

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

MAY 17 2005

STATE OF ILLINOIS  
Pollution Control Board

MATHER INVESTMENT PROPERTIES,  
L.L.C.,

Petitioner,

vs.

ILLINOIS STATE TRAPSHOOTERS  
ASSOCIATION, INC.,

Respondent.

PCB05-29

NOTICE OF FILING AND PROOF OF SERVICE

TO: Dorothy Gunn, Clerk, Illinois Pollution Control Board, 100 West Randolph Street,  
James R. Thompson Center, Suite 11-500, Chicago, IL 60601-3218;

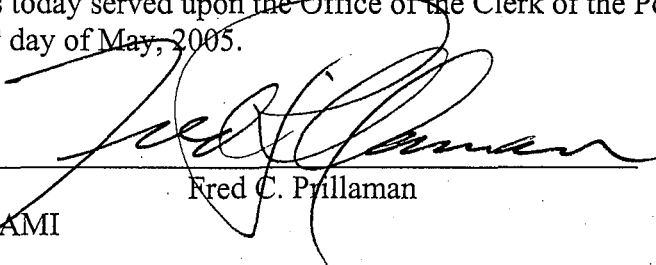
Carol Webb, Hearing Officer, Illinois Pollution Control Board, 1021 North Grand Avenue East,  
P.O. Box 19274, Springfield, IL 62794-9274

Charles J. Northrup, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Suite 800 Illinois  
Building, P.O. Box 5131, Springfield, IL 62705

PLEASE TAKE NOTICE that on May 16, 2005, I filed with the Office of the Clerk of the  
Pollution Control Board an original and nine copies of Respondent's Motion for Stay by U.S. Mail.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with  
a copy of the document described above, were today served upon the hearing officer and counsel of  
record of all parties to this cause by enclosing same in envelopes addressed to such attorneys at their  
business addresses as disclosed by the pleadings of record herein, with postage fully prepaid, and by  
depositing same in the U.S. Mail in Springfield, Illinois on the 16<sup>th</sup> day of May, 2005.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with  
a copy of the document described above, was today served upon the Office of the Clerk of the Pollution  
Control Board by Federal Express on the 16<sup>th</sup> day of May, 2005.

  
Fred C. Prillaman

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THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
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ILLINOIS STATE TRAPSHOOTERS  
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STATE OF ILLINOIS  
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MOTION FOR STAY

NOW COMES Respondent, ILLINOIS STATE TRAPSHOOTERS ASSOCIATION, INC. (hereinafter "Trapshooters"), by its undersigned counsel, pursuant to Section 101.514 of the Board's Procedural Rules (35 Ill. Admin. Code § 101.514), and moves to stay this action in light of the pendency of Mather Investment Properties, L.L.C. v. Illinois State Trapshooters, Inc., No. 2003-L-0144, now pending in the Circuit Court of Sangamon County. In support of its motion, Respondent states as follows:

BACKGROUND

Attached hereto is a true and correct copy of the complaint filed by Petitioner in the Illinois Circuit Court located in Sangamon County, Illinois. (Ex. A) The Board is authorized to take official notice of such filings. 35 Ill. Admin. § 101.630; see also Village of Hillside v. John Sexton Sand & Gravel Corp., PCB No. 80-60 (Oct. 30, 1980) (taking official notice of pending Circuit Court action).

The facts giving rise to the Sangamon County action and to this proceeding are as follows. In October of 1998, Panther Creek Office Park, L.L.C. entered into a contract with Trapshooters. (Ex. A, ¶6) Panther Creek Office Park, L.L.C. later assigned its interest in the

contract to Mather Investment Properties, L.L.C. (hereinafter "Mather"). (Ex. A, ¶7) By virtue of these agreements, Trapshooters agreed to sell certain real estate to Mather. Trapshooters was to receive the agreed purchase price (Ex. A-1-3)<sup>1</sup>, and Mather was to receive real estate commonly known as "Mather Gun Club Real Estate" (*id.*). The parties knew that there remained on the property spent lead shot from trapshooting that had occurred on the property, and regarded the right to mine that lead as valuable. The agreement provided that :

Seller shall mine the Mather Gun Club Real Estate for lead and remove lead at its cost and shall be entitled to all proceeds generated therefrom. If Seller is unable to contract for the removal of the lead prior to December 1, 1998, or prior to a closing date established herein, Seller's right to collect and sell the lead shall lapse, and the parties shall close pursuant to the provisions of this Agreement.

(Ex. A-1-11 (emphasis added)).

The parties also recognized that broken targets and target fragments remained on the property. They allocated to the Buyer the responsibility to clean up those targets and fragments.

The agreement provided that:

It is agreed by the parties that Buyer shall have the sole responsibility and shall bear all costs associated with the maintenance, destruction and/or removal of all improvements existing on the Mather Gun Club Real Estate and shall likewise bear the sole responsibility for the removal of debris remaining on the property, including, but not limited to, broken shooting targets.

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<sup>1</sup> The Circuit Court Complaint is marked Exhibit A. Attached to said complaint are Exhibits 1 through 5. In this motion, Defendants will refer to the exhibits to the Circuit Court Complaint as Exhibits A-1, A-2, A-3, A-4 & A-5.

(Ex. A-1-13).

The contract closed on September 28, 2000, and Mather took possession of the premises on that date. (Ex. A, Ct. I, at ¶ 21).

Later, a public controversy arose involving Mather's attempt to develop the property for Wal-Mart Stores Inc. (Ex. A, Ct. I, at ¶22 & Ex. A-3-A) Apparently, concerns regarding contamination resulting from future development of the property were directed to the Illinois EPA. (Compl. Ex. 1) The Illinois EPA wrote to Mather, recommending an environmental site assessment. (Id.) The letter indicated that such a property development might implicate waste regulations, that were previously inapplicable:

[T]he Illinois EPA would like to emphasize that even though no environmental permits were or are generally required for the operation of a shooting range, environmental permits may be required for such activities as moving contaminated soil to other parts of the site, creating piles of contaminated soils, and moving contaminated soils off site.

(Id.)<sup>2</sup>

Mather alleges that it conducted a site assessment, finding environmental issues allegedly associated with lead shot and target debris from shooting range operations. (Ex A-3) Mather expressed "surprise" that there was a potential environmental concern (Ex. A-3), given that Hanson Professional Services, Inc. (hereinafter "Hanson") prepared an environmental audit on the property, which concluded that

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<sup>2</sup> "Spent rounds of ammunition and target fragments are not . . . 'discarded material' . . . because they have not been 'abandoned' . . ." Long Island Soundkeeper Fund v. New York Athletic Club, 42 ERC (BNA) 1421 (Mar. 20, 1996, S.D.N.Y.)

USEPA and Illinois EPA do not consider expended materials on the shooting range to be solid or hazardous wastes that would be subject to regulation. There is no surface water on the site from which lead shot or dissolved lead may be ingested by migratory waterfowl. In our opinion, lead shot and target debris on the shooting range do not pose an imminent or substantial endangerment to health or the environment, and therefore are not considered recognized environmental conditions.

(Ex. A, ¶25)

On May 14, 2003, Mather sued Trapshooters and Hanson in the Circuit Court of Sangamon County, Illinois. (Ex. A) Trapshooters has been sued for breach of contract, having allegedly failed to “keep the Mather Gun Club Real Estate free of all pollutants and hazardous substances as defined by the statutes and regulations of the United States and of the State of Illinois,” (Ex. A, Ct. I, at ¶27), and having provided a Phase I environmental audit completed by Hanson pursuant to ASTM standards, as opposed to Illinois legal standards. (Ex. A, Ct. I at ¶33) Hanson was also sued under a contract theory (Ex. A, Ct. II) and a negligent misrepresentation theory. (Ex. A, Ct. III) The case remains pending in Circuit Court.

On or about August 16, 2004, Mather filed this enforcement action with the Board. The factual allegations are common to those in the Circuit Court proceeding. Mather alleges that Trapshooters “abandoned the lead fragments, broken clay targets, and associated contamination” in violation of Section 21(e) of the Illinois Environmental Protection Act (hereinafter “the Act”). (415 ILCS 5/21(e)) This enforcement action seeks civil penalties, injunctive relief, and cost recovery.

## LEGAL ARGUMENT

In considering a motion to stay proceeding in light of another pending matter, the Board has considered four factors: “(a) comity, (b) prevention of multiplicity, vexation and harassment, (c) likelihood of obtaining complete relief in the foreign jurisdiction, and (d) the *res judicata* effect of a foreign judgment in the local forum.” Environmental Site Developers, Inc. (“ESDI”) v. White and Brewer Trucking, Inc., PCB No. 96-180, at p. 7 (July 10, 1997) (citing A.E. Staley Mfg. Co. v. Swift & Co., 84 Ill. 2d 245, 254 (1980)). No single factor is determinative, but the analysis involves a balancing of all factors. See ESDI, PCB No. 96-180 (Sept. 18, 1997) (after finding that none of the factors favored issuance of a stay, the Board reconsidered and issued a stay in light of additional evidence with respect to two of these factors).

