

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO.: 4:14-cv-00609
MICHAEL DEWINE	:	
OHIO ATTORNEY GENERAL	:	JUDGE: <u>BENITA Y. PEARSON</u>
	:	
Plaintiff,	:	
	:	
v.	:	<u>CONSENT DECREE</u>
	:	
NAVY FRIENDS, INC., ET AL,	:	
	:	
Defendants.	:	
	:	

Plaintiff, State of Ohio, by through Ohio Attorney General Michael DeWine (“Plaintiff” or “State”) at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), filed a Complaint against Defendants Gordon M. Schaaf, Ralph J. Carestia, Navy Friends, Inc., Berk Realty, Inc., Samuel H. Berkowitz, and Richard Goodman, (“Defendants”) seeking reimbursement of certain costs expended pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.* (“CERCLA”) and enforcement of Ohio's hazardous waste, statutory nuisance and water pollution laws found in Chapters 3734, 3767 and 6111 of the Ohio Revised Code (“Ohio Rev. Code”) and rules adopted thereunder and Ohio’s common law nuisance and ultrahazardous activity.

**NOW, THEREFORE**, without trial of any issue of fact or law, without admission of liability or any allegation in the Complaint by Defendants and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

## I. DEFINITIONS

1. As used in this Consent Decree:
  - A. “Consent Decree” means this Consent Decree and all appendices attached hereto.
  - B. “Director” means Ohio's Director of Environmental Protection.
  - C. “Defendants” means Gordon M. Schaaf, Ralph J. Carestia, Navy Friends, Inc., Berk Realty, Inc., Samuel H. Berkowitz and Richard Goodman.
  - D. “Effective Date” means the date the Northern District Federal Court of Ohio enters this Consent Decree.
  - E. “Ohio EPA” means the Ohio Environmental Protection Agency.
  - F. “Plaintiff” means the State of Ohio by and through the Attorney General of Ohio.
  - G. “Response Costs” means all direct and indirect costs, not inconsistent with the National Contingency Plan, incurred by Ohio EPA and related to the investigation and remediation of the Site including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, administrative costs, legal and enforcement related costs, oversight costs, laboratory costs, the costs of reviewing and developing plans, reports, and other items.
  - H. “Site” means the properties located at 1052 North State Street (US Route 422), Girard, Ohio 44420, parcel numbers 14-596080, 14-596081, 14-596082, 14-596083, 14-596084, 14-596085, and 26-184500 and is further described in the attached deed, Exhibit A.

## II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. §§ 9601, *et seq.*, Ohio Rev. Code Chapters 3734, 3767

and 6111 and the common law. Venue is proper in this Court.

### **III. PERSONS BOUND**

3. The provisions of this Consent Decree shall apply to and be binding upon the State and upon Defendants, and their officers, agents, servants, employees, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Decree whether by personal service or otherwise and who will provide work or services on behalf of Defendants related to this Consent Decree.

### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

4. Except as otherwise provided in paragraphs 5 through 12 of this Consent Decree, compliance with the terms of this Consent Decree by Defendants, individually, or as a group as set forth herein, shall constitute full satisfaction of any civil liability to the State for all claims in the State's Complaint.

5. This Consent Decree shall not be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint or for claims or conditions alleged in the Complaint that occur after the Effective Date.

6. Nothing in this Consent Decree shall be construed to limit the authority of the State to undertake any action against any entity, including Defendants, to eliminate or mitigate conditions that may present an imminent threat to the public health, welfare, or environment and to seek cost reimbursement for any such action. Nothing in this Consent Decree or its implementation shall be construed to limit the authority of the State to seek relief for claims for damage to natural resources.

7. Nothing in this Consent Decree shall relieve any Defendant of any obligation to comply with Ohio Rev. Code Chapters 3734, 3767 and 6111 including, without limitation, any

regulation, license, or order issued under these Chapters, and any other applicable federal, state or local statutes, regulations, or ordinances, including but not limited to permit requirements.

8. The State reserves the right to seek legal and/or equitable relief to enforce the requirements of this Consent Decree, including penalties against Defendants for noncompliance with this Consent Decree.

