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By: Louis G. Karagias  
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TR 5 ASSOCIATES, LLC,  
  
Plaintiff,  
  
vs.  
  
NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, et al.,  
  
Defendants.

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
THE ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION FUND,  
  
Defendants/Third-Party Plaintiffs,  
  
vs.  
  
ELITE CLEANERS, et al.,  
  
Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: OCEAN COUNTY  
DOCKET NO. L-3027-04

Civil Action

**CONSENT JUDGMENT**

This matter was opened to the Court by Jeffrey S. Chiesa, Attorney General of New Jersey, Louis G. Karagias, Deputy Attorney General appearing, attorney for defendants/third-party plaintiffs New Jersey Department of Environmental Protection (“DEP”), and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively

“Third-Party Plaintiffs”), and Carroll, McNulty & Kull LLC, Timothy B. Parlin, Esq., appearing as attorney for plaintiff TR 5 Associates, LLC, (“TR 5”), and its members Steven Dayon, Irwin Dayon, Charles Chappan and Frances Lynn Dayon (collectively, the “Settling Plaintiffs”), and Taff & Davies, James W. Donnelly, Esq., appearing as attorney for Third-Party Defendants Daniel Heller and Naftali Heller (the “Settling Defendants”) (Settling Plaintiffs and Settling Defendants, collectively the “Settling Parties”); and all parties hereto have amicably resolved their disputes detailed below.

## **I. BACKGROUND**

1. The Settling Plaintiffs initiated this action on October 18, 2004 by filing a complaint against the Third-Party Plaintiffs, Settling Defendants, and others, pursuant to the Spill Compensation and Control Act *N.J.S.A. 58:10-23.11, et seq.* (the “Spill Act”) and common law.

2. The Third-Party Plaintiffs filed cross-claims, a counterclaim and a Third-Party Complaint against various defendants, pursuant to the Spill Act and common law, seeking reimbursement of the cleanup and removal costs they incurred as a result of the alleged discharge of hazardous substances at 1515 Highway 37 East (Block 1085.02, Lot 5), Toms River Township, Ocean County, New Jersey. The Third-Party Plaintiffs also sought reimbursement under the Spill Act and the common law for the damages they incurred for any natural resource of this State that had been injured as a result of the alleged contamination of the Property.

3. The Settling Parties subsequently filed responsive pleadings in which they denied all liability, and asserted various defenses to the allegations contained in the Third-Party Plaintiffs’ Complaint, as well as a counterclaim and cross claims.

4. By entering into this Consent Judgment, the Settling Parties do not admit to any liability arising from the transactions or occurrences the Third-Party Plaintiffs allege in the complaint filed in this action.

5. The Third-Party Plaintiffs allege, and the Settling Parties deny, that “hazardous substances,” as defined in *N.J.S.A. 58:10-23.11b.*, have been “discharged” at the Property within the meaning of *N.J.S.A. 58:10-23.11b.*, which substances allegedly included trichloroethylene (“TCE”) and perchloroethylene (“Perc”).

6. The Property was purchased by the Heller family in 1966 and was developed as a five-unit strip mall.

7. A septic system and private well originally served the Property. In 1971, the Property began to use the municipal sewer system for waste removal instead of the septic system located on the Property.

8. A dry cleaner known as Elite Cleaners (a/k/a E-Z Cleaners), owned by the Spoto family, began operating at the Property in 1966. These dry cleaning operations at the Property ceased in 1971.

9. In February 2004, the Property was sold to TR 5.

10. In the late 1980’s, Ocean County ordinance 87-1 required that all potable wells be tested prior to the property being sold to ensure that the well’s drinking water quality was acceptable.

11. During this time, it was observed that residential wells in the Breton Harbor area contained TCE and Perc above the drinking water Maximum Concentration Levels (“MCLs”).

12. In 1988, an investigation was conducted by the Ocean County Department of Health (“OCDH”) and the DEP, which tested well water from 147 homes in the Breton Harbor

area. The testing found that 60 wells contained TCE and Perc above the applicable MCLs. Based upon this, a Well Restriction Area (“WRA”) was established in 1988 by the Third-Party Plaintiffs and New Jersey Spill Fund moneys were used to connect the affected Breton Harbor neighborhoods to a public water supply.