The type of stay sought by this motion is “aimed at avoiding duplicative litigation.” Village of Mapleton v. Cathy’s Tap, 313 Ill. App. 3d 264, 266 (3<sup>rd</sup> Dist. 2000). Here, the term “duplicative” has a different meaning than that set forth in the Board’s regulations:

Two actions are for the same cause when the relief requested is based on substantially the same set of facts. The crucial inquiry is whether the two actions arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof or relief sought materially differs between the two actions. Furthermore, the purpose of the two actions need not be identical; rather, there need only be a substantial similarity of issues between them.

### Id.

While the two actions at issue here involve different causes of action, they arise from the same commercial transaction by which Trapshooters conveyed the property to Mather. The complaints in both proceedings set forth substantially the same set of facts. Finally, both actions

involve the common issues of the nature of the lead mining transaction and the applicability of state environmental laws and regulations.

A proper application of the four factors used to determine whether a stay is appropriate yields the conclusion that a stay should be entered here.

**A. Comity.**

“Comity is the principle under which courts will give effect to the decisions of a court of another jurisdiction as a matter of deference and respect.” ESDI, PCB No. 96-180, at p. 7 (July 10, 1997). “Where another court has taken jurisdiction over a controversy, a court with jurisdiction over the same controversy as a result of a later-filed suit will generally, as a matter of comity, defer to the first court in ruling on the matter before both courts.” Id. While the ESDI case involved different parties to different actions involving different regulatory provisions, this case involves the same parties, arguing for an interpretation of the same transactional documents.

The Board does not determine the rights of parties to a contract and has directed parties in the past to direct those issues to a court of law. EPA v. Will County Landfill, Inc., PCB No. 72-13, at p. 2 (Dec. 12, 1972). Where, as here, the nature of the contractual transaction is a central issue in adjudicating environmental liability, comity suggest that the Board should defer to the state court’s expertise in interpreting the contract. Village of Mapleton, 313 Ill. App. 3d at 268.

**B. Prevention of Multiplicity, Vexation and Harassment.**

In deciding whether to grant a stay, a court may consider whether judicial economy would be served in granting the stay. Philips Elecs., N.V. v. New Hampshire Ins. Co., 295 Ill. App. 3d 895 (1<sup>st</sup> Dist. 1998) In this case, a stay would avoid the multiplicity of proof and argument concerning the proper interpretation of the contract. See Village of Mapleton, 313 Ill.

App. 3d at 268. Ordinarily, it is “uneconomical as well as vexatious” for a lawsuit to proceed where another suit is pending in another court presenting the same issues between the same parties. Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 495 (1941).

**C. Likelihood of Obtaining Complete Relief in State Action.**

In the Circuit Court action, Mather is suing for “an amount not less than \$250,000, including but not limited to, all costs that Mather has incurred or will incur as a result of the contamination of ‘the Property,’ any diminution of property value of the parcel from its intended use, costs of this suit, attorney fees and any other relief the Court deems just and proper.” (Ex. A at p. 9) In two separate counts, this prayer for relief is also directed towards Hanson, who is not a party to the Board proceeding. (Id. at pp. 11, 15-16)

Hanson’s absence from this proceeding means that the Circuit Court action is more likely to provide complete relief to Mather than the Board action in which relief against Hanson is impossible.

The only relief that appears unavailable to Mather in the Circuit Court proceeding is the request for civil penalties. However, civil penalties cannot be awarded to Mather, but are paid to the Environmental Protection Trust Fund. (415 ILCS 5/42(a)) In the sense that “relief” refers to “the assistance, redress, or benefit which a complainant seeks” (Black’s Law Dictionary (6<sup>th</sup> ed.)), these penalties do not serve a compensatory function, but serve a public policy function. In any event, a stay does not deny Mather any relief from the Board, but merely directs the parties to the Circuit Court proceeding until the stay is lifted. Village of Mapleton, 313 Ill. App. 3d at 268.



**D.     *Res Judicata* Effect**

“The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same claim, demand or cause of action.” Fried v. Polk Bros., Inc., 190 Ill. App. 3d 871, 877 (2<sup>nd</sup> Dist. 1989). “The doctrine is based on the public policy which favors judicial economy and the finality of litigation and is divided into two branches: *res judicata*, or estoppel by judgment, and collateral estoppel, or estoppel by verdict.” Id. “Collateral estoppel is also referred to as ‘issue preclusion.’” Id. Here, resolution of those issues pertaining to the proper construction of the contract’s provisions might well be preclusive as to those issues in subsequent litigation.<sup>3</sup> Collateral estoppel or issue preclusion is a proper consideration in issuing a stay of subsequent litigation. Tumminaro v. Tumminaro, 198 Ill. App. 686, 695 (2<sup>nd</sup> Dist. 1990); see also Village of Mapleton, 313 Ill. App. 3d at 268 (holding that a declaratory judgment action as to the validity of an ordinance would have *res judicata* effects on the same questions in subsequent litigation).

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<sup>3</sup> In determining whether or not Trapshooters abandoned waste on the property, the Board will necessarily need to interpret the contractual provision concerning mining rights. See USA v. Petersen Sand & Gravel, Inc., 806 F. Supp.1346, 1354 (N.D. Ill. 1992) (explaining that when an environmental issue is raised as to whether or not an activity relates to waste or a useful product, the inquiry “must by necessity turn on a fact-specific inquiry into the nature of the transaction.”)

### **CONCLUSION**

For the reasons stated herein, Respondent asks the Board to stay this action pending resolution of the Circuit Court proceeding, or for such other and further relief as the Board deems meet and just.

### **MOHAN, ALEWELT, PRILLAMAN & ADAMI**

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Attorneys for Respondent Illinois Trapshooters  
Association, Inc.

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS

MATHER INVESTMENT PROPERTIES, L.L.C., )  
an Illinois Limited Liability Company, )

Plaintiff, )

v. )

ILLINOIS STATE TRAPSHOOTERS )  
ASSOCIATION, INC., an Illinois not-for- )  
profit corporation, and HANSON )  
PROFESSIONAL SERVICES, INC., a )  
Foreign Corporation, d/b/a HANSON )  
ENGINEERS INCORPORATED, )

Defendants. )

2003L 0144

No.

**FILED**

MAY 14 2003 CIV.-9

*Dorothy P. Schuf*

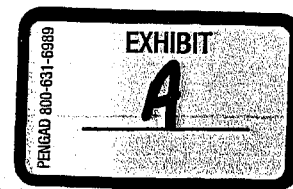
Clerk of the  
Circuit Court

COMPLAINT

NOW COMES Plaintiff, Mather Investment Properties, L.L.C., an Illinois Limited Liability Company, by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., R. Gerald Barris, Thomas H. Wilson, and Charles J. Northrup, of counsel, and for its Complaint against Illinois State Trapshooters Association, Inc., and Hanson Professional Services, Inc., a Foreign Corporation, d/b/a Hanson Engineers Incorporated, states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Panther Creek Office Park, LLC (hereinafter **PANTHER CREEK**) is an Illinois limited liability company with offices in Springfield, Illinois.
2. Mather Investment Properties L.L.C. (hereinafter **MATHER**) is an Illinois Limited Liability Company located in Sangamon County, Illinois.
3. Defendant Illinois State Trapshooters Association, Inc. (hereinafter **TRAPSHOOTERS**) is an Illinois not-for-profit corporation.



4. Defendant Hanson Professional Services is a Foreign Corporation with its headquarters in Springfield, Sangamon County, Illinois, and does business as Hanson Engineers Incorporated (hereinafter **HANSON**).

5. At all times mentioned herein, one of the services **HANSON** offered to the general public and sellers and buyers of commercial real property was information in the form of a Phase I environmental audit based on evaluation of "the Property" for the guidance of sellers and buyers of commercial real property, their assigns and agents in their business transactions.

6. On or about October 13, 1998, **PANTHER CREEK** entered into a contract (Contract attached hereto as Exhibit 1-3 through 1-21) to purchase approximately 64 acres of real estate in Sangamon County, Illinois ("the Property") from **TRAPSHOOTERS**, located southwest of the City of Springfield, Illinois, generally at the intersection of Interstate 72 and Illinois Route 4, commonly known as 3006 Mathers Road, and legally described as:

The South 3.88 acres of the East Half of the Southeast Quarter of Section 13;

The Northeast Quarter of the Northeast Quarter of Section 24; EXCEPTING THEREFROM a 0.102 acre tract conveyed to the State of Illinois, Department of Transportation, by Warranty Deed dated May 6, 1994, and recorded June 27, 1994 as Document No. 94-26746;

The South 3.91 acres of the West Half of the Southeast Quarter of said Section 13;

The Northwest Quarter of the Northeast Quarter of said Section 24; All in township 15 North, Range 6 West of the Third Principal meridian in Curran Township;

Situated in Sangamon County, Illinois.

7. On or about August 24, 1999, **PANTHER CREEK**, **TRAPSHOOTERS** and **MATHER** amended the agreement and confirmed assignment of contract to **MATHER**. (A true and exact copy of Amendment to Real Estate Purchase Agreement is attached hereto as Exhibit 1-1

through 1-3). The October 13, 1998 real estate contract and the August 24, 1999 amendment and assignment of the contract will hereinafter be referred to as the **CONTRACT**.