9. By entering into this Consent Decree, Defendants do not waive any defenses that they may legally raise in any future action identified in this Section, nor do Defendants waive any claim or defenses amongst themselves or against any others not a party to this action. However, Defendants shall not assert, and may not maintain any defense or claim based upon statute of limitations or the principles of waiver, laches, res judicata, collateral estoppel, claim preclusion, issue preclusion, claim splitting or other defense basis upon the contention that the claims brought by the State in a subsequent action were or should have been brought in the instant action.

10. Nothing in this Consent Decree shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Decree.

11. This Consent Decree shall be without prejudice to any civil claims, demands, rights, or causes of action, judicial or administrative, including rights to cost recovery and/or contribution, Defendants may have or which may in the future accrue to the benefit of the Defendants against others not a party to this Consent Decree regarding the Site.

12. Nothing in this Consent Decree shall be construed to relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

## V. SALE OF PROPERTY

13. Within thirty (30) days of the Effective Date, Defendants are ordered and enjoined to transfer title to all properties that comprise the Site, parcel numbers 14-596080, 14-596081, 14-596082, 14-596083, 14-596084, 14-596085, and 26-184500 from Navy Friends, Inc. to the City of Girard.

14. Within forty-five (45) days of the Effective Date, the documents that evince the transfer of the Property shall be provided to the State at the following address:

Office of the Attorney General of Ohio  
Assistant Attorney General George Horvath  
Environmental Enforcement Section  
30 East Broad St., 25<sup>th</sup> Floor  
Columbus, Ohio 43215

## VI. PAYMENT OF RESPONSE COSTS

15. Defendants are ordered and enjoined to pay the State its Response Costs, totaling \$46,945.38, and the Complaint Filing Fee of \$400.00. Each Defendants' specific payment obligations and amounts are described below:

a. From Defendants Berk Realty, Inc., Samuel H. Berkowitz and Richard Goodman, jointly and severally, pay \$30,000, as follows:

- i. Within thirty days of the Effective Date pay \$18,000.00;
- ii. Within 180 days of the Effective Date pay \$6,000; and
- iii. Within 365 days of the Effective Date pay the final payment of \$6,000.

b. From Defendants Navy Friends, Inc., Ralph J. Carestia, and Gordon M. Schaaf, jointly and severally, within thirty days of the Effective Date, pay \$16,945.28.

c. Within thirty days of the Effective Date, Defendants Berk Realty, Inc., Samuel H. Berkowitz, Richard Goodman, jointly and severally, shall pay \$200.00 for the Complaint Filing Fee and Defendants Navy Friends, Inc., Ralph J. Carestia, and Gordon M. Schaaf,

jointly and severally, shall pay \$200.00 for the Complaint Filing Fee.

16. Defendants shall remit payment by way of a cashier's or certified check in the amounts as set forth above payable to the order of "Treasurer, State of Ohio." The checks and transmittal letters shall be submitted to the following addresses:

a. Original Correspondence and Checks:

Scott Hainer, Paralegal, or his successor, at the  
Office of the Attorney General of Ohio  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215

b. Copies of Correspondence and Checks:

Terri McCloskey, DERR Fiscal Officer,  
Ohio EPA, Lazarus Government Center,  
P.O. Box 1049, Columbus, Ohio 43216-1049

#### **VII. MODIFICATION**

17. No modification shall be made to this Consent Decree without the written agreement of the Parties and the Court.

#### **VIII. RETENTION OF JURISDICTION**

18. Court shall retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with this Consent Decree.

#### **IX. COSTS**

19. Defendants shall pay court costs incurred in connection with this action, in addition to the \$400.00 Complaint filing fee as described in Paragraph 15, above.

#### **X. ENTRY OF DECREE**

20. Upon signing of this Consent Decree by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed

to serve upon all parties the notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Federal Rules of Civil Procedure and note the service in the appearance docket.

**XI. AUTHORITY TO ENTER INTO THE CONSENT DECREE**

21. The signatory for each Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation or individual to all terms and conditions thereof.