13. In 1999, the Third-Party Plaintiffs began a source evaluation in an attempt to identify potential sources of the TCE/Perc contamination in the groundwater in the Breton Harbor area. According to the Third-Party Plaintiffs, the investigation, which consisted of soil borings, suggested that groundwater contamination could be emanating from the Property.

14. The Third-Party Plaintiffs’ research showed that “Z2 Cleaners” had operated a dry cleaning establishment at the Property as early as 1966.

15. The Third-Party Plaintiffs alleged that the Property’s septic system was used to dispose of liquid waste until 1971, and “hazardous substances,” as defined in *N.J.S.A. 58:10-23.11b.*, were “discharged” at the Property within the meaning of *N.J.S.A. 58:10-23.11b.*, all of which are denied by the Settling Parties.

16. In August 2001, the Third-Party Plaintiffs’ Bureau of Site Assessment conducted a Site Investigation at the Property and concluded that the contamination could be emanating from the eastern side of the Property. The Third-Party Plaintiffs further concluded that the former Z2 Cleaners site should be considered an “Immediate Environmental Concern (“IEC”) due to the potable well contamination, and that cost recovery efforts should be initiated against the Hellers and Z2 Cleaners.

17. The Third-Party Plaintiffs subsequently notified TR 5 of its purported liability.

18. On January 29, 2004, the Third-Party Plaintiffs filed a First Priority Lien bearing Judgment No. DJ-038397-04 (the “Lien”) on the Property for approximately \$340,000 for

reimbursement of cleanup and removal costs the DEP incurred as a result of an alleged discharge of hazardous substances at the Property.

19. The Third-Party Plaintiffs allege that the costs and damages they have incurred are “cleanup and removal costs” within the meaning of *N.J.S.A. 58:10-23.11b*.

20. The Third-Party Administrator has certified for payment, valid claims made against the Spill Fund concerning the Property, and, further, has approved other claims for the Breton Harbor area.

21. The parties recognize, and this Court by entering this Consent Judgment finds that: the parties to this Consent Judgment have negotiated this Consent Judgment in good faith; the implementation of the Consent Judgment will allow the parties to this Consent Judgment to avoid continued, prolonged and complicated litigation; and the implementation of the Consent Judgment is fair, reasonable, and in the public interest.

**THEREFORE**, with the consent of the parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED:**

## **II. JURISDICTION**

22. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act and the common law. This Court also has personal jurisdiction over the parties to this Consent Judgment, solely for the purposes of implementing this Consent Judgment and resolving the underlying litigation.

23. The parties to this Consent Judgment waive all objections and defenses they may have to the jurisdiction of this Court or to venue in this County. Furthermore, the parties shall not challenge the Court’s jurisdiction to enforce this Consent Judgment.

### III. PARTIES BOUND

24. This Consent Judgment applies to, and is binding upon, the Third-Party Plaintiffs and the Settling Parties.

### IV. DEFINITIONS

25. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act, or in the regulations promulgated under that Act, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following shall apply:

- a) “Consent Judgment” shall mean this Consent Judgment.
- b) “Day” shall mean a calendar day unless expressly stated to be a working day. “Working Day” shall mean a day other than Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday or State holiday, time shall run until the close of business of the next “Working Day.”
- c) “Future Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, which the Third-Party Plaintiffs may incur after the effective date of this Consent Judgment to remediate the Site.
- d) “Interest” shall mean interest at the rate established by *R. 4:42* of the then current edition of the New Jersey Court Rules.
- e) “Lien” shall mean the First Priority Lien the Third-Party Plaintiffs filed on the Property, bearing Judgment No. DJ-038397-04, dated January 29, 2004.
- f) “Natural Resource Damages” shall mean all claims arising from the alleged discharges at the Property that occurred prior to the effective date of this Consent Judgment, and that are recoverable by the Third-Party Plaintiffs as natural resource damages for injuries to natural resources under the Spill Act; the Water Pollution Control Act; the Oil Pollution Act, 33 *U.S.C.A.* §§ 2701 to 2761, the Clean Water Act, 33 *U.S.C.A.* §§ 1251 to 1387, the Comprehensive Environmental Response Compensation and Liability Act, 42 *U.S.C.A.* §§ 9601 to 9675, or any other state or federal common law, statute, or regulation, and include:

- 1) The costs of assessing injury to natural resources and natural resource services, Third-Party Plaintiffs' Office of Natural Resource Restoration's oversight costs determined pursuant to *N.J.A.C. § 7:26C-4.7*, attorney's fees, consultants and experts' fees, other litigation costs and interest, incurred prior to the effective date of this Consent Judgment; and
- 2) Compensation for restoration of, the lost value of, injury to, or destruction of natural resources and natural resource services.