8. An outdoor shooting range, more recently known as the "Mather Gun Club", had been operated on "the Property" since the 1930's.

9. At times known better by **TRAPSHOOTERS**, but at least between 1988 and 1998, **TRAPSHOOTERS** owned "the Property" commonly known as the "Mather Gun Club" and continued to operate an outdoor shooting range on the parcel.

10. During the **TRAPSHOOTERS** ownership of "the Property", it consisted of an outdoor shooting range, several buildings associated with the range, a graveled drive and parking lot, campsites, and lawn areas.

11. During the **TRAPSHOOTERS** ownership of "the Property", lead shot, as well as broken clay targets, were deposited on "the Property" as a result of activities at the outdoor shooting range.

12. Paragraph 7(v) of the **CONTRACT** between **MATHER** and the **TRAPSHOOTERS** provides that the **TRAPSHOOTERS** shall:

keep the Mather Gun Club Real Estate [the parcel] free of all pollutants and hazardous substances as defined by the statutes and regulations of the United States and the State of Illinois.

13. Paragraph 13 of the **CONTRACT** provides that:

A. Seller at its expense shall within sixty (60) days from the date hereof obtain a Phase 1 environmental audit of the subject property from Hanson Engineering Company of Springfield, Illinois, assessing any pollutants, contaminants, hazardous materials, or other mineral or gasoline products and hydrology, that are of environmental concern, including asbestos in the buildings. If a Phase II audit is indicated, the cost of the Phase II audit shall be paid by the Seller."

\* \* \*

C. The parties agree that the audits contemplated hereby shall be provided to both Seller and Buyer and that the contents thereof shall not be disclosed to anyone except the parties' engineers, consultants, attorneys and lenders.

14 Paragraph 27 of the **CONTRACT** provides that:

This Agreement shall be construed and governed by the laws of the State of Illinois and any action to enforce its terms or conditions shall be brought in the Circuit Court of Sangamon County, Illinois, therefore.

15. Paragraph 10 of the **CONTRACT** provides that in the event of a default under the **CONTRACT**, the defaulting party shall be responsible for the expenses and reasonable attorney fees of the non-defaulting party.

16. During the negotiations between **PANTHER CREEK, MATHER** and the **TRAPSHOOTERS**, **TRAPSHOOTERS** was informed or otherwise made aware that "the Property" was being purchased for commercial development that would include normal and customary development activities such as the construction of buildings, parking lots, roads and other improvements which would cause soil on almost all of "the Property" to be disturbed, moved or removed from the site.

17. Prior to September 1998, **TRAPSHOOTERS** had been considering selling "the Property" as "commercial property." **TRAPSHOOTERS** knew that any purchaser or its mortgage lender of "the Property" would require a Phase I environmental audit of "the Property" meeting the requirements of federal and Illinois law be performed by an engineering firm assessing whether there were recognized environmental conditions on "the Property." **TRAPSHOOTERS** knew that any purchaser or mortgage lender of commercial property who failed to obtain a Phase I environmental audit, or took title with a Phase I environmental assessment that there were

recognized environmental conditions on "the Property" could or would be liable for any remediation costs or damages assessed by the EPA or IEPA.

18. Because of its knowledge of the facts alleged in paragraph 17 above, sometime prior to September 1998, **TRAPSHOOTERS** entered into a contract with **HANSON** whereby **HANSON** agreed to perform a Phase I environmental audit of "the Property" in return for payment by the **TRAPSHOOTERS**, for the direct benefit of **PANTHER CREEK, MATHER** or other third party intending to purchase "the Property" for development.

19. **HANSON** knew or should have known "the Property" was being purchased for commercial development purposes, which included the construction of buildings, parking lots, roads and other improvements, which would cause soil on almost all of "the Property" to be disturbed, moved or removed from the site, and knew or should have known that purchasers of "the Property" would rely on the representations and assessments in its Phase I environmental audit.

20. In accordance with the express provisions of paragraph 13 of the **CONTRACT**, the Phase I environmental "audits contemplated hereby [were to] be provided to both Seller and Buyer . . ." by **HANSON**. **HANSON** delivered the Phase I environmental audit of "the Property" to the **TRAPSHOOTERS** on or about September 29, 1998 and authorized release of the report to **MATHER** and other potential or actual purchasers of "the Property". **HANSON** knew or should have known that **TRAPSHOOTERS, MATHER** and/or any purchaser of "the Property" would rely on its Phase I environmental audit for guidance in their business transaction of purchasing "the Property".

**COUNT I**  
**BREACH OF CONTRACT**  
**(TRAPSHOOTERS)**

1-20. **MATHER** restates and realleges paragraphs 1 through 20 of the "Allegations Common to All Counts" as paragraph 1 through 20 of Count I of Plaintiff's Complaint.

21. **MATHER** performed all of its obligations under the **CONTRACT** by paying to **TRAPSHOOTERS** the sum of money required under the **CONTRACT**, closed and took title to "the Property" on September 28, 2000.

22. On August 24, 1999, **MATHER** entered into a contract with Wal-Mart Stores Inc. (hereinafter **WAL-MART**) for the sale of "the Property".

23. **WAL-MART**'s closing on its purchase of this Property is expressly conditioned upon **WAL-MART** being able to receive all necessary written approvals, permits and licenses as may be required for the construction of its facilities upon "the Property," from all appropriate and applicable governmental agencies and entities, including, but not limited to the U.S. Environmental Protection Agency ("EPA") and the Illinois Environmental Protection Agency ("IEPA"), via a "no further remediation" ("NFR") letter.

24. On August 17, 2001, the IEPA sent a letter to **MATHER** informing it that any development or construction on "the Property" would be a new use of "the Property", taken in combination with the contamination resulting from activities at the former shooting range, could pose an unacceptable risk to human health and/or the environment. (A true and exact copy of the letter is attached as Exhibit 3A).

25. Because of the IEPA letter (Exhibit 3A) and other contacts with the IEPA, in order for **WAL-MART** to obtain all the necessary written approvals, permits or licenses that may be



required for construction of its facilities on "the Property," **MATHER** has been required to prepare and submit a remediation plan to the IEPA to obtain approval or a NFR letter for anyone to disturb, store, or move off site the lead contaminated soil on "the Property." **WALMART**, or any purchaser, cannot construct any facility on "the Property" without disturbing, storing, or moving off site the lead contaminated soil on it.

26. At present, EPA and IEPA have not made a decision or decisions about granting appropriate and applicable licenses, permits, or approval concerning this remediation plan.

27. Pursuant to Paragraph 7 (v) of the **CONTRACT**, as a condition of the purchase agreement, **TRAPSHOOTERS** had a contractual obligation to "keep the Mather Gun Club Real Estate free of all pollutants and hazardous substances as defined by the statutes and regulations of the United States and the State of Illinois."

28. That at all times mentioned herein, lead shot and contamination associated with clay targets resulting from the shooting range was and is a pollutant and hazardous substance under the statutes, regulations, and case law of the United States and Illinois.

29. At all times mentioned herein, the existence of lead shot and contamination on the "property" was and is a recognized environmental condition by the EPA and IEPA. Mather first learned of this fact after it received Exhibit 3A.

30. In violation of Paragraph 7(v) of the **CONTRACT**, **TRAPSHOOTERS** did not deliver "the Property" to **MATHER** "free of all pollutants and hazardous substances . . ."

31. **TRAPSHOOTERS** also had a contractual obligation to "obtain a Phase 1 environmental audit of the subject property from **HANSON** Engineering Company of Springfield, Illinois, providing information based on evaluation assessing any pollutants, contaminants,



limited to cost in additional environmental investigation and remediation, loss of use, loss in value, and attorneys fees which currently exceed \$250,000.00 and is growing.

WHEREFORE, **MATHER** respectfully requests that judgment be entered in its favor and against **TRAPSHOOTERS** in an amount not less than \$250,000.00, including but not limited to, all costs that **MATHER** has incurred or will incur as a result of the contamination of "the Property", any diminution of property value of the parcel from its intended use, costs of this suit, attorney fees, and any other relief the Court deems just and proper.

**COUNT II**  
**THIRD PARTY BENEFICIARY CONTRACT**  
**(HANSON)**

1-20. **MATHER** restates and realleges paragraphs 1 through 20 of the "Allegations Common to All Counts" as paragraphs 1 through 20 of this Count II of Plaintiff's Complaint.

21. In accordance with the provision expressly identifying **HANSON** in paragraph 13 of the **CONTRACT**, the **TRAPSHOOTERS** entered into a contract or purchase order with **HANSON** whereby **HANSON** agreed to perform a Phase I environmental audit of "the Property" in return for payment by the **TRAPSHOOTERS**, for the direct benefit of **MATHER** or other third party intending to purchase "the Property" for development. **TRAPSHOOTERS** and **HANSON** have copies of the contract or purchase order to make a Phase I environmental audit of "the property." **MATHER** does not have a copy of this contract or purchase order.