**IT IS SO ORDERED:**

/s/ Benita Y. Pearson on 3/25/2014  
**JUDGE**  
**U.S. Federal Court,**  
**Northern District of Ohio,**  
**Eastern Division**

**FOR PLAINTIFF**

**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**

  
**GEORGE HORVATH (0030466)**  
**TIMOTHY J. KERN (0034629)**

Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215

Tel: (614) 466-2766

Fax: (614) 644-1926

[George.Horvath@OhioAttorneyGeneral.gov](mailto:George.Horvath@OhioAttorneyGeneral.gov)

[Timothy.Kern@OhioAttorneyGeneral.gov](mailto:Timothy.Kern@OhioAttorneyGeneral.gov)

**FOR DEFENDANTS**

  
\_\_\_\_\_  
Gordon M. Schaaf, transacting business as  
Leatherworks Partnership

\_\_\_\_\_  
Ralph J. Carestia,  
transacting business as Leatherworks Partnership  
By Anthony Carestia with written Power of  
Attorney

**Navy Friends, Inc.:**

  
\_\_\_\_\_  
By: Gordon M. Schaaf, President

  
\_\_\_\_\_  
Gordon M. Schaaf, Personally

\_\_\_\_\_  
Ralph J. Carestia, Personally  
By Anthony Carestia, with written Power of  
Attorney

**Berk Realty, Inc.:**

\_\_\_\_\_  
By: Samuel H. Berkowitz, President

\_\_\_\_\_  
Samuel H. Berkowitz, Personally

\_\_\_\_\_  
Richard Goodman, Personally



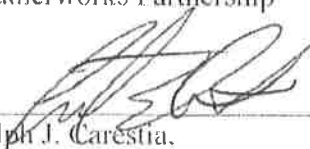
**FOR PLAINTIFF**

**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**

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TIMOTHY J. KERN (0034629)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
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Tel: (614) 466-2766  
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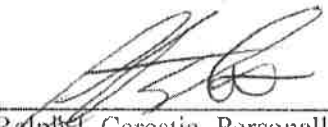
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Ralph J. Carestia,  
transacting business as Leatherworks Partnership  
By Anthony Carestia with written Power of  
Attorney

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By: Gordon M. Schaaf, President

\_\_\_\_\_  
Gordon M. Schaaf, Personally

  
\_\_\_\_\_  
Ralph J. Carestia, Personally  
By Anthony Carestia, with written Power of  
Attorney

**Berk Realty, Inc.:**

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By: Samuel H. Berkowitz, President

\_\_\_\_\_  
Samuel H. Berkowitz, Personally

\_\_\_\_\_  
Richard Goodman, Personally

**FOR PLAINTIFF**

**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**

**GEORGE HORVATH (0030466)**  
**TIMOTHY J. KERN (0034629)**  
Assistant Attorneys General  
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30 East Broad Street, 25th Floor  
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**Navy Friends, Inc.:**

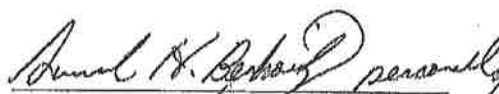
\_\_\_\_\_  
By: Gordon M. Schaaf, President

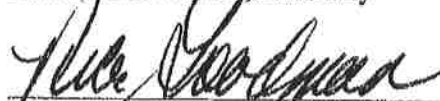
\_\_\_\_\_  
Gordon M. Schaaf, Personally

\_\_\_\_\_  
Ralph J. Carestia, Personally  
By Anthony Carestia, with written Power of  
Attorney

**Berk Realty, Inc.:**

  
By: Samuel H. Berkowitz, President

  
Samuel H. Berkowitz, Personally

  
Richard Goodman, Personally



Reviewed:

Wm. Roger Truitt, Esq., Counsel for  
Ralph J. Carestia

Reviewed:

Richard Goodman, Esq.  
Counsel for Berk Realty, Inc.

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Reviewed:  
Wm. Roger Truitt, Esq., Counsel for  
Ralph J. Carestia

A handwritten signature in black ink, appearing to read "Richard Goodman", written over a horizontal line.

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Reviewed:  
Richard Goodman, Esq.  
Counsel for Berk Realty, Inc.

