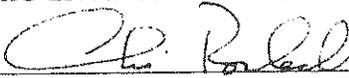
SHEILA K. PUCELLA, NOTARY
STATE OF OHIO
MY COMMISSION EXPIRES: 10/16/11

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OHIO ENVIRONMENTAL PROTECTION AGENCY


Chris Korleski, Director

7/19/10
Date

State of Ohio)

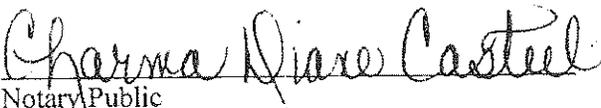
ss:

County of Franklin)

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

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19th day of July, 2010.




Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2014

This instrument prepared by:
Joseph A. Gregg
Attorney at Law
One Seagate 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032

Exhibits

- Exhibit A – Legal Description and Metes and Bounds Figure of Area of Property Subject to Commercial/Industrial Land Use Only
- Exhibit B – Legal Description and Metes and Bounds Figure of Area of Property Subject to Limitations on Ground Water Extraction and Use, Excavation Activities, and Construction of Inhabitable or Enclosed Structures
- Exhibit C - Easements, Restrictions, and Other Matters Affecting Title Searched



EXHIBIT A
LEGAL DESCRIPTION
KILLIAN LATEX, INC. PROPERTY
15.0313 ACRES

Situated in the Township of Springfield, County of Summit and State of Ohio; and being part of Tract 5; also being the consolidated whole of two parcels of land, now or formerly in the name of Killian Latex, Inc. (10.687 Ac. & 4.4314 Ac.; 7/27/1981; Deed Vol. 6521, Pg. 485); as recorded in the Summit County Recorder's Office; bound and described as follows:

Commencing at a point at the intersection of the centerline of Killian Road (C.H. 135, 60') with the westerly line of said Tract 5, being a railroad spike found;

Thence N 89°03'00" E, along the centerline of said Killian Road, 541.23 feet to a point of curvature;

Thence along the centerline of said Killian Road, being an arc of a curve to the right, 417.52 feet to a point of tangency; said curve having the following data: Delta - 08°21'00", R-2864.93', C-417.15, CB-S 86°46'30" E;

Thence along the centerline of said Killian Road, S 82°36'00" E, 5.78 feet to a point; also being the POINT OF BEGINNING of the parcel herein described;

Thence continuing along the centerline of said Killian Road, S 82°36'00" E, 395.72 feet to a point of curvature;

Thence along the centerline of said Killian Road, being an arc of a curve to the left, 229.39 feet to a point of intersection with the southwesterly line of the Cleveland Terminal & Valley Railroad; said curve having the following data: Delta - 06°52'51", R-1910.11', C-229.26', CB-S 86°02'26" E;

Thence S 63°19'30" E, along the southwesterly line of said CT & V Railroad, 607.96 feet to a 1" iron pipe found at the N.W. Corner of a parcel of land, now or formerly in the name of Archwood Leasing Corp. (4.350 Ac.; 11/10/1915);

Thence S 00°20'40" W, along the westerly line of said 4.350 Ac. parcel, 327.49 feet to a sandstone found at the S.W. Corner of said 4.350 Ac. parcel;

Thence S 89°11'00" W, along the northerly line of a parcel of land, now or formerly in the name of F.G. Ayers, Inc. (71.43 Ac.; 12/21/1994; O.R. 1825, Pg. 683), and along the northerly line of a parcel of land, now or formerly in the name of Paul R. Semonin, etal (13.000 Ac.; 4/08/1999; Doc.#54274750), 1171.25 feet to a 5/8" iron pin found at the S.E. Corner of a parcel of land, now or formerly in the name of Springfield Township Board of Trustees (12.3920 Ac.; 12/26/1997; Doc.#54089521);

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Legal Description 15.0313 Ac. continued

Thence N 00°43'50" E, along the easterly line of said 12.3920 Ac. parcel, 683.96 feet to the point of beginning, while passing through a 5/8" iron pin/cap (6688) set at 30.20 feet from said point;

And containing 15.0313 Acres of land, more or less, subject to all legal highways and easements; as surveyed by Douglas P. McLaughlin, P.S. 6688 on August 17, 2009.

Basis of bearings is from the Survey S-289 of Summit County Recorder's Office as performed by John M. Moore (P.S. 4883), as it applies to the centerline of Killian Road (S 82°36'00" E, as monumented.