22. In accordance with express provisions of paragraph 13 of the **CONTRACT**, the Phase I environmental "audits contemplated hereby [were to] be provided to both Seller and Buyer. . . " directly or indirectly through **TRAPSHOOTERS**.

23. In September, 1998, **HANSON** prepared its Phase I Environmental Site Assessment for "the Property" and the audits were provided to both the Seller and Buyer.

24. The information and assessments in the Phase I environmental audit of "the Property", prepared by **HANSON**, was material to **MATHER**'s decision and consideration to purchase "the Property".

25. **MATHER** performed all of its obligations under the **CONTRACT** by paying to **TRAPSHOOTERS** the sum of money required under the **CONTRACT**, closed and took title to "the Property" on September 28, 2000.

26. **HANSON** breached its obligations under its contract with the **TRAPSHOOTERS** by failing to identify the lead shot on "the Property," the presence or likely presence of a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from "the Property," as required by 415 ILCS 5/22(j)(6)(E)(v)(I) and 415 ILCS 5/22(j)(6)(E)(vii) for a "Phase I Environmental Audit."

27. **HANSON** breached its obligations under its contract with the **TRAPSHOOTERS** by failing to comply with ASTM Practice E 1527-97 and by failing to identify the lead shot and clay pigeons, as recognized environmental conditions associated with "the Property".

28. On August 24, 1999, **MATHER** entered into a contract with Wal-Mart Stores Inc. (hereinafter **WAL-MART**) for the sale of "the Property".

29. **WAL-MART**'s closing on its purchase of this Property is expressly conditioned upon **WAL-MART** being able to receive all necessary written approvals, permits and licenses as may be required for the construction of its facilities upon "the Property," from all appropriate and applicable governmental agencies and entities, including, but not limited to the U.S. Environmental

Protection Agency ("EPA") and the Illinois Environmental Protection Agency ("IEPA"), via a "no further remediation" ("NFR") letter.

30. On August 17, 2001, the IEPA sent a letter to **MATHER** informing it that any development or construction on "the Property" would be a new use of "the Property", taken in combination with the contamination resulting from activities at the former shooting range, could pose an unacceptable risk to human health and/or the environment. (A true and exact copy of the letter is attached as Exhibit 3A).

31. In order for **WAL-MART** to obtain all the necessary written approvals, permits or licenses that may be required for construction of its facilities on "the Property," **MATHER** has been required to prepare and submit a remediation plan to the IEPA to obtain approval for anyone to disturb, store, or move off site the lead contaminated soil on "the Property." **WALMART**, or any purchaser, cannot construct any facility on "the Property" without disturbing, storing, or moving off site the lead contaminated soil on it.

32. At present, the EPA and IEPA have not made a decision or decisions about granting appropriate and applicable licenses, permits, or approval concerning this remediation plan.

33. The lead shot and contamination associated with clay targets remaining on "the Property" has caused **MATHER** substantial money damages, including but not limited to cost associated with environmental investigation and remediation, loss of use, loss in value, and attorneys fees which currently exceeds \$250,000.00 and continues to grow..

WHEREFORE, **MATHER** respectfully requests that judgment be entered in its favor and against **HANSON** in an amount not less than \$250,000.00, including but not limited to, all costs that **MATHER** has incurred or will incur as a result of the contamination of "the Property", any

diminution of property value of the parcel from its intended use, costs of this suit, attorney fees, and any other relief the Court deems just and proper.

**COUNT III**  
**NEGLIGENT MISREPRESENTATION**  
**(HANSON)**

1-20. **MATHER** restates and realleges paragraphs 1 through 20 of the "Allegations Common to All Counts" as paragraphs 1 through 20 of this Count III of its Complaint.

21. At all times relevant to this Complaint, **HANSON** held itself out to the general public on its web site( [http://www.hansonengineers.com/environmental\\_services/aboutus/Services/land.htm](http://www.hansonengineers.com/environmental_services/aboutus/Services/land.htm)) as specialists of environmental information to assist customers in "purchasing property" by providing "Environmental assessments/audits." (A copy of this web page is attached hereto as Exhibit 5).

22. **HANSON** is in the business of providing information to others with respect to environmental assessments of property for the guidance of sellers and buyers of property in the business transaction of selling and buying property and, therefore, owed a duty to **MATHER** to communicate true facts and information.

23. In accordance with the provisions expressly identifying **HANSON** in paragraph 13 of the **CONTRACT**, **HANSON** evaluated "the Property" subject of this litigation and provided information by way of a Phase I environmental audit for the guidance of **TRAPSHOOTERS** and **PANTHER CREEK/MATHER**, and their assigns in their business transaction of **MATHER's** purchase of "the Property".

24. The "Findings and Conclusions" section in the HANSON's September 1998, Phase I environmental audit declared that "This assessment has revealed no evidence of recognized environmental conditions in connection with "the Property"." (Exhibit 2-17).

25. The HANSON Phase I environmental audit further stated that:

"USEPA and Illinois EPA do not consider expended materials on the shooting range to be solid or hazardous wastes that would be subject to regulation. There is no surface water on the site from which lead shot or dissolved lead may be ingested by migratory waterfowl. In our opinion, lead shot and target debris on the shooting range do not pose an imminent or substantial endangerment to health or the environment, and therefore are not considered recognized environmental conditions." (Exhibit 2-18)

26. Since at least 1995, the Illinois Environmental Protection Agency ("IEPA") has regulated closed or former shooting ranges, pursuant to its authority under the Illinois Environmental Protection Act, including the removal of contaminated soil.

27. On August 17, 2001, the IEPA sent a letter to MATHER informing it that a new use of "the Property", taken in combination with the contamination resulting from activities at the former shooting range, could pose an unacceptable risk to human health and/or the environment. (A true and exact copy of the letter is attached as Exhibit 3A).

28. HANSON was negligent in providing the statements and information provided in its Phase I environmental audit (Exhibit 2) which contained one or more false statements, misrepresentations, or inadequate statements or failed to disclose the following material facts:

- A. The assessment revealed no evidence of recognized environmental conditions in connection with "the Property".
- B. Moving, piling soil on site or moving it off site, could constitute an uncontrolled risk to human health which would require purchasers of "the Property" to pay for federal and state environmental permits and remediation costs.

- C. If a purchaser of "the Property" disturbed, stored, or moved any soil in "the Property" containing lead, it could be forced by the EPA and IEPA to pay expenses of remediation of "the Property" and to obtain permits for such actions.
- D. The lead shot and clay fragments on "the Property" are subject to regulations under the Federal Resource Conservation & Recovery Act ("RCRA").
- E. The lead shot and clay fragments in the soil on "the Property" was subject to regulation under the Federal Comprehensive Environmental Response, Compensation & Liability Act ("CERCLA").
- F. Disturbing, storing, moving soil containing lead on "the Property" would bring such actions under the regulations of the EPA or IEPA and could only be done after obtaining permits. The potential cost of disturbing, storing, or moving soil pursuant to EPA or IEPA could be so great that it would prohibit any use of "the Property" and make it worthless.
- G. The lead shot on "the Property" constitutes the presence or likely presence of a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from "the Property," as required by 415 ILCS 5/22(j)(6)(E)(v)(I) and 415 ILCS 5/22(j)(6)(E)(vii) for a "Phase I Environmental Audit."

29. The information was made by **HANSON** with the knowledge and intent that it would guide or induce **TRAPSHOOTERS**, **MATHER**, or other third party to transact business by purchase "the Property".

30. Prior to August 17, 2001, **MATHER** did not have personal knowledge of the regulatory status of the lead shot and clay targets under federal and state environmental laws and reasonably believed and relied on the skill, experience, and expertise of **HANSON** and the representations it made in its Phase I environmental audit and purchased "the Property" in justifiable reliance on completeness and truth of the statements contained therein.



31. **MATHER** first discovered that **HANSON** might be, or was, negligent in its preparation, assessment, and findings as contained in the Phase I environmental audits and as set forth in paragraph 28A above, and its failure to disclose the material facts alleged in paragraphs 28 B through F after it received the August 17, 2001, IEPA letter and through its contacts with the IEPA since that date.

32. If **MATHER** had known the statements in paragraph 28A above was not true, or the material facts not disclosed in paragraphs 28, B, C, D, E and F, it would not have closed on the purchase of "the Property".

33. **MATHER** has and will continue to incur damages in payment of costs of engineering, permits, attorneys fees, and remediation costs in order to comply with the express condition precedent concerning obtaining "governmental approval" with **WAL-MART**.

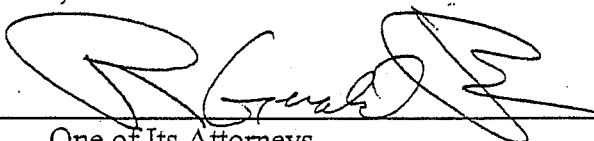
34. The negligent acts or omissions of **HANSON** as alleged in paragraph 28 above, have caused **MATHER** to incur, and in the future incur, substantial damages including, but not limited to cost associated with environmental investigation and remediation, loss in value, and attorneys fees.

