OHIO E.P.A.

SEP -3 2014

ENTERED DIRECTOR'S JOURNAL

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

By: _____ Date: 9-3-14

CUYAHOGA COUNTY
OFFICE OF FISCAL OFFICER - 12
DEED 9/18/2014 10:14:43 AM
201409180258

To be recorded with Deed Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Morabito Enterprises, Inc., an Ohio corporation ("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 described in section 2 herein ("the Property"), to the activity and use limitations set forth herein.

This Environmental Covenant concerns an area known as the American Steel and Wire – TOW (ASW) Site. In a Decision Document dated January 16, 2014, the Director of Ohio EPA selected a remedial action for the ASW Site requiring, among other things, restrictions on ground water use and reducing and/or eliminating human exposure through direct contact with contaminated soil, on the Site. The Ohio EPA issued a Statement of Basis seeking public input on the proposed remedy, but did not receive comments concerning that document. The Decision Document for the Final Corrective Action was journalized on January 22, 2014.

A Part A Permit Application for RCRA Hazardous Waste Facility Treatment, Storage, and Disposal (TSD) permit (for storage of on-site generated hazardous waste in containers on the Property) was submitted and was journalized on November 30, 1981 by the Ohio Hazardous Facility Approval Board (HWFAB). A Closure Plan for the closure of identified RCRA hazardous waste management units at ASW was submitted in 1991 and was approved by Ohio EPA. Closure procedures were found to meet the requirements of OAC Rule 3745-66-11, and the closure certification was accepted by Ohio EPA on March 28, 1994. There was no evidence of off-site contamination.

In 2011, a sampling investigation was conducted to evaluate the Site Property with regard to RCRA Corrective Action obligations in an area identified as having residual historic contamination. The investigation revealed that, although contamination continued to exist, the levels were acceptable for industrial/commercial land use, the Site Property did not pose a risk to human health and the environment when land use is restricted to commercial/industrial use and ground water restrictions are applied. Subsequently also, a layer of fill (comprised of natural material obtained from the

excavation of soil during the installation of the Northeast Ohio Regional Sewer District Euclid Creek Storage Tunnel Project in Cleveland) was added to the property by the Owner providing an additional layer of protection for potential receptors.

As part of the closure of, and corrective actions obligations pertaining to the Property pursuant to the Permit and Ohio hazardous waste requirements contained in ORC Chapter 3734, the Owner has agreed to restrictions on the future use of Property, as described herein.

Now therefore, Owner and Ohio EPA agree to the following:

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

2. Property. This Environmental Covenant concerns approximately 3.75 acres (Permanent Parcel No.: 133-13-003) located at 7840 Wire Avenue, Cleveland, Ohio, being part of Sublot Nos. 61, 74 through 81 and 85, part of vacated Wire Avenue S.E. and part of vacated Jones Road S.E. in The B.B. Burke Subdivision of part of Original One Hundred Acre Lot No. 455 as shown by the recorded plat in Volume 3 of Maps, Page 5 of Cuyahoga County Records, Cuyahoga County, Ohio, and more particularly described in Exhibit 1 attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. This Property is owned by Morabito Enterprises, Inc., 3560 E. 55thth Street, Cleveland, Ohio 44105.

4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner listed above.

5. Activity and Use Limitations. As part of the Final Corrective Action described in the Decision Document journalized January 22, 2014, Owner hereby imposes and agrees to comply with the following activity and use limitations:

a. The Property shall not be used for residential activities. The term "residential activities" shall include, but not be limited to, the following:

(i) Single and multi-family dwelling and rental units;
(ii) Day care centers and preschools and primary and secondary educational facilities;
(iii) Correctional facilities;
(iv) Transient or other residential facilities; and
(v) Production of food-chain products by agricultural means for animal or human consumption.

b. Ground water shall not be withdrawn from the Property except for the purposes of monitoring and remediation

6. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within [thirty (30)] days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within [sixty (60)] days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

7. Running with the Land. This Environmental Covenant shall be binding upon the Owner, during the time that the Owner owns the Property or any portion thereof, and upon 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.

8. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

9. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives, Holders and the City of Cleveland the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.

10. Compliance Reporting. Owner and any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis a written certification which complies with the requirements of Ohio Administrative Code rule 3745-50-42(B), (C), and (D) that the activity and use limitations remain in place and are being complied with.

11. 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:

a. THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____[NAME] COUNTY RECORDER ON _____, 2014, IN [DOCUMENT ____, *or* BOOK___, PAGE ____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

(i) The Property shall not be used for residential activities. The term "residential activities" shall include, but not be limited to, the following:

1. Single and multi-family dwelling and rental units;
2. Day care centers and preschools and primary and secondary educational facilities;
3. Correctional facilities;
4. Transient or other residential facilities; and
5. Production of food-chain products by agricultural means for animal or human consumption.