Natural Resource Damages do not include:

- (i) Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages; or
  - (ii) Requirements to clean up any contamination as a result of discharges at the Property.
- g) "Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper case letter.
  - h) "Party" or "Parties" shall mean Third-Party Plaintiffs, which includes the DEP, the Administrator, and the Settling Parties.
  - i) "Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, the Third-Party Plaintiffs incurred on or before the effective date of this Consent Judgment, to remediate the Site.
  - j) "Property" shall mean the real property located at 1515 Highway 37 East (Block 1085.02, Lot 5), Toms River Township, Ocean County, New Jersey.
  - k) "Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.
  - l) "Settling Parties" shall mean TR 5 Associates, and its members Steven Dayon, Irwin Dayon, Charles Chappan and Frances Lynn Dayon, and Daniel Heller and Naftali Heller.
  - m) "Site" shall mean the Property, consisting of less than 1 acre of real property located at 1515 Highway 37 East, Toms River Township, Ocean County, New Jersey, this property being also known and designated as Block 1085.02, Lot 5, on the Tax Map of Toms River Township, and all

other areas where any hazardous substance discharged there has become located, which plaintiff DEP has designated as Site Remediation Program Interest No. G000062662.

- n) “Settling Plaintiffs” shall mean TR 5 Associates, LLC and its members Steven Dayon, Irwin Dayon, Charles Chappan and Frances Lynn Dayon (the Dayons and Chappan, collectively the “members”). The Settling Plaintiffs shall also include their officers, directors, employees, predecessors, parents, successors, subsidiaries, assigns, trustees, shareholders, members, employees, administrators, and trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity; and any administrator, trustee, and trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity of any member (“Related Entity”) but only to the extent that the alleged liability of any Related Entity for remediating the Site is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Site arose independently of its status and capacity as a Related Entity of any of the Settling Plaintiffs.
- o) “Settling Defendants” shall mean defendants, Daniel and Naftali Heller.
- p) “Third-Party Plaintiffs” shall mean the DEP, the Administrator, and any successor, department, agency or official.

## **V. PARTIES’ OBJECTIVES**

26. The Parties’ objectives in entering into this Consent Judgment are to protect public health and safety and the environment by the Settling Plaintiffs agreeing to reimburse the Third-Party Plaintiffs for their Past Cleanup and Removal Costs and Natural Resource Damages. In return, the Third-Party Plaintiffs agree to dismiss all claims against the Settling Plaintiffs concerning Past Cleanup and Removal Costs and Natural Resource Damages, as well as filing a Warrant of Satisfaction with the Clerk of the Superior Court for the Lien. Furthermore, in return for the Settling Defendants agreeing to reimburse the Third-Party Plaintiffs for their Past Cleanup and Removal Costs and Natural Resource Damages, the Third-Party Plaintiffs agree to

dismiss all of their claims against the Settling Defendants concerning the Site as stated in the Complaint and this Consent Judgment.

## **VI. SETTling PARTIES' COMMITMENTS**

27. Within 30 days of the effective date of this Consent Judgment, the Settling Plaintiffs shall cause to be paid to the Third-Party Plaintiffs the sum of \$125,000, which monies shall be paid by the Settling Plaintiffs, in reimbursement and in full satisfaction of Past Cleanup and Removal Costs and Natural Resource Damages.

28. Within 30 days of the effective date of this Consent Judgment, the Settling Defendants shall pay the Third-Party Plaintiffs the sum of \$5,000, in reimbursement and in full satisfaction of Past Cleanup and Removal Costs, Future Cleanup and Removal Costs and Natural Resource Damages.

29. The Settling Parties shall pay the specified amounts by insurance company check, certified check or check from an attorney's trust account, made payable to the "Treasurer, State of New Jersey." The Settling Parties shall mail the payment and payment invoice to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey, 08625-0093 via Certified Mail, Return Receipt Requested.