WHEREFORE, **MATHER** respectfully requests that judgment be entered in its favor and against **HANSON** in an amount not less than \$250,000.00, including but not limited to, all costs

that MATHER has incurred or will incur as a result of the contamination of "the Property", any diminution of property value of the parcel from its intended use, costs of this suit, attorney fees, and any other relief the Court deems just and proper.

**PLAINTIFF DEMANDS TRIAL BY JURY OF 12 ON ALL COUNTS.**

MATHER INVESTMENT PROPERTIES, LLC,  
Plaintiff,

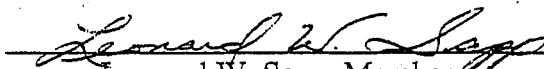
By:   
One of Its Attorneys

Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
R. Gerald Barris, Thomas H. Wilson and  
Charles J. Northrup, of Counsel  
Suite 800 Illinois Building  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217.544.1144

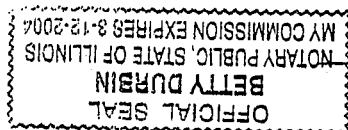
**AFFIDAVIT**

STATE OF ILLINOIS       )  
                                      ) SS.  
COUNTY OF SANGAMON )

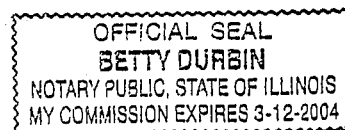
MATHER Investment Properties, LLC, by a Member, pursuant to Supreme Court Rule 222(b), does hereby state that the money damages sought exceed \$50,000.00.

  
Leonard W. Sapp, Member

Subscribed and sworn to before me this 14th day of May, 2003.



  
Notary Public



### AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS AMENDMENT, made and executed this 24<sup>th</sup> day of August, 1999, by and between the ILLINOIS STATE TRAPSHOOTER'S ASSOCIATION, INC., an Illinois not-for-profit corporation, hereinafter called "Seller," and MATHER INVESTMENT PROPERTIES, L.L.C., an Illinois limited liability company (as Assignee of PANTHER CREEK OFFICE PARK, L.L.C., under a Real Estate Purchase Agreement entered into by PANTHER CREEK OFFICE PARK, L.L.C., as Buyer, on October 13, 1998), hereinafter called "Buyer"; WITNESSETH:

#### RECITALS

WHEREAS, Seller and Buyer entered into a certain Real Estate Purchase Agreement (hereinafter the "Agreement") dated the 13th day of October, 1998, regarding the property commonly known as the Mather Gun Club Real Estate (hereinafter the "Property"), a copy of which is attached hereto and made a part hereof as Exhibit A; and

WHEREAS, Seller and Buyer desire to amend the Agreement in certain particulars.

NOW THEREFORE, for the consideration stated below and for the mutual promises herein set forth, the Agreement is amended as follows:

1. EXTENSION OF AGREEMENT. The Agreement is hereby extended to and including August 31, 2000, with all original terms and conditions to apply.

2. CONSIDERATION. As and for consideration of this Amendment, Buyer has paid to Seller the sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) in certified funds. Buyer does hereby acknowledge and agree that said entire amount is the sole property of Seller and is in no respect refundable to Buyer, notwithstanding any term or provision of the Agreement or of this Amendment to the contrary. Seller and Buyer do

hereby agree that of said amount, Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) will be applied to the purchase price at any closing between the parties, with the remaining Fifty Thousand and No/100 Dollars (\$50,000.00) not applicable to the purchase price. Absent a closing by the parties, the entire amount shall remain the sole property of Seller. Seller does hereby acknowledge that Buyer has previously paid to it Ten Thousand and No/100 Dollars (\$10,000.00), nonrefundable and applicable to the purchase price at any subsequent closing, and that Buyer has placed Ten Thousand and No/100 Dollars (\$10,000.00) in escrow, which shall also be applicable to the purchase price upon closing and which is refundable to Buyer, solely as allowed by the terms and conditions of the Agreement.

3. **LEASES.** Seller agrees not to enter into any leases for the Property at any time prior to the expiration of this Amendment. Seller hereby represents to Buyer that there are currently no leases in effect for the Property.

IN WITNESS WHEREOF, this Amendment is signed on the day and year first written above.

**MATHER INVESTMENT PROPERTIES,  
L.L.C., an Illinois limited liability company**

By: Leonard W. Sapp  
Leonard W. Sapp, Member

By: Thomas Lewis  
Thomas Lewis, Member

By: John B. Clark  
John B. Clark, Member

**ILLINOIS STATE TRAPSHOOTER'S  
ASSOCIATION, INC., an Illinois not-  
for-profit corporation**

By: A. Kim Youngblood  
A. Kim Youngblood, President.

August 24, 1997

REAL ESTATE PURCHASE AGREEMENT

1374 0000 *W. J. Jones*

THIS AGREEMENT, made and executed this ~~1st~~ day of October, 1998, by and between ILLINOIS STATE TRAPSHOOTERS ASSN., INC., an Illinois not-for-profit corporation (hereinafter called "Seller"), and PANTHER CREEK OFFICE PARK, L.L.C., an Illinois limited liability company with offices in Springfield, Illinois (hereinafter called "Buyer"); WITNESSETH:

RECITALS

WHEREAS, Seller has represented to Buyer that Seller is the owner of the real estate described on Annex A, attached hereto, incorporated herein and made a part hereof, hereinafter called "Mather Gun Club Real Estate";

NOW, THEREFORE, for and in consideration of the mutual promises herein set forth, Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller the real estate described on Annex A upon the following terms and conditions:

SUBSTANTIVE

1. Purchase Price: The purchase price ("Purchase Price") of the subject property shall be Two Million One Hundred Thousand Dollars (\$2,100,000.00), based upon Seller's representation to Buyer that the Mather Gun Club Real Estate contains at least sixty-three and four tenths (63.4) acres of land and contains all the land owned by Seller in Sections 24 and 13, Township 15 North, Range 6 West of the Third Principal Meridian, Sangamon County, Illinois. Buyer, at its expense, shall obtain a boundary survey of said Mather Gun Club Real Estate by Crawford, Murphy & Tilly, Inc. of Springfield, Illinois, showing the exact acreage of the real estate. Buyer shall pay the cost

of such survey. In the event the survey discloses more or less than 63.4 acres, the Purchase Price shall be adjusted by multiplying the exact number of acres shown by the survey by Thirty-three Thousand One Hundred Twenty-three and 02/100 Dollars (\$33,123.02) per acre or fraction thereof. The amount of acreage shall be conclusively determined by the survey. Subject to the prorations, credits and adjustments required hereunder, the entire Purchase Price shall be paid by Buyer to Seller in immediately available funds at the Closing.

2. **Earnest Money:** Within five (5) business days of the execution of this Agreement by both Buyer and Seller, Buyer shall deposit with Chicago Title Insurance Company, as escrow agent, funds in the amount of Ten Thousand Dollars (\$10,000.00) for and as earnest money.

3. **Title Evidence:** The Seller, at Seller's expense, shall furnish to the Buyer within fifteen (15) days of the execution of this contract, a title insurance commitment for an owner's title insurance policy, committing to insure title to the Mather Gun Club Real Estate for the amount of the Purchase Price for such real estate, to be determined as set forth in paragraph 1 of this Agreement, showing good and merchantable title in Seller free and clear of all encumbrances, except standard general exceptions of the title insurance company and prior conveyances and reservations of minerals.

4. **Contingencies:** Notwithstanding any other provisions of this Agreement to the contrary, Buyer's obligations under this Agreement are contingent upon the following contingencies being satisfied or waived by Buyer:

- i. Buyer negotiating an acceptable written agreement with the City of Springfield regarding improvements required for the upgrading of Mathers Gun Club Road.
- ii. Buyer obtaining written approval of Buyer's development plans from the Springfield Planning and Zoning Commission and by the Springfield City Council. "Development Plans" as used herein shall include but not be limited to approval of Buyer's Plat of Subdivision by the City of Springfield, curb cuts, turning traffic lanes, deceleration lanes, specifications of roadway materials, paving thickness, lime stabilization, location and size of detention pond or ponds, location and size of storm sewer and sanitary sewers, location and size of water mains, and receipt of engineer's estimate of the cost of each of said items.
- iii. All easements in respect of the Mather Gun Club Real Estate shall be satisfactory to Buyer.
- iv. All tenancies have been terminated and all tenants have vacated the Mather Gun Club Real Estate.
- v. Buyer obtaining approval of the Springfield Metro Sanitary District of annexation of Mather Gun Club Real Estate into said District and Buyer's satisfaction with capacity of sewers to serve the Mather Gun Club Real Estate.
- vi. Buyer obtaining ordinances from the City of Springfield granting such zoning classifications as required by Buyer.

- vii. Buyer obtaining a written commitment from the City of Springfield for annexation of the Property into the City.
- viii. Buyer obtaining a title insurance commitment showing marketable fee simple title is vested in Seller and containing no requirements which must be satisfied before an owner's title insurance policy will be issued based thereon except for Seller's existing mortgage, which will be paid by Seller at Closing.
- ix. There are no underground storage tanks located upon the Mather Gun Club Real Estate.
- x. Seller shall furnish to Buyer Seller's Responsible Property Transfer Act affidavit executed by the President of Seller.