EXHIBIT A



QUIT-CLAIM DEED

Statutory Form  
 (§5102.1) Ohio Revised Code

REAL PROPERTY TRANSFER TAX  
 TRANSFERRED AND PAID  
 3 2 AUG 01 2003

In the Amount Of *2000.00*  
 David A. Niles, Trumbull County Auditor

Leatherworks Partnership, a Maryland partnership, for valuable consideration paid, grants to Navy Friends, Inc., a Virginia corporation whose tax mailing address is: D.S. & F., Inc., 1440 Wisconsin Avenue, NW, Washington, D.C. 20007, the following real property:

Situated in the City of Girard, County of Trumbull and State of Ohio; and known as being part of Section 11 of the original survey of Liberty Township, bounded and described as follows:

PARCEL #1: Beginning at the point of intersection of the centerline of State Street with the division line between lands now or formerly of Ohio Water Service Co. on the southeast and lands of Erie Land & Improvement Co. of Pennsylvania on the northwest; thence S. 82° 49' W. along said division line, 601.3 feet to an iron pin in the easterly right of way line of Erie Railroad Co.; thence N. 1° 10' E., along the easterly right of way line of said railroad, 261.42 feet; thence W. 82° 49' E. parallel to course #1 herein, 566.9 feet, more or less, to said centerline of State St.; thence S. 2° 21' E. along said street centerline, 208 feet to the point of beginning, containing about 2.723 acres of land, more or less, but subject to all legal highways.

PARCEL #2: Beginning in the centerline of State Street at a point N. 24° 29' W., 296.1 feet distant from the northerly line of Gomer J. Jones Add. to said City, recorded in Plat Vol. 8, Pg. 30, Trumbull County Records to the place of beginning; thence S. 82° 49' W., 623.2 feet to an iron pin in the easterly side of the Erie Railroad right of way; thence N. 1° 10' E. and along the easterly side of said right of way, 344.5 feet to a point in the southwesterly corner of land conveyed to the Trumbull & Mahoning Water Co. by deed dated 2/18/14 and recorded in Deed Vol. 252, Pg. 14, Trumbull County Records; thence W. 46° 10' E., 24.68 feet to a point; thence N. 82° 49' E., 584.14 feet to the centerline of State Street; thence S. 3° 21' E. and along the centerline of State Street, 146.87 feet to the place of beginning and containing about 4.865 acres of land, more or less, but subject to all legal highways.

PARCEL #3: Beginning in the centerline of State Street and the northerly line of Gomer J. Jones Add. to said City, recorded in Plat Vol. 8, Pg. 30, Trumbull County Records; thence S. 78° 15' W. and along the northerly line of said Gomer J. Jones Addition, 763.16 feet to an iron pin in the easterly side of the Erie Railroad right of way; thence N. 1° 10' E., along said right of way, 349.5 feet to an iron pin; thence N. 82° 49' E., 623.2 feet to the centerline of said State Street; thence S. 24° 29' E., 296.1 feet to the place of beginning and containing about 4.830 acres of land, more or less, but subject to all legal highways.



PARCEL #4: Beginning at the southerly corner of the 4th parcel of 6 parcels of land conveyed by deed dated 11/28/21 from The Dollar Savings & Trust Co. to The Cleveland & Mahoning Valley Railroad Co., recorded in Deed Vol. 284, Pg. 158, Trumbull County Records, distant 30 feet westerly by rectangular measurement from the original centerline of Erie Lackawanna Railroad Co.; thence No. 14° 12' 30" W., along the westerly line of 4th parcel of 6 parcels of land conveyed as aforesaid by deed dated 11/29/21 and its northerly extension, 790.771 feet, more or less, to the center of Squaw Creek; thence No. 89° 47' 25" E. Along said creek centerline, 206.37 feet, more or less, to a point distant 50 feet westerly by rectangular measurement from said original centerline of railroad; thence S. 0° 55' W. parallel to said original centerline and distant 50 feet westerly therefrom, 767.435 feet to the point or place of beginning, containing about 1.818 acres of land, more or less, but subject to all legal highways.

Also known as being part of the land and premises conveyed by deed dated 4/5/28 from Mahoning River Land Co. to Erie Land & Improvement Co. of Pennsylvania recorded in Deed Vol. 345, Pg. 255, Trumbull County Records, being also a part of the land and premises conveyed by deed dated 12/22/41 from Robert E. Woodruff & John A. Hadden as Trustees of the property of Erie Railroad Co. to Erie Railroad Co., recorded in Deed Vol. 440, Pg. 144, Trumbull County Records.