## **VII. THIRD-PARTY PLAINTIFFS' COVENANTS & RELEASES**

30. In consideration of the payment the Settling Plaintiffs are making pursuant to Paragraph 27 above, and except as otherwise provided in Paragraphs 38-40 below, the Third-Party Plaintiffs covenant not to sue or take any further administrative action against the Settling Plaintiffs for reimbursement of Past Cleanup and Removal Costs the Third-Party Plaintiffs have incurred for the Site.

31. In consideration of the payment the Settling Defendants are making pursuant to Paragraph 28 above, the Third-Party Plaintiffs covenant not to sue or take any further administrative action against the Settling Defendants for reimbursement of Past Cleanup and Removal Costs and Future Cleanup and Removal Costs the Third-Party Plaintiffs have incurred and will incur for the Site.

32. In further consideration of the payments the Settling Parties are making pursuant to Paragraphs 27 and 28 above, and except as otherwise provided in Paragraphs 38-40 below, the Third-Party Plaintiffs fully and forever release, covenant not to sue, and agree not to otherwise take administrative action against the Settling Parties for Natural Resource Damages.

33. In further consideration of the payment the Settling Plaintiffs are making pursuant to Paragraph 27 above, and except as otherwise provided in Paragraphs 38-40 below, Third-Party Plaintiff Administrator covenants to promptly file a Warrant of Satisfaction with the Clerk of the Superior Court for the Lien.

34. The Settling Plaintiffs release and dismiss with prejudice any and all claims it may have now or in the future regarding the Site against and as to the Settling Defendants. This provision prevails over and supersedes any interpretation of this Consent Judgment to the contrary, so the Settling Plaintiffs shall have no claims whatsoever now or in the future against the Settling Defendants.

35. The Settling Defendants release and dismiss with prejudice any and all claims it may have now or in the future regarding the Site against and as to the Settling Plaintiffs. This provision prevails over and supersedes any interpretation of this Consent Judgment to the contrary, so the Settling Defendants shall have no claims whatsoever now or in the future against the Settling Plaintiffs.

36. The covenants and releases contained in Paragraphs 30-35 above, shall take effect immediately upon the Third-Party Plaintiffs receiving each payment the Settling Parties are required to make pursuant to Paragraphs 27 and 28 above in full, and in the prescribed time and manner.

37. The covenants and releases contained in Paragraphs 30-35 above are further conditioned upon the Settling Parties' satisfactory performance of their other obligations under this Consent Judgment, and extend only to the Settling Parties and not to any other person.

### **VIII. SETTLING THIRD-PARTY PLAINTIFFS' RESERVATIONS**

38. Notwithstanding any other provision of this Consent Judgment, the Third-Party Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Site, or to direct the Settling Plaintiffs to undertake any remediation authorized by law concerning the Site.

39. The covenants and releases contained in Paragraphs 30-35 above do not pertain to any matters other than those expressly stated. The Third-Party Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Parties concerning all other matters, including the following:

- a) claims based on the Settling Parties' failure to satisfy any term or provision of this Consent Judgment;
- b) liability against Settling Plaintiffs for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Plaintiffs at the Property, other than as otherwise ordered or approved by the Third-Party Plaintiffs.
- c) criminal liability;
- d) as to Settling Plaintiffs only:
  - 1.) liability for any violation of federal or state law that occurs during or after the remediation of the Site;

2.) liability for any claim filed against the Spill Fund concerning the Site;  
and

3.) liability for Future Cleanup and Removal Costs.

40. The covenants and releases contained in Paragraphs 30-35 above do not pertain to any matters other than those expressly stated. The Third-Party Plaintiffs reserve and this Consent Judgment is without prejudice to, claims based on the Settling Parties' failure to satisfy any term or provision of this Consent Judgment.

### **IX. SETTling PARTIES' COVENANTS**

41. The Settling Parties covenant not to oppose the entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Third-Party Plaintiffs notify the Settling Parties, in writing, that they no longer support entry of this Consent Judgment.

42. The Settling Parties further covenant, subject to Paragraph 44 below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Property. This covenant shall include the following:

a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning the Site; and

b. any claim or cause of action concerning the remediation of the Site, including Third-Party Plaintiff DEP's selection, performance or oversight of the remediation or Third-Party Plaintiff DEP's approval of the plans for the remediation.