5. Satisfaction of Contingencies as Condition of Closing: A. In the event Buyer shall give written notice to Seller on or before May 31, 1999, that all contingencies set forth in paragraph 4 of this Agreement have been satisfied or waived, then the parties shall close the purchase and sale of the Mather Gun Club Real Estate within thirty (30) days after giving of such notice.

B. In the event Buyer fails to obtain in writing to Buyer's satisfaction the contingencies set forth in paragraph 4 of this Agreement on or before May 31, 1999, then Buyer may: (i) terminate this Agreement by giving written notice to Seller, in which event Seller shall authorize the escrow agent in writing to return to Buyer the earnest money funds held by said escrow agent and neither party to this Agreement shall have any further liability one to the other; or (ii) extend the period of time for Buyer to obtain satisfaction in



writing or waiver of said contingencies until August 31, 1999, in which event Buyer shall pay directly to Seller the sum of Ten Thousand and No/100 Dollars (\$10,000.00) for such extension, which amount shall be non-refundable, however such amount shall be applied to the purchase price at closing. (The original \$10,000.00 paid to the Escrow Agent shall remain on deposit with said Escrow Agent and shall also be applied to the purchase price at closing.) If Buyer shall have obtained to Buyer's satisfaction or waiver in writing all of the contingencies set forth in paragraph 4 of this Agreement on or before August 31, 1999, the parties shall close the purchase and sale of the Mather Gun Club Real Estate within thirty (30) days of the date of such notice. Said Ten Thousand and No/100 Dollars (\$10,000.00) shall also be applied to the purchase price at closing.

C. In the event Buyer shall fail to obtain satisfaction of the contingencies within the time schedule herein set forth, then this Agreement shall terminate, in which event Buyer shall direct the escrow agent in writing to return to Buyer the earnest money funds held by said escrow agent and neither party to this Agreement shall have any further liability one to the other.

D. In the event Buyer shall give written notice to Seller that all contingencies set forth in paragraph 4 of this Agreement have been satisfied or waived but shall fail to close within thirty (30) days thereof, then all the earnest money funds paid and held by the escrow agent shall be paid to Seller and neither party to this Agreement shall have any further liability one to the other.

6. **Possession:** Seller shall give Buyer possession of the real estate on the date of closing.

7. Closing:

- i. The real estate taxes shall be prorated between the parties effective at Closing based upon the most current real estate tax assessment information then available.
- ii. Seller shall keep the Mather Gun Club Real Estate and all improvements thereon insured for fire and extended coverage in the amount of Two Hundred Forty-eight Thousand Dollars (\$248,000.00).
- iii. Seller shall keep the Mather Gun Club Real Estate and all improvements thereon insured for public liability with single occurrence liability limits in the sum of not less than One Million (\$1,000,000.00) Dollars. Seller shall deliver to Buyer a duplicate original of each such policy, or in lieu thereof, a certificate issued by the carrier. Each such policy or certificate shall provide that the same shall not be canceled without at least ten (10) days prior written notice to Buyer, and shall name Buyer or Buyer's designee as an additional insured thereunder.
- iv. Seller shall indemnify, save harmless and defend Buyer from any and all claim, demand, charge, expense, or loss whatsoever, including attorneys' fees assessed against Buyer and arising by reason of the operation of the Seller on the Mather Gun Club Real Estate.
- v. Seller shall keep the Mather Gun Club Real Estate free of all pollutants and hazardous substances as defined by the statutes and regulations of the United States and of the State of Illinois.

8. Conveyance: Seller agrees to convey merchantable title of Mather Gun Club Real Estate to Buyer or Buyer's nominee by warranty deed in recordable form and comply with all applicable statutes and ordinances in respect of Plat Act compliance and approval, and in compliance with the laws of the State of Illinois and the ordinances of Sangamon County and the City of Springfield, free and clear of all liens and encumbrances, except standard general exceptions of the title insurance company and prior conveyances and reservations of minerals.

9. Default: A. Buyer's Default: Should the Buyer default in any of its obligations under this Agreement, the Seller may, at its option, declare this Agreement terminated, provided that it shall first give the Buyer at least thirty (30) days written notice of such default, and shall set forth in said notice the specific breach or breaches complained of and of Seller's intention to terminate this Agreement and retain all payments made under this Agreement as liquidated damages. Such notice shall be served as set forth in paragraph 22 of this Agreement. If such default has not been cured within such thirty (30) days after receipt of said notice, then this Agreement shall thereupon be terminated, and Buyer shall give notice to escrow agent that all payments made to the escrow agent under this Agreement up to that time shall be paid to Seller, and Seller shall have all the rights and remedies for breach of this Agreement as shall be permitted by law and equity.

B. Seller's Default: Should the Seller default in any of its obligations under this Agreement, the Buyer shall give the Seller at least thirty (30) days written notice of such default, and shall set forth in said notice the specific breach or breaches complained of.

Such notice shall be served as set forth in paragraph 22 of this Agreement. If such default has not been cured within such thirty (30) days after receipt of said notice, then at Buyer's option, this Agreement shall thereupon be terminated, and Buyer shall be entitled to immediate return of all earnest money and sums paid by Buyer to escrow agent hereunder, or the Buyer shall, at its election, have all the rights and remedies for breach of this Contract or for specific performance thereof as may be permitted in law or equity.

10. Costs of Collection: In the event the Seller or Buyer should incur any — expenses or attorneys' fees in enforcing any of the provisions of this Agreement because of the default of the other party, any such expenses and reasonable attorneys' fees shall be borne by the defaulting party and shall be due and payable upon demand.

11. Closing: The Closing shall be held in the office of Chicago Title Insurance Company, 1043 South Fifth Street, Springfield, Illinois, or such other place in the City of Springfield as Buyer and Seller shall agree.

12. Governmental Permits: Seller acknowledges that Buyer shall be required to apply for permits from various governmental entities necessary for the satisfaction of the contingencies set forth in paragraph 4 of this Agreement and for Buyer's plans for development of the Mather Gun Club Real Estate. Seller agrees to and it shall, at request of Buyer, join with Buyer in the execution of such petitions and applications for permits, zoning, annexation and utilities as may be requested by Buyer from time to time during the term of this contract; provided, Buyer shall pay and shall indemnify Seller from all costs and expenses for filing and other fees as may be required for such applications or

petitions. The effectiveness and binding effect upon Seller of each petition and application shall be expressly contingent upon the transfer of a deed from Seller to Buyer.

13. Environmental Audit: A. Seller at its expense shall within sixty (60) days from the date hereof obtain a Phase I environmental audit of the subject property from Hanson Engineering Company of Springfield, Illinois, assessing any pollutants, contaminants, hazardous materials, lead or other mineral or gasoline products and hydrology, that are of environmental concern including asbestos in the buildings. If a Phase II audit is indicated, the cost of the Phase II audit shall be paid for by Seller.

B. If the environmental study discloses pollutants, contaminants and hazardous materials upon the Mather Gun Club Real Estate, then the Buyer shall have the right within the thirty (30) day period following delivery of any audit disclosing such substances to terminate this Agreement by giving written notice to Seller, and Buyer shall be entitled to immediate return of all earnest money and sums paid hereunder.

C. The parties agree that the audits contemplated hereby shall be provided to both Seller and Buyer and that the contents thereof shall not be disclosed to anyone except the parties' engineers, consultants, contractors, attorneys and lenders.

D. Seller shall mine the Mather Gun Club Real Estate for lead and remove lead at its cost and shall be entitled to all proceeds generated therefrom. If Seller is unable to contract for the removal of the lead prior to December 1, 1998, or prior to a closing date established herein, Seller's right to collect and sell the lead shall lapse, and the parties shall close pursuant to the provisions of this Agreement.

14. Relationship of Parties: The parties agree that their relationship under this Agreement shall be that of Buyer and Seller and that nothing herein contained shall be deemed or interpreted to create between them the relationship of principal and agent, employer and employee, or partners or joint venturers.

15. Buyer's Right to Enter Land: A. On execution hereof Buyer or its agents shall have the right to enter on the Mather Gun Club Real Estate, make inspections, advertise, place signage and show the premises, carry out surveying work with machinery and equipment, and conduct such tests, including soil and sub-soil tests on it and under it as Buyer shall desire, provided that Buyer shall repair any and all damage caused thereby and pay to Seller the value of any crops which may be destroyed by Buyer.

B. The foregoing may be done or caused to be done by Buyer, and Buyer shall be solely responsible for the cost thereof and hereby indemnifies and agrees to hold Seller harmless from any liability or cost therefor, including reasonable attorneys' fees. Buyer shall indemnify, save harmless, and defend Seller from any and all claim, demand, charge, expense, or loss whatsoever, including attorneys' fees, assessed against Seller and arising by reason of any activities conducted by Buyer on the Mather Gun Club Real Estate.