(ii) Ground water shall not be withdrawn from the Property except for the purposes of monitoring and remediation

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

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

A. that the Owner is the sole owner of the Property;

B. that the Owner holds fee simple title to the Property and that the Owner conducted a current title search that shows that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;

C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other

agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;

E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and, if applicable, notified such persons of the Owner's intention to enter into this Environmental Covenant.

13. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, if applicable; the Holders and the Director of the Ohio EPA, pursuant to ORC § 5308.82 and 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations so long as there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee, if applicable, and Holders or their assignees, if any of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee, if applicable, shall file such instrument for recording with the Cuyahoga County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA [and other "Holders" or their assignees, if any].

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

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

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall record, in the office of the Cuyahoga County Recorder, this Environmental Covenant in the same manner as a deed to the Property, pursuant to ORC § 5301.88. Owner shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the Environmental Covenant.

17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as

a deed record for the Property with the Cuyahoga County Recorder's Office.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, any lessee, other signatories to the Environmental Covenant; each person holding a recorded interest in the Property, each unit of local government in which the Property is located, including the City of Cleveland, and any other person designated by Ohio EPA.

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

As to Ohio EPA:
Ohio EPA – Central Office
Lazarus Government Center
Division of Environmental Response and Revitalization
PO Box 1049
Columbus, Ohio 43216-1049
Attn: DERR Records Management Officer

Or, send electronically to: records@epa.ohio.gov

And

Ohio EPA Northeast District Office
2110 E. Aurora Road,
Twinsburg, Ohio 44087
Attn: DERR Site Coordinator for The American Steel and Wire - TOW Site

As to Owner:

Ben Morabito, President
Morabito Enterprises, Inc.,
3560 E. 55thth Street,
Cleveland, Ohio 44105.

As to Holder:

Ben Morabito, President
Morabito Enterprises, Inc.,
3560 E. 55thth Street,
Cleveland, Ohio 44105

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

IT IS SO AGREED:

MORABITO ENTERPRISES, INC., OWNER

Date: 7-22-2014

Ben Morabito, President

State of Ohio)
) ss:
County of Cuyahoga)

Before me, a notary public, in and for said county and state, personally appeared BEN MORABITO a duly authorized representative of MORABITO ENTERPRISES who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of MORABITO ENTERPRISES, INC

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 22 day of JULY, 2014.

Notary Public

Victor A. Allen
Notary Public, State of Ohio
Comm Exp. 4/21/16

MORABITO ENTERPRISES, INC., HOLDER

Ben Morabito, President

Date: 7-22-2014

State of Ohio)
) ss:
County of Cuyahoga)

Before me, a notary public, in and for said county and state, personally appeared Ben Morabito, a duly authorized representative of Morabito Enterprises Inc, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of Morabito Enterprises Inc

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 22 day of July, 2014.

Notary Public

Victor A. Allen
Notary Public, State of Ohio
Comm Exp. 4/21/16

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director

8/30/14
Date

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Craig W. Butler, 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 30th day of AUGUST, 2014.

Charma Diane Casteel
Notary Public

NOTARIAL SEAL STATE OF OHIO

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
May 10, 2019

This instrument prepared by:

Richard T. Sargeant, Esq.
Eastman & Smith Ltd.
One SeaGate, 24th Floor
Toledo, Ohio 43604

EXHIBIT 1

LEGAL DESCRIPTION

Permanent Parcel No.: 133-13-003

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of Sublot Nos. 61, 74 thru 81, 84 and 85, part of vacated Wire Avenue S.E. and part of vacated Jones Road S.E. in The B.B. Burke Subdivision of part of Original One Hundred Acre Lot No. 455, as shown by the recorded plat in Volume 3 of Maps, Page 5 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning in the Southerly line of Burke Avenue S.E., 40 feet wide, at the Northwesterly corner of land conveyed to Irwin R. Siegal and Marlene Siegal by deed dated October 8, 1979 and recorded in Volume 15091, Page 59 of Cuyahoga County Records, at a point North 87 deg. 46' 08" East, 23.50 feet from the Northwesterly corner of Sublot No. 23 in Burzilla A. Burke's Subdivision, recorded in Volume 2 of Maps, Page 44 of Cuyahoga County Records; thence continuing along Westerly, Southerly and Westerly line of the land so conveyed to Irwin R. Siegal and Marlene Siegal the following six courses and distances: South 5 deg. 14' 56" East, 198.42 feet; South 16 deg. 24' 16" East, 116.56 feet to an iron pin found and the principal place of beginning; North 87 deg. 48' 38" East, 430.80 feet to an iron pin found; South 1 deg. 55' 41" East, 490.82 feet to an iron pin found; South 70 deg. 00' 07" East, 156.77 feet to an iron pin set; South 4 deg. 50' 54" West, 30.15 feet to a steel fence post found at the Easterly tip of Jones Road S.E., 49.50 feet wide, and also in the Northeasterly line of The Wheeling and Lake Erie Railway Company right of way as now established; thence continuing along Northeasterly, Southerly and Northeasterly lines of said right of way as established by deeds recorded in Volume 419, Page 423 and Volume 329, Page 392 of Cuyahoga County Records, and vacations by Ordinance Nos. 488, passed April 3, 1905 and 2585 passed November 6, 1906 of the City of Cleveland, the following eight courses and distances; North 79 deg. 31' 38" West, 76.32 feet to an iron pin found; North 62 deg. 40' 58" West, 196.59 feet to an iron pin set; along an arc bearing to the right 94.29 feet