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EXHIBIT B

**LEGAL DESCRIPTION
5.7917 ACRES**

**PORTION OF PROPERTY SUBJECT TO LIMITATIONS ON GROUND WATER
EXTRACTION AND USE, EXCAVATION ACTIVITIES, AND CONSTRUCTION OF
INHABITABLE OR ENCLOSED STRUCTURES**

Situated in the Township of Springfield, County of Summit and State of Ohio; and being part of Tract 5; also being parts of two parcels of land, now or formerly in the name of Killian Latex, Inc. (10.687 Ac. & 4.4314 Ac.; 7/27/1981; Deed Vol. 6521, Pg. 485); as recorded in the Summit County Recorder's Office; bound and described as follows:

Commencing at a point at the intersection of the centerline of Killian Road (C.H. 135, 60') with the westerly line of said Tract 5, being a railroad spike found;

Thence N 89°03'00" E, along the centerline of said Killian Road, 541.23 feet to a point of curvature;

Thence along the centerline of said Killian Road, being an arc of a curve to the right, 417.52 feet to a point of tangency; said curve having the following data: Delta - 08°21'00", R-2864.93', C-417.15, CB-S 86°46'30" E;

Thence along the centerline of said Killian Road, S 82°36'00" E, 401.50 feet to a point of curvature;

Thence along the centerline of said Killian Road, being an arc of a curve to the left, 229.39 feet to a point of intersection with the southwesterly line of the Cleveland Terminal & Valley Railroad; said curve having the following data: Delta - 06°52'51", R-1910.11', C-229.26', CB-S 86°02'26" E;

Thence S 63°19'30" E, along the southwesterly line of said CT & V Railroad, 233.66 feet to a point; also being the POINT OF BEGINNING of the parcel herein described;

Thence S 00°20'40" W, 190.00 feet to a point;

Thence S 34°54'35" W, 70.00 feet to a point;

Thence S 18°58'55" E, 120.00 feet to a point;

Thence S 89°11'00" W, 403.47 feet to a point;

Thence N 00°20'40" E, 126.31 feet to a point;

Thence S 89°11'00" W, 202.50 feet to a point;

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John A. Donofrio, Summit Fiscal Officer

Thence S 00°20'40" W, 265.74 feet to a point;

Legal Description 5.7917 Ac. continued

Thence N 89°11'00" E, along the northerly line of a parcel of land, now or formerly in the name of F.G. Ayers, Inc. (71.43 Ac.; 12/21/1994; O.R. 1825, Pg. 683), 941.50 feet to a sandstone found at the S.W. Corner of a parcel of land, now or formerly in the name of Archwood Leasing Corp. (4.350 Ac.; 11/10/1915);

Thence N 00°20'40" E, along the westerly line of said 4.350 Ac. parcel, 327.49 feet to a 1" iron pipe found at the N.W. Corner of said 4.350 Ac. parcel;

Thence N 63°19'30" W, along the southwesterly line of said CT & V Railroad, 374.30 feet to the point of beginning;