C. Buyer's right to enter the premises during the period of this Agreement for the purpose of making surveys or performing tests or work as herein permitted is conditioned on Buyer paying for the cost of all such work, and Buyer will not permit any lien to be filed against the premises on account of same and if a lien is filed, Buyer agrees

to immediately satisfy same or acquire a bond from a commercial surety company to cover the same in the event Buyer elects to contest the lien.

D. There shall be no demolition of improvements to the Mather Gun Club Real Estate unless such demolition is required by a governmental authority having jurisdiction over the real estate except by mutual agreement.

16. Fire and Casualty Insurance: If prior to delivery of a deed to the improvements under this Agreement, the improvements on the premises shall be destroyed or materially damaged by fire or other casualty, Buyer shall be entitled to receive at closing the proceeds of any insurance on them.

17. Buyer's Right to Exchange: Buyer shall have the right to exchange the Mather Gun Club Real Estate for other like-kind property as provided under Section 1031 of the Internal Revenue Code. In such event Buyer shall pay all expenses associated with the consummation of said exchange in excess of those expenses that would be customary for Seller if there were no exchange involved.

18. No Commission: No broker's commission or finder's fee is due or payable to any party to this Agreement or any third party or agent by reason of entering into this Agreement or by reason of the exercise of the options granted herein.

19. Removal of Improvements and Debris: It is agreed by the parties that Buyer shall have the sole responsibility and shall bear all costs associated with the maintenance, destruction and/or removal of all improvements existing on the Mather Gun Club Real Estate and shall likewise bear the sole responsibility for the removal of debris remaining on the property, including, but not limited to, broken shooting targets.

20. Retention of Personal Property: It is further agreed by the parties that this Real Estate Purchase Agreement specifically excludes personal property owned by the Seller associated with and used by Seller in the furtherance of its corporate purpose as an amateur trapshooting association. Buyer does hereby agree to allow Seller, at Seller's discretion, to remove from the premises or liquidate said personal property, including, but not limited to, equipment associated with the projection of trap targets, golf carts, firearms paraphernalia, award and trophies and the like prior to closing.

21. Memorandum of Agreement: Buyer and Seller shall execute a memorandum of this Agreement, a copy of which is attached as Annex B, and the parties agree that such Memorandum of Agreement may be recorded in the Office of the Recorder of Deeds of Sangamon County, Illinois.

22. Notices: Any notices pursuant to this Agreement shall be sent by certified mail, return receipt requested, addressed as follows:

TO SELLER: Jerry Sedlacek, President  
Illinois State Trapshooter's Association  
2730 Riggins Road  
Troy, IL 62294

AND TO: John E. Childress  
Brown, Hay & Stephens  
700 Mercantile Bank Building  
P.O. Box 2459  
Springfield, Illinois 62705

TO BUYER: c/o Leonard W. Sapp  
1999 West Wabash  
Springfield, Illinois 62704



AND TO: Robert S. Cohen  
Giffin, Winning, Cohen & Bodewes, P.C.  
One West Old State Capitol Plaza, Suite 600  
P.O.Box 2117  
Springfield, Illinois 62705

and may be made in person or by depositing the same in the United States Mail properly addressed to the other party with postage prepaid. Any notices so mailed shall be deemed to have been made upon deposit in the United States Mail as aforesaid.

23. Time Of Essence: The time of payment and the time of performance of the obligations to be performed hereunder by Buyer shall be of the essence of this Agreement. Any failure to make payments by the date specified in this Agreement shall constitute a default of this Agreement by the Buyer.

24. Invalidity: The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such provision shall be deemed severable and this Agreement may be enforced with such provisions severed or as modified by such court.

25. Headings: Headings in this Agreement are for convenience only and are not intended to describe, interpret, define, limit or construe its provisions.

26. Binding Effect: Each of the provisions of this Agreement shall extend to and shall, as the case may require, bind or inure to the benefit of the parties hereto and their respective successors, heirs, administrators, trustees, executors, legal representatives and assigns.

27. Governing Law: This Agreement shall be construed and governed by the laws of the State of Illinois and any action to enforce its terms or conditions shall be brought in the Circuit Court of Sangamon County, Illinois, therefore.

28. Future Assurances: The parties agree to execute any and all additional documents and/or instruments necessary to carry out the terms of this Agreement. The costs incurred in the preparation of any additional documents shall be borne by the party for whose benefit the documents are being executed.

29. Entire Agreement: This Agreement to Purchase dated October <sup>13</sup>~~8~~<sup>th</sup> 1998, <sup>Be</sup>~~is~~<sup>Lus</sup> contains the entire agreement between the parties hereto. No representations other than those therein contained have been made by either party to the other party or their respective agents and attorneys. No waivers, alterations or modifications of this Agreement or any agreements in connection herewith shall be valid unless in writing and duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above set forth.

ILLINOIS STATE TRAPSHOOTERS ASSN.,  
INC., an Illinois not-for-profit corporation,

By: Jerry Sedlacek  
Jerry Sedlacek, President

PANTHER CREEK OFFICE PARK, L.L.C., an  
Illinois limited liability company,

By: Leonard W. Sapp  
Its member

By: John B. Clark MEMBER.

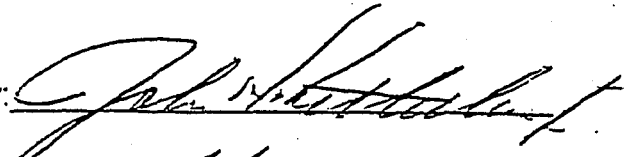
ACKNOWLEDGEMENT OF ESCROWEE

The undersigned, Chicago Title Insurance Company, as Escrowee, hereby acknowledges receipt of the sum of Ten Thousand Dollars (\$10,000), which represents an earnest money deposit paid by Buyer. Escrowee agrees to hold and distribute said earnest money pursuant to the terms and provisions set forth hereinabove in said Contract for Sale of Real Estate.

Date: Oct 22, 1998.

CHICAGO TITLE INSURANCE  
COMPANY

By:

  
Its Manager

ANNEX A  
Legal Description

All that part of the following described real estate lying Westerly of the West line of the service drive described as follows:

The South 3.88 acres of the East Half of the Southeast Quarter of Section 13;

The Northeast Quarter of the Northeast Quarter of Section 24; EXCEPTING THEREFROM a 0.102 acre tract conveyed to the State of Illinois, Department of Transportation, by Warranty Deed dated May 6, 1994, and recorded June 27, 1994, as Document No. 94-26746;

The South 3.91 acres of the West Half of the Southeast Quarter of said Section 13;

The Northwest Quarter of the Northeast Quarter of said Section 24; All in Township 15 North, Range 6 West of the Third Principal meridian in Curran Township;

~~EXCEPT the North 208.71 feet of the South 203.71 feet of the East 203.71 feet of said Northwest Quarter of the Northeast Quarter of Section 24;~~

Situated in SANGAMON COUNTY, ILLINOIS.

TAL f3e  
Jed

ANNEX B

MEMORANDUM OF CONTRACT

Seller's Name and Address:

Illinois State Trapshooters Assn.  
c/o Jerry Sedlacek, President  
2730 Riggins Road  
Troy, IL 62294

Buyer's Names and Address:

Panther Creek Office Park, L.L.C.  
c/o Leonard W. Sapp  
1999 West Wabash  
Springfield, Illinois 62704

This Memorandum of Contract is entered into between ILLINOIS STATE TRAPSHOOTERS ASSN., INC., an Illinois not-for-profit corporation, as Seller, and PANTHER CREEK OFFICE PARK, L.L.C., an Illinois limited liability company with offices in Springfield, Illinois, as Buyer, as a memorandum that on October 1, 1998, Seller agreed to sell to Buyer and Buyer agreed to buy the following described real estate:

All that part of the following described real estate lying Westerly of the West line of the service drive described as follows:

The South 3.88 acres of the East Half of the Southeast Quarter of Section 13;

The Northeast Quarter of the Northeast Quarter of Section 24; EXCEPTING THEREFROM a 0.102 acre tract conveyed to the State of Illinois, Department of Transportation, by Warranty Deed dated May 6, 1994, and recorded June 27, 1994, as Document No. 94-26746;

The South 3.91 acres of the West Half of the Southeast Quarter of said Section 13;

The Northwest Quarter of the Northeast Quarter of said Section 24; All in Township 15 North, Range 6 West of the Third Principal meridian in Curran Township;

~~EXCEPT the North 208.71 feet of the South 303.71 feet of the East 208.71 feet of said Northwest Quarter of the Northeast Quarter of Section 24;~~

Situated in SANGAMON COUNTY, ILLINOIS.

upon all the terms and conditions set forth in such contract. This Memorandum of Contract is not intended to be the definitive agreement of purchase and sale between the parties hereto, but only a memorandum of their written purchase and sale agreement which was executed by them on the date above set forth.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of

Contract this <sup>13th</sup> ~~1st~~ day of October, 1998.

