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**Appendix C – Land Use Restriction Agreement**

247381

Attachment D

LAND USE RESTRICTION AGREEMENT

This Land Use Restriction Agreement is entered into by Industrial Recovery Capital Company of Ohio, L.L.C., (a Delaware limited liability company) herein called "Grantor" this 2nd day of Nov. 2000 at Columbus State of Ohio

The Grantor hereby imposes restrictions on the following described real estate which shall hereinafter be referred to as the "Area," more particularly described as set forth in Exhibit 1 attached hereto and incorporated herein

- 1. On November 29, 2000, the Grantor and the Director of Ohio Environmental Protection Agency ("Ohio EPA") entered into agreed-upon Director's Final Findings and Orders approving the hazardous waste closure plan for the Area and on September 5, 2000, the Director of Ohio EPA approved the Corrective Action Plan, subject to Grantor's compliance with the Agreement.

Pursuant to this Agreement and the Director's Final Findings and Orders, Grantor agrees to impose the restrictions described below on the Area and comply with the covenants, terms and conditions related thereto.

- 2. The Grantor hereby imposes the following restrictions on the Area:

The Area shall not be used for residential activities or industrial activities, but may be used for recreational activities.

The term "residential activities" shall include, but not be limited to, the following

- a. Single and multi-family dwelling and rental units;
- b. Day care centers and preschools;
- c. Hotels and motels;
- d. Educational and religious facilities;
- e. Restaurants and other food and beverage services (except as part of recreational activities within the Area);
- f. Hospitals and other extended care medical facilities, and

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Nail Robert C. Kiger, Esq. PORTER, WRIGHT, MORRIS & HARRIS, L.L.P., 41 S. High St Columbus OH 43215 (slope Pa

g. **Transient or other residential facilities.**

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use (except as part of recreational activities within the Area).

The term "recreational activities" shall mean use of the Area for play, amusement, sports and hobbies and shall specifically include, but not be limited to, use of the Area for softball, volleyball, basketball, baseball, tennis, soccer, walking, and running.

3. No person shall fill, grade, excavate, dig, build, drill, mine, or plant on the land at the Area without prior authorization of the Director of the Ohio Environmental Protection Agency, or his successor. For purposes of this paragraph, the Grantor shall comply with the Operation and Maintenance Plan approved in accordance with the Agreement and so long as the filling, grading, excavating, digging, building, drilling, mining, or planting, is permitted by the Operation and Maintenance Plan, said plan shall constitute such prior authorization and Grantor shall not be required to obtain the separate approval of the Director of the Ohio EPA, or his successor. For purposes of this paragraph, the term "Grantor" shall mean only said Industrial Recovery Capital Company of Ohio, L.L.C. and not its successors or assigns.
4. Ground water underlying the Area shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of monitoring ground water contamination levels in accordance with plans approved by the Director of the Ohio EPA, or his successor.
5. The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the Grantor and the State of Ohio and their respective personal representatives, heirs, successors, assigns and transferees and shall continue as a servitude running in perpetuity with the Area, subject to termination or modification as described below. The term "Grantor," wherever used herein, except for paragraph 3 above, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, assigns and transferees.
6. The Grantor may request written approval for a use of the Area which is not specifically permitted by the restriction set forth in paragraph 2 by submitting a written petition, via certified mail, to the Director of Ohio EPA for termination or modification of this restriction. Any such request which constitutes a change in the specific prohibition may only be granted by the Director of Ohio EPA, in his sole discretion. In such event, the petition for modification or termination shall

state the specific provision(s) sought to be modified or terminated and shall further include evidence demonstrating:

- (a) The Area meets Ohio's risk-based performance standard in effect at the time of such petition for a residential (or equivalent) land-use scenario; or
  - (b) The Area has been sample tested and compared with background samples taken from land surrounding the Area which has been unaffected by past treatment, storage, or disposal of hazardous waste, and such data shows that current conditions present at the Area are not statistically greater than background conditions.
7. The petition for termination or modification will be considered by the Director of Ohio EPA only when it presents new and relevant information not previously considered prior to the imposition of this restriction by the Ohio EPA. The Director of Ohio EPA will issue a determination based upon the criteria set forth in paragraph 6 above.
  8. The Grantor shall be considered in violation of the Director's Final Findings and Orders and the approved Hazardous Waste Closure Plan if the foregoing use restriction is violated or breached. For violation or breach of the foregoing use restriction, the Director of Ohio EPA shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to obtain injunctive relief in order to prevent violation or breach of the foregoing use restriction. Failure to timely enforce the foregoing covenant and use restriction by any party shall not bar subsequent enforcement by such party and shall in no manner be deemed a waiver.
  9. Grantor agrees to include in any instrument in which Grantor conveys any interest in any portion of the Area, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**THE INTEREST CONVEYED HEREBY IS SUBJECT TO A  
LAND USE RESTRICTION AGREEMENT, DATED \_\_\_\_\_,  
2000, RECORDED IN THE PUBLIC LAND RECORDS ON  
\_\_\_\_\_, 200\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN  
FAVOR OF, AND ENFORCEABLE BY, THE STATE OF  
OHIO.**

Within thirty (30) days of the date of any such instrument of conveyance is executed, Grantor will provide the Director of Ohio EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

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- 10. Grantor has covenanted to and with the State of Ohio that the Grantor is lawfully seized in fee simple of the Area, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Area is free and clear of encumbrances, except those noted on **Exhibit 2** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

IN WITNESS WHEREOF, Grantor has caused this Declaration of Restrictions to be signed in its name.

