#### BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

E.R. 1, LLC, assignee of CASEYVILLE	)	
SPORT CHOICE, LLC	)	
C 1 is	)	
Complainant,	)	
	)	
v.	)	PCB 08-30
	)	(Citizens Enforcement-Land)
ERMA I. SEIBER, ADMINISTRATRIX OF	)	
THE ESTATE OF JAMES A. SEIBER,	)	
DECEASED, ERMA I. SEIBER,	)	
INDIVIDUALLY, and FAIRMOUNT PARK,	)	
INC.,	)	
	)	
Respondents.	)	

#### COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT TO ADD A DEFENDANT

COMES NOW Complainant E.R. 1, LLC, an assignee of Complainant Caseyville Sport Choice, LLC ("Caseyville"), by and through its undersigned counsel, and pursuant to Section 103.206(a) and (b) of the Illinois Administrative Code, respectfully moves the Court to give Caseyville leave to amend its Complaint to state a cause of action against an additional party defendant. In further support of its Motion for Leave to Amend the Complaint ("Motion"), Caseyville states and alleges as follows:

- 1. Complainant filed a Complaint before the Illinois Pollution Control Board ("Board") in October of 2007 and a First Amended Complaint in August of 2008. The First Amended Complaint, which was accepted by the Board, named the following Respondents: Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber, in her individual capacity, and Fairmount Park, Inc. (formerly known as Ogden Fairmount, Inc.), a Delaware Corporation.
- 2. On or around July 25, 2012, Erma I. Seiber passed away. Attached to this Motion is Ms. Seiber's Certificate of Death. *See* Exhibit A.

3. James A. Seiber Jr. is serving as the executor of the estate of Erma I. Seiber.

Attached to this Motion is a copy of Judge Browning's Order in the Commonwealth of Kentucky

appointing James A. Seiber, Jr. as the executor of the estate of Erma I. Seiber. See Exhibit B.

4. Consequently, the Complainant desires to add Mr. James A. Seiber, Jr. to this

proceeding as a defendant in his role as the executor of the estate of Erma I. Seiber, deceased, and

James A Seiber, deceased. Complainant concurrently submits the Second Amended Formal

Complaint to the Board with this Motion.

5. On February 26, 2013, Complainant properly served the Second Amended Formal

Complaint upon Mr. James A. Seiber, Jr., the party defendant to be added. Complainant included

the necessary language required in the notice pursuant to Section 103.204(f) of the Illinois

Administrative Code. The proof of service is attached. See Exhibit C.

WHEREFORE, Complainant respectfully requests the Board grant its Motion for Leave to

amend the First Amended Complaint to add James A. Seiber, Jr., the executor of the estate of Erma

I. Seiber, deceased, and James A. Seiber, deceased, as an additional party defendant, and to award

Complainant any such additional relief as the Board may deem appropriate.

Dated: February 26, 2013

Respectfully Submitted,

BRYAN CAVE LLP

Daniel Nester (ARDC No. 6208872)

Steven J. Poplawski (ARDC No. 6193897)

John R. Kindschuh (ARDC No. 6284933)

Christopher Blaesing (ARDC No. 6298240)

One Metropolitan Square 211 North Broadway Suite 3600 St. Louis, MO 63102 Telephone: (314) 259-2000 Telefax: (314) 259-2020

Attorneys for E.R. 1, LLC, As Assignee Of Caseyville Sport Choice, LLC

## **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing response was electronically filed with the Office of the Clerk and was served upon the following parties via U.S. mail on the 26th day of February, 2013:

David J. Gerber Attorney at Law 241 North Main Street Belleville, IL 62025 Attorney for Caseyville Sport Choice, LLC

Donald W. Urban Sprague and Urban 26 E. Washington Street Belleville, IL 62220 Attorneys for Erma I. Seiber

Penni S. Livingston Attorney At Law 5701 Perrin Road Fairview Heights, IL 62208 Attorney for Fairmount Park, Inc.



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AUG 14 2012 TODD CO CIRCUIT/DISTRI

CASE NUMBER 12-P- 000 47

IN RE: THE ESTATE OF ERMA IRENE SEIBER, DECEASED

#### **ORDER**

THIS DATE came James A. Şeiber, Jr, the named Executor under the Will of Erma Irene Seiber, deceased, and filed application requesting that he be appointed Executor of said estate. The Court considered said application, and thereby being sufficiently advised, should and hereby does ORDER AND ADJUDGE that James Selber, Jr. be and hereby is appointed Executor of the Estate of Erma Irene Selber deceased, and he shall execute bond in the sum of \$2,400,000.00, with decedent's daughter, Angela Silvia, as surety thereon.

THEREUPON, the said James A. Selber, Jr. executed the aforesaid bond, v Angela Slívia as surety thereon, which bond is approved by the Court and after tak the proper oath as Executor, James A. Seiber, Jr. Is now the qualified and acting Executor of the Estate of Erma Irene Selber/deceased.

SUE CARPL BROWNING, JUDGE TODD DISTRICT COURT

Commonwealth of Kentucky Count of Justice KRS 394.145; KRS 395.015  In re Estate of ERMA IRENE SEIBER Social Security No. 332-30-7124 Birth date of decedent 8-12-1937 Residence 2070 Rattlesnake Road Elkton Todd Ky. 42220 (street address) (chy) (county) (cip)  who died (2) testale   intestate on	AOC-805 De Rev. 3-01 Page 1 of 2	oc. Code: PPW or PWF			Case No.	
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	-	ire <u>3-13-2</u> ne within petition v	7013	•	•	Title State at Large
pate or complete order of probate on reverse side of this petition) (To be filed in duplicate)  Dillingham & Traughber Post Office Box 129, Elkton, Kentucky 42220-0129	tenor of Kentucky Civil F (Attorney must prepare a	ire <u>3-13-2</u> ne within petition v Rule No. 11. and present sepan	vas prepared or s	ubscribed by the und	arsigned in accord	Title State at Large ance with the meaning and
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### BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

E.R. 1, LLC, ASSIGNEE OF CASEYVILLE SPORT CHOICE, LLC

Complainant,

u

ERMA I. SEIBER, ADMINISTRATRIX OF THE ESTATE OF JAMES A. SEIBER, DECEASED, ERMA I. SEIBER, INDIVIDUALLY, AND FAIRMOUNT PARK, INC

Respondents.

#### AFFIDAVIT OF SERVICE

I, Richard Harris do hereby state the following: I am over the age of 21 and am a disinterested party in the above listed cause.

On Tuesday 02-26-13 at approximately 3:05 PM I made Personal Service of a "Second Amended Formal Complaint" in the above titled matter to Mr. James A. Seiber, Jr.

Service was obtained at the residence of James A. Seiber, Jr. located at 508 Greenwood Place, Collinsville, Illinois 62234.

Affiant has nothing further to state at this time

RICHARD HARRIS

SPECIAL PROCESS SERVER

**Exhibit C**