PARCEL #5: Situated partly in the City of Girard and partly in the Village of McDonald (formerly Weathersfield Twp.) and known as being part of Lot 2 of the original survey of Weathersfield Township and parts of Lots 10 & 11 of the original survey of Liberty Township, more particularly bounded and described as follows: Beginning on the westerly right of way line of the Pittsburgh, Youngstown and Ashtabula Railroad at line of land conveyed by Carnegie Steel Co. to Erie Land & Improvement Co. of Pennsylvania by deed dated 6/1/31, recorded in Deed Vol. 345, Pg. 255, Trumbull County Records; thence along said westerly right of way line of the Pittsburgh, Youngstown and Ashtabula Railroad, the following six courses and distances: (1) S. 11° 49' 37" E., 65.44 feet; (2) S. 12° 49' 43" E., 65.63 feet; (3) S. 12° 49' 43" E., 234.49 feet; (4) S. 11° 47' E., 787.76 feet; (5) S. 10° 07' 20" E., 1193.37 feet; (6) by a curve deflecting to the left having a radius of 7888.12 feet southwardly, an arc distance of 643.51 feet to the southerly line of land conveyed to Carnegie Steel Co., by Osborne Estates Co. by deed dated 8/24/26, recorded in Deed Vol. 330, Pg. 159, Trumbull County Records; thence along said southerly line of land so conveyed by Osborne Estates Co., N. 87° 03' 10" W., 75.36 feet to the Mahoning River as it now exists in 1943; thence along the said N. 87° 03' 10" W., 120 feet, more or less, to the center of said Mahoning River; thence upstream along the center of said Mahoning River, N. 11° 25' 40" W., 2354 feet, more or less, to said land conveyed by Carnegie Steel Co. to Erie Land & Improvement Co. of Pennsylvania, thence along said land so conveyed to the Erie Land & Improvement Co. of Pennsylvania, S. 86° 16' 50" E., 120 feet, more or less, to the bank of said Mahoning River; thence along the same, S. 86° 16' 50" E., 46.81 feet, more or less, to the place of beginning, containing about 13.351 acres of land, more or less, of which about 10.882 acres of land are situated in the City of Girard and about 1.669 acres of land are situated in the Village of McDonald, be the same more or less, but subject to all legal highways. Being parts of premises



conveyed to Carnegie Steel Co., a New Jersey Corp., as follows: by deed of J. L. Marsters, et ux, dated 10/25/10, recorded in Deed Vol. 302, Pg. 399, Trumbull County Records, for Lot 2, Weathersfield Township and Lot 11 Liberty Township; and by deed of Osborne Estates Co., dated 8/24/26 and recorded in Deed Vol. 310, Pg. 169, Trumbull County Records, for Lots 10 & 11 Liberty Township. NOTE: EXCEPTING FROM THE ABOVE DESCRIBED PREMISES ANY PART THEREOF RESULTING THROUGH THE CHANGE IN THE COURSE OF THE MAHONING RIVER OCCASIONED BY OTHER THAN NATURAL CAUSES OR BY NATURAL CAUSES OTHER THAN ACCRETION.

NOTE: PARCELS #1 & #2 ABOVE ARE BISECTED BY A 10 FOOT WIDE PARCEL OWNED BY THE OHIO WATER SERVICE, INC. BY VIRTUE OF DEED VOL. 354, PG. 260, TRUMBULL COUNTY RECORDS.

ADDRESS: 1052 N. State Street, Girard, Ohio 44420  
DEED REFERENCE: Vol 269, pg 624

Auditor's Permanent Parcel Nos. 596080, 596081, 596085, 596084, 596083, 596082 and 184500.

Prior instrument references. Volume 834, Page 526, Official Records of Trumbull County.

executed this 26<sup>th</sup> day of JULY, 2003 by Gordon M. Schaaf, a general partner of Leatherworks Partnership.

LEATHERWORKS PARTNERSHIP

TRUMBULL COUNTY AUDITOR

JUL 31 2003  
23 CF  
GIS/TAX MAP DEPT.

By: *Gordon M. Schaaf*  
Gordon M. Schaaf, a General Partner  
of Leatherworks Partnership

STATE OF MARYLAND |  
COUNTY OF ANNE ARUNDEL | SS

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of JULY, 2003 by Gordon M. Schaaf, a general partner of Leatherworks Partnership.

*William A. Long*  
Notary Public  
MY COMMISSION EXPIRES 10/01/05.

NOTARIAL  
SEAL

This instrument prep of D).

LETSON, GRIFFITH, WOODALL, LIVELLE & ROSENBERG CO., L.P.A.  
Attorneys at Law  
P.O. Box 331  
Warren, Ohio 44682-0331