43. The Settling Parties' covenants not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 42 above do not apply where the Third-Party Plaintiffs sue or take administrative action against the Settling Parties pursuant to Paragraphs 38-40 above.

#### **X. SETTling PARTIES' RESERVATIONS**

44. The Settling Parties reserve, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, *N.J.S.A. 59:1-1* through *-12-3*; the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1* through *-13-10*; the New Jersey Constitution, N.J. Const. art. VIII, § 2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concern the Property, including Third-Party Plaintiff DEP's selection and performance of the remediation, or Third-Party Plaintiff DEP's oversight or approval of the Settling Plaintiffs' plans or activities relating to the remediation. The foregoing applies only to claims that the Settling Plaintiffs may bring pursuant to any statute other than the Spill Act and the Water Pollution Control Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act or the Water Pollution Control Act.

45. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of *N.J.S.A. 58:10-23.11k* or *N.J.A.C. 7:1J*.

## **XI. FINDINGS & ADMISSIONS OF LIABILITY**

46. Nothing in this Consent Judgment shall be considered an admission by the Settling Parties, or a finding by the Third-Party Plaintiffs, of any wrongdoing or liability on the Settling Parties' part for anything the Third-Party Plaintiffs have actual knowledge of having occurred at the Site as of the effective date of this Consent Judgment.

## **XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION**

47. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

48. Each Settling Party expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that each Settling Party may have concerning any matter, transaction, or occurrences concerning the Site against any person not a Party to this Consent Judgment.

49. When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of *N.J.S.A. 58:10-23.11f.a.(2)(b)* and *42 U.S.C.A. § 9613(f)(2)* for the purpose of providing protection to the Settling Parties from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, that the Settling Parties are entitled, upon fully satisfying their obligations under this Consent Judgment, to protection from contribution actions or claims for matters addressed in this Consent Judgment.

50. In order for the Settling Parties to obtain protection under *N.J.S.A. 58:10-23.11f.b.* from contribution claims concerning the matters addressed in this Consent Judgment, the Third-Party Plaintiffs published notice of this Consent Judgment in the *New Jersey Register*

and on the Third-Party Plaintiff DEP's website on \_\_\_\_\_, in accordance with *N.J.S.A. 58:10-23.11e.2*. Such notice included the following information:

- a) the caption of this case;
- b) the name and location of the Property;
- c) the names of the Settling Parties; and
- d) a summary of the terms of this Consent Judgment.

51. The Third-Party Plaintiffs, in accordance with *N.J.S.A. 58:10-23.11.e.2*, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom the Third-Party Plaintiffs had notice as of the date the Third-Party Plaintiffs published notice of the proposed settlement of this matter in the *New Jersey Register* in accordance with Paragraph 50 above.

52. The Third-Party Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 72 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 50 and 51 above, the Third-Party Plaintiffs receive information that disclose facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

53. In any subsequent administrative or judicial proceeding initiated by the Third-Party Plaintiffs for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Site, each Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims the Third-Party Plaintiffs raise in the subsequent proceeding were or should have been

brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment.

### **XIII. GENERAL PROVISIONS**

54. Site Access. In addition to Third-Party Plaintiff DEP's statutory and regulatory authority to enter and inspect the Property, the Settling Plaintiffs shall allow Third-Party Plaintiff DEP and its authorized representatives access to all areas of the Property to:

- a. remediate the Property; and
- b. perform any remedial investigation or remedial action that this Consent Judgment requires, or Third-Party Plaintiff DEP otherwise orders, which the Settling Plaintiffs are unwilling and/or unable to perform.

55. The Settling Plaintiffs shall ensure that any sale or transfer of the Property is conditioned upon Third-Party Plaintiff DEP and its authorized representatives having continuing access for the purposes stated in Paragraph 54 above.

56. The Third-Party Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Parties by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

### **XIV. ACCESS TO INFORMATION**

57. Upon receipt of a written request by one or more of the Third-Party Plaintiffs, a Settling Party shall submit or make available to the Third-Party Plaintiffs all information the Settling Party has concerning the Site, including technical records and contractual documents.

58. A Settling Party may assert a claim of confidentiality or privilege for any information submitted to the Third-Party Plaintiffs pursuant to this Consent Judgment. The Settling Parties, however, agree not to assert any privilege or confidentiality claim concerning data related to Site conditions, sampling, or monitoring.