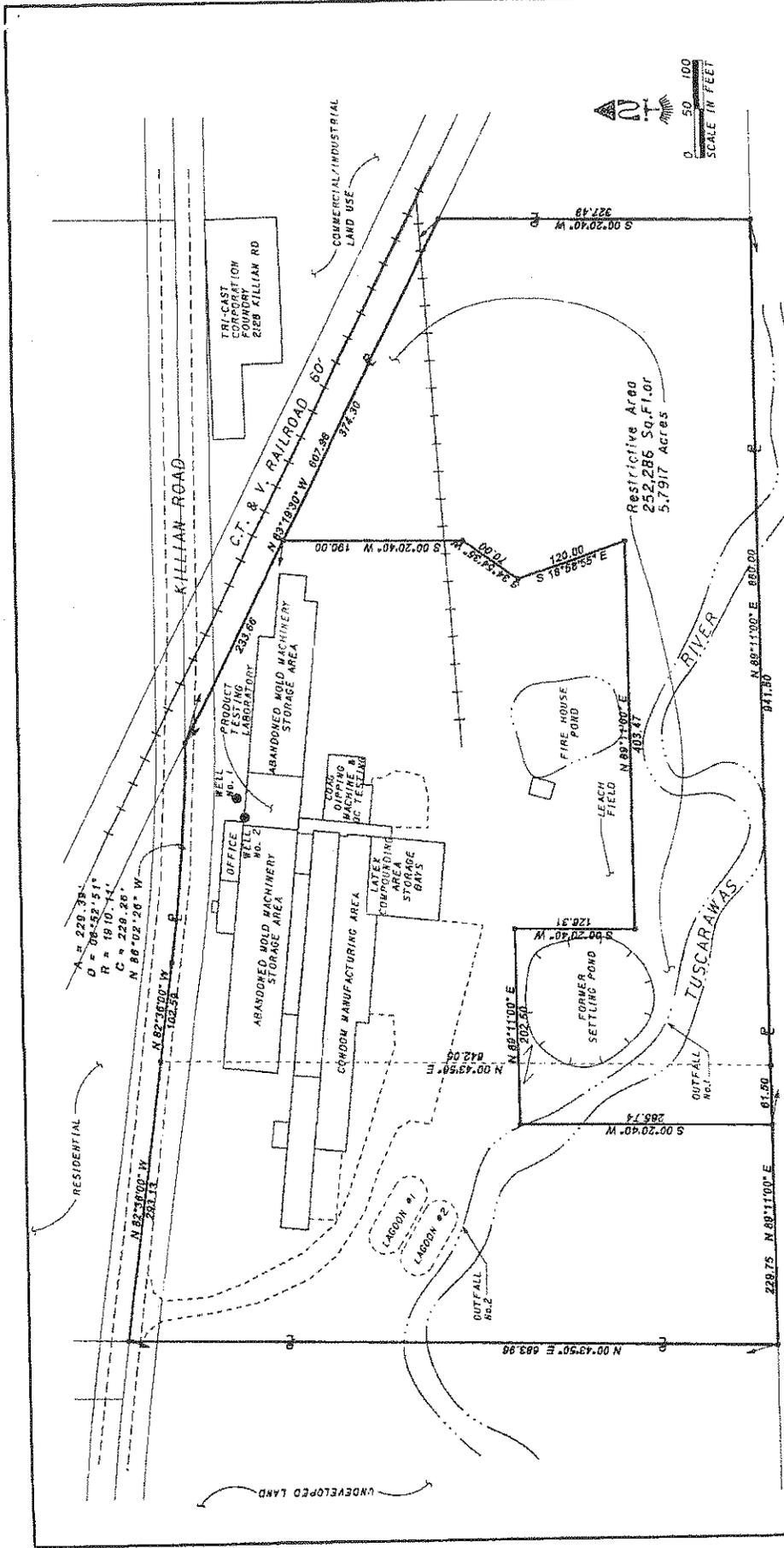
And containing 5.7917 Acres of land, more or less, subject to all legal highways and easements; as surveyed by Douglas P. McLaughlin, P.S. 6688 on August 17, 2009.

Basis of bearings is from the Survey S-289 of Summit County Recorder's Office as performed by John M. Moore (P.S. 4883), as it applies to the centerline of Killian Road (S 82°36'00" E, as monumented.

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1000 S. Cleveland-Miamillon Rd.
 State 196
 Akron, OH 44333
 Phone: (330) 688-1600
 Fax: (330) 688-1844

Figure 2 - Metes and Bounds of the Portion of the Property Subject to Ground Water Extraction and Use Limitations, Excavation Restrictions, and Inhabitable or Enclosed Structure Restrictions

FORMER KITTINGER TRUCKING SITE
 SPRINGFIELD TOWNSHIP SUMMIT COUNTY, OHIO

Prepared by: P. Koonen | Date: August 2008 | Project No. 04015

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John A Donofrio, Summit Fiscal Officer

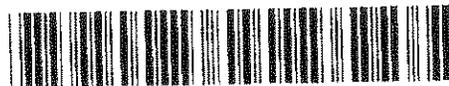
EXHIBIT C

Easements, Restrictions, and Other Matters Affecting Title Searched

- 1) Easement to Ohio Edison Company, filed for record April 23, 1947, in Volume 2379, Page 451, of the Summit County Records.

- 2) Unrecorded Lease by and between United States Leasing Corporation (lessor) and The Akwell Corporation (lessee), as evidenced by Subordination Agreement filed for record June 15, 1960 in Volume 3908,, Page 27, of the Summit County Records

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