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having a radius of 713.01 feet and a chord bearing North 55 deg. 01' 01" West, 94.22 feet to an iron pin set; North 60 deg. 00' 48" East, 10.73 feet to an iron pin found; along an arc bearing to the right, 15.57 feet having a radius of 703.01 feet and a chord bearing North 50 deg. 54' 12" West, 15.57 feet to an iron pin found; along an arc bearing to the right, 355.10 feet having a radius of 830.92 feet and a chord bearing North 38 deg. 02' 05" West, 352.41 feet to an iron pin set; North 38 deg. 37' 26" West, 49.70 feet to a P.K. nail set; North 3 deg. 22' 19" West, 26 feet to an iron pin set; North 16 deg. 24' 16" West, 43.88 feet to the iron pin found at the principal place of beginning, according to a survey by Schneider Consulting Engineers, dated June 1986.

TOGETHER WITH an Easement created in the Deed from United States Steel Corporation to Irwin R. Siegal and Marlene Siegal, filed for record October 16, 1979 and recorded in Volume 15091, Page 59 of Cuyahoga County Records, an easement for the installation, inspection, maintenance, alteration, change repair, removal, operation and use of water, gas and other utility lines and all necessary appurtenances thereto together with the right of access thereto for such purposes over, across, under and through the following described portion of the premises described above, as follows:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of Sublot No. 23 in Burzilla b. Burke's Subdivision of a part of Original One Hundred Acre Lot 455 in Newburgh Township, as shown by the recorded plat in Volume 2 of Maps, Page 44 of Cuyahoga County Records, and part of Sublot Nos. 74 and 75 in B.B. Burke's Subdivision of a part of Original One Hundred Acre Lot No. 455 of Newburgh Township, as shown by the recorded plat in Volume 3 of Maps, Page 5 of Cuyahoga County Records, and together forming a parcel of land, bounded and described as follows:

Beginning on the Southerly line of Burke Avenue S.E., 40 feet wide, at its intersection with the Easterly line of The Wheeling and Lake Erie Railway Company right of way, being also the Easterly line of land conveyed to The Connotton Valley Railway Company by deed dated November 12, 1881 and recorded in Volume 329, Page 397 of Cuyahoga County Records;

Course No. 1: thence North 87 deg. 46' 08" East along the Southerly line of Burke Avenue S.E., 25 feet;

Course No. 2: thence South 5 deg. 14' 56" East parallel with the Northeasterly line of land so conveyed to The Connotton Valley Railway Company, 20 feet;

Course No. 3: thence South 87 deg. 46' 08" West parallel with the Southerly line of Burke Avenue S.E., 9.98 feet to its intersection with a line drawn parallel with and distant 15 feet Easterly by rectangular measurement from the Easterly line of land so conveyed to The Connotton Valley Railway Company;

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Course No. 4: thence South 5 deg. 14' 56" East along said parallel line, 124.48 feet to its intersection with a line drawn parallel with and distant 25 feet Easterly by rectangular measurement from the Easterly line of The Wheeling and Lake Erie Railway Company right of way, being also the Easterly line of land conveyed to Charles G. Patterson by deed dated November 12, 1881 and recorded in Volume 329, Page 405 of Cuyahoga County Records;

Course No. 5: thence South 16 deg. 24' 16" East along said last mentioned parallel line, 172.14 feet;

Course No. 6: thence South 87 deg. 48' 38" West, 25.79 feet to the Easterly line of land so conveyed to Charles G. Patterson;

Course No. 7: thence North 16 deg. 24' 16" West along the Easterly line of The Wheeling and Lake Erie Railroad Company right of way, being also the Easterly line of land so conveyed to Charles G. Patterson, 116.56 feet to the Northeasterly corner thereof;

Course No. 8: thence North 5 deg. 14' 56" West along the Easterly line of The Wheeling and Lake Erie Railway Company right of way, being also the Easterly line of land conveyed to The Connotton Valley Railway Company, as aforementioned, 198.42 feet to the place of beginning, according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in September, 1979.

ROBERT KLAIBER P.E., P.S.
Legal Description complies with Cuyahoga County Conveyance Standards and is approved for transfer:

JUL 11 2005

Agent

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