#### **XV. RETENTION OF RECORDS**

59. Each Settling Party shall preserve during the pendency of this Consent Judgment and for a minimum of seven years after its effective date, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Party's possession or in the possession of Settling Party TR 5's divisions and employees, and the Settling Party's agents, accountants, contractors, or attorneys, which in any way concern the Site, despite any document retention policy to the contrary.

60. After the seven-year period specified in Paragraph 59 above, any Settling Party may request of Third-Party Plaintiff DEP, in writing, that it be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receiving written approval from Third-Party Plaintiff DEP, the Settling Party may discard only those documents Third-Party Plaintiff DEP does not require the Settling Party to preserve for a longer period.

#### **XVI. NOTICES AND SUBMISSIONS**

61. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing:

As to the Third-Party Plaintiffs:

Section Chief  
Environmental Enforcement Section  
Department of Law and Public Safety  
Division of Law  
Richard J. Hughes Justice Complex  
P.O. Box 093  
Trenton, NJ 08625-0093

As to TR 5 Associates, LLC & Its Members:

Timothy B. Parlin, Esq.  
Carroll, McNulty & Kull LLC  
120 Mountain View Blvd.  
P.O. Box 650  
Basking Ridge, NJ 07920

As to Daniel and Naftali Heller:

James W. Donnelly, Esq.  
Taff & Davies, Esqs.  
The Shoppes at Lake Ridge  
143 Route 70  
Toms River, NJ 08755

62. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

63. The Settling Parties shall not construe any informal advice, guidance, suggestions, or comments by the Third-Party Plaintiffs, or by persons acting for them, as relieving the Settling Parties of their obligations to obtain written approvals or modifications as required by this Consent Judgment.

#### **XVII. EFFECTIVE DATE**

64. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

### **XVIII. RETENTION OF JURISDICTION**

65. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including any appeal from an administrative determination of a dispute between the Parties.

### **XIX. MODIFICATION**

66. This Consent Judgment represents the entire integrated agreement between the Third-Party Plaintiffs and the Settling Parties concerning the Property, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

67. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

68. All notices or other documents any Settling Party is required to submit to the Third-Party Plaintiffs under this Consent Judgment shall, upon approval or modification by the Third-Party Plaintiffs, be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

69. In the event the Third-Party Plaintiffs approve or modify a portion of a notice or other document that any Settling Party is required to submit under this Consent Judgment, the approved or modified portion shall be enforceable under this Consent Judgment.

70. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

## **XX. ENTRY OF THIS CONSENT JUDGMENT**

71. The Settling Parties consent to the entry of this Consent Judgment without further notice.

72. Upon the conclusion of the public comment period specified in Paragraph 50 above, the Third-Party Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

73. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

## **XXI. SIGNATORIES/SERVICE**

74. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such Party to this Consent Judgment.

75. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

76. Each Settling Party shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Parties agree to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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J.S.C.

New Jersey Spill Compensation Fund

Dated:

By: \_\_\_\_\_

Anthony J. Farro  
Administrator, New Jersey Spill Compensation Fund

New Jersey Department of Environmental Protection

Dated:

By: \_\_\_\_\_

Rich Boornazian  
Assistant Commissioner, Natural & Historic Resources

New Jersey Department of Environmental Protection

Dated:

By: \_\_\_\_\_

Kevin F. Kratina  
Assistant Director,  
Enforcement and Information Support Element  
Site Remediation Program

Jeffrey S. Chiesa  
Attorney General of New Jersey

Dated:

By: \_\_\_\_\_

Louis G. Karagias  
Deputy Attorney General

TR 5 Associates, LLC and Its Members

Dated:

By: \_\_\_\_\_

Timothy B. Parlin, Esq.  
Carroll, McNulty & Kull LLC  
120 Mountain View Blvd.  
P. O. Box 650  
Basking Ridge, NJ 07920

Person Authorized to Accept Service on  
Behalf of TR 5 Associates, LLC and Its Members

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Daniel and Naftali Heller

Dated:

By: \_\_\_\_\_

James W. Donnelly, Esq.  
Taff & Davies  
The Shoppes at Lake Ridge  
143 Route 70  
Toms River, NJ 08755

Person Authorized to Accept Service on  
Behalf of Daniel and Naftali Heller

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_