Executed this 2<sup>nd</sup> day of Nov., 2000

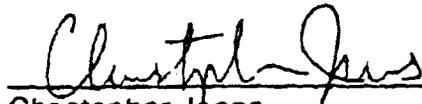
IT IS SO AGREED:

Industrial Recovery Capital Company of Ohio, L.L.C.

  
 By \_\_\_\_\_

Nov. 2, 2000  
 Date

Ohio Environmental Protection Agency

  
 Christopher Jones  
 Director

NOV 2 9 2000  
 Date

LEGAL DEED DESCRIPTION  
Environmental Strategies Corporation  
Restricted Area Easement  
7.369 Acres

Real estate situated in the City of Marysville, Paris Township of Union County, Ohio, in the Virginia Military Survey Number 3351, being part of the 15.048 acre tract of Industrial Recovery Capital Company of Ohio, LLC (Official Record 87, page 365), being a Restricted Area Easement and being further bounded and described as follows:

Beginning for reference at a three-fourths (3/4) inch diameter iron pipe found on the point common to the southerly marginal line of Ninth Street (50 feet wide), the westerly marginal line of Chestnut Street (50 feet wide) and the northeasterly corner of Lot Number 400 (formerly Lot Number 383 of Reed's Addition as numbered and delineated upon the recorded plat thereof, of record in Plat Book 1, page 129 in the office of the Union County Recorder) owned by Kenneth Lee Nicol (Deed Record 344 page 188),

thence with the southerly marginal line of said Ninth Street, South 85 degrees 18 minutes 21 seconds West (reference bearing), 243.00 feet to an iron pipe set on the westerly corner of a 16.5 foot wide alley, and the northeasterly corner of said Industrial Recovery Capital Company 15.048 acre tract;

thence continuing with the southerly marginal line of said Ninth Street and the northerly line of said Industrial Recovery Capital Company 15.048 acre tract, South 85 degrees 18 minutes 21 seconds West, 20.00 feet to the point of beginning of the Restricted Area Easement to be described.

thence parallel to the easterly line of said Industrial Recovery Capital Company 15.048 acre tract, South 04 degrees 09 minutes 19 seconds East, 530.85 feet to a point,

thence South 72 degrees 29 minutes 15 seconds East, 110.19 feet to a point,

thence South 04 degrees 58 minutes 55 seconds East, 346.83 feet to a point on the southeasterly corner of the herein described Restricted Area Easement, said point being 7.37 feet north of the south line of said Industrial Recovery Capital Company 15.048 acre tract,

thence South 85 degrees 14 minutes 28 seconds West, 486.87 feet parallel to and 7.37 feet by perpendicular measurement to the southerly line of said Industrial Recovery Capital Company 15.048 acre tract to a point on the southwesterly corner of the herein described Restricted Area Easement;

thence North 05 degrees 01 minute 36 seconds West, 351.46 feet to a point;

thence North 74 degrees 54 minutes 06 seconds East, 148.95 feet to a point;

thence North 04 degrees 25 minutes 59 seconds West, 51.77 feet to a point,

thence South 85 degrees 34 minutes 01 second West, 37.68 feet to a point,

thence North 04 degrees 25 minutes 59 seconds West, 439.46 feet to a point on a northwesterly corner of the herein described Restricted Area Easement,

thence North 85 degrees 34 minutes 02 seconds East, 167.01 feet to a point,

thence North 04 degrees 25 minutes 59 seconds West, 50.66 feet to a point on the southerly marginal line of said Ninth Street and on the northerly line of said Industrial Recovery Capital Company 15.048 acre tract,

thence with the line common to the southerly line of said Ninth Street and the northerly line of said Industrial Recovery Capital Company 15.048 acre tract, North 85 degrees 18 minutes 21 seconds East, 111.85 feet to the place of beginning

Bearing (South 85 degrees 18 minutes 21 seconds West) assumed from a previous survey recorded in Survey Record 18, page 44

The tract as described from an actual field survey performed on or about May 14, 1999, by James A. Page (S-6034) of Page Engineering Inc., Marysville, Ohio, contain 7.369 acres, more or less, subject to all previous easements and rights-of-way of record. All iron pipes set are 3/4" x 30" galvanized iron pipe with yellow survey caps stamped S-6034. The survey is recorded in Survey Record 16 in the office of the Union County Engineer

James A. Page, PS  
S-6034  
May 20, 1999  
JN 97-98

2000 DEC 22 P:11:23  
2600

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