ILLINOIS STATE TRAPSHOOTERS  
ASSN., INC., an Illinois not-for-profit  
corporation,

PANTHER CREEK OFFICE PARK,  
L.L.C., an Illinois limited liability  
company,

By:

Jerry Sedlacek  
Jerry Sedlacek, President

SELLER

By:

Lorant W. Sapp  
Its member

BUYER

By: Thomas A. Sauer MEMBER

By: John B. Clark, member

STATE OF ILLINOIS )

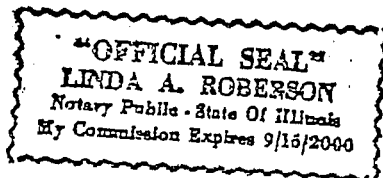
COUNTY OF SANGAMON )

SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO  
HEREBY CERTIFY that Jerry Sedlacek, personally known to me to be the President of  
ILLINOIS STATE TRAPSHOOTERS ASSN., INC., an Illinois not-for-profit corporation, and

personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President he signed and delivered the said instrument as President of said corporation, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5th day of October, 1998.



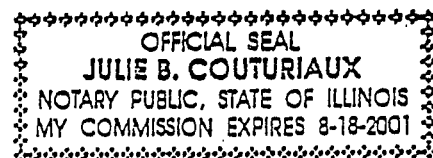
Linda A. Roberson  
Notary Public

STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON ) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Leona M. Sapp Thomas, Esq., J.D. personally known to me to be Member of PANTHER CREEK OFFICE PARK, L.L.C., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Member he signed and delivered the said instrument as Member of said limited liability company, pursuant to authority given by the members of said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of October, 1998.

Julie B. Couturiaux  
Notary Public



October 1, 1998\dtf\WP\WIN60\REV\ECUSTA.PA

EXHIBIT

MARINE BANK

SPRINGFIELD  
2136 E. Cook • Springfield, IL • 525-8800  
3050 Wabash Ave. • Springfield, IL • 728-0600

PANTHER CREEK OFFICE PARK, L.L.C.  
1999 W. WABASH AVE.  
SPRINGFIELD, IL 62704

1076

DATE October 13, 1998 70-940/711

PAY Ten Thousand & no/100 DOLLARS \$ 10,000.00  
TO THE ORDER  
OF

RECEIVED

Chicago Title Ins., Escrow Agent

*Leonard Sapp*

*Philip Donett*

Earnest Deposit

⑈001076⑈ ⑆071109406⑆ 00 000 086⑈

© 1998 MAR



Patrick V. Reilly  
R. Gerald Barris \*  
Stephen A. Tagge  
Michael A. Myers  
C. Clark Germann  
Gary A. Brown  
Stephen R. Kaufmann  
Frederick B. Hoffmann  
William R. Enlow  
Craig S. Burkhardt  
Michael C. Connelly  
Scott C. Helmholz \*  
John A. Kauerauf  
James M. Morphew  
Stephen J. Bochenek  
David A. Rolf  
Peggy J. Ryan  
Mark K. Cullen  
Thomas H. Wilson  
Todd M. Turner  
R. Lee Allen  
Charles J. Northrup

\* also licensed in Missouri

Sorling, Northrup, Hanna, Cullen  
and Cochran, Ltd.

Attorneys at Law

Suite 800 Illinois Building

607 East Adams Street

Post Office Box 5131

Springfield, Illinois 62705

Telephone: (217) 544-1144

Fax No.: (217) 522-3173

www.sorlinglaw.com

Writer's E-Mail Address: [cjnorthrup@sorlinglaw.com](mailto:cjnorthrup@sorlinglaw.com)

October 2, 2001

Elizabeth A. Urbance \*  
W. Jason Rankin  
Julie B. Cox  
E. Zachary Dinardo  
Theresa M. Cameron  
James G. Fahey  
John F. Shonkwiler  
Jeffrey R. Jurgens

Charles H. Northrup  
Philip E. Hanna  
William S. Hanley  
William B. Bares  
of counsel

Sorling, Catron and Hardin  
(1945-1975)  
Carl A. Sorling  
(1944-1991)  
B. Lacey Catron Jr.  
(1944-1959)  
John H. Hardin  
(1945-1978)  
George W. Cullen  
(1950-1986)  
Thomas L. Cochran  
(1956-1994)

Illinois State Trapshooters Association  
Mr. Roger Rocke  
185 East South Lakeview Drive  
East Peoria, IL 61611

Mr. Douglas Dorsey  
Hanson Engineers  
1525 So. Sixth Street  
Springfield, IL 62703-2886

Re: Mather Gun Club - Springfield, Illinois

Dear Sirs:

On August 17, 2001, Mather Investment Properties, L.L.C. received correspondence from the Illinois Environmental Protection Agency regarding the environmental condition of the former Mather Gun Club property located at 3006 Mathers Road in Springfield, Illinois. The correspondence identified numerous potential concerns associated with the property as a result of its former use as a trap and skeet shooting range. The correspondence also noted potential liability under the Illinois Environmental Protection Act ("Act") as well as the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). A copy of the correspondence is enclosed.

In response to this correspondence, Mather Investment Properties has retained Rapps Engineering to review the status of the Gun Club property as well as to communicate with the Illinois EPA on this issue. In that regard, Rapps representatives met informally with the IEPA to better evaluate its concerns and, if necessary, any potential remedial action. In addition, Rapps conducted a limited sampling program at the property on August 30, 2001. That sampling revealed exceedances of IEPA TACO soil standards for lead, arsenic, and certain PAHs. Given the levels

EXHIBIT

October 2, 2001

of these contaminants, Rapps has proposed, and is preparing, to enroll this site into the IEPA's Site Remediation Program to address the identified concerns.

The existence of a potential environmental problem at the Gun Club property has been a surprise to Mather Investment Properties. As you know, Hanson Engineers prepared a Phase I Environmental Site Assessment in September, 1998 wherein it concluded that the "lead shot and target debris on the shooting range do not pose an imminent or substantial endangerment to health or the environment, and therefore are not considered recognized environmental conditions." In light of the expressed concerns of the IEPA, this statement is not accurate. Furthermore, based upon a review of general environmental materials readily available at the time the Phase I was prepared, it appears that this statement was not accurate at the time it was written. Pursuant to the October 13, 1998 contract between the Association and Mather Investment Properties, Mather was entitled to rely upon the conclusions of this Report. In fact, Mather Investment Properties did rely upon the Report, which identified no environmental problems, in making its decision to purchase the Gun Club property.

As noted above, Mather Investment Properties is proceeding to address the environmental condition of the property to the extent the IEPA may require. This includes enrollment into the IEPA's SRP, and may ultimately require some level of remedial activity at the property. The costs are unknown. Obviously, my client wishes to minimize any such costs, but they could be substantial. Given the Association's potential liability under the Act for "causing" the environmental problem, or under CERCLA as a former operator of the facility, as well as any potential contractual liability of Hanson to the Association or Mather Investment Properties, you may wish to review the existing Rapps data or Mather's contemplated course of action vis a vis the IEPA. If you would like to discuss this matter, do not hesitate to contact me.

Very truly yours,



Charles J. Northrup

Enclosure

cc: Mather Investment Properties



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

217/785-9407

THOMAS V. SKINNER, DIRECTOR

August 17, 2001

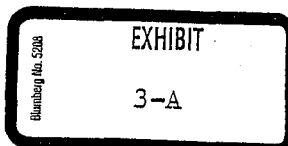
Mr. Leonard W. Sapp, Managing Partner  
Mather Investment Properties, LLC  
1999 West Wabash Avenue  
Springfield, Illinois 62704

Re: 1671205736 – Sangamon County  
Mather Gun Club (Mather Investment Properties)  
General Correspondence

Dear Mr. Sapp:

The purpose of this letter is to offer compliance assistance and perspective from the Illinois Environmental Protection Agency ("Illinois EPA") on the future redevelopment of the Mather Gun Club and associated properties in Springfield, Illinois. On June 19, 2001, the Springfield City Council passed two ordinances (Ordinance Numbers 343-06-01 and 344-06-01) regarding the annexation and zoning of the subject properties. Additionally, the Illinois EPA has been contacted by the public regarding potential heavy metal (primarily lead and arsenic) and polynuclear aromatic hydrocarbon ("PNA" or "PAH") contamination at the Mather Gun Club property due to the former use of the property as a trap and skeet shooting range.

If there are contaminants present at the site, there is the potential for the establishment of new or the exacerbation of existing contaminant exposure pathways during and after the redevelopment of the property which pose an unacceptable risk to human health and/or the environment. Be advised that if there is contamination present at the site that poses an unacceptable risk to human health or the environment or if the redevelopment of the site creates new exposure pathways that allows contamination at the site to pose an unacceptable risk to human health or the environment, all past, present and future owners of the property may be subject to liability pursuant to the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and/or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund). Please understand that the Illinois EPA has not inspected the property, but that this letter is based on Illinois EPA's past experiences with the redevelopment of former shooting ranges. It is based on these experiences that we offer the following discussion:



GEORGE H. RYAN, GOVERNOR

AUG 24 2001

August 17, 2001

Letter to Mr. Leonard W. Sapp

Regarding the Redevelopment of the Former Mather Gun Club

Page 2 of 3

**What activities or actions need to be conducted prior to transfer and redevelopment of the site?**

The Illinois EPA recommends that a Phase 1 (and potentially a Phase 2) Environmental Assessment be conducted prior to any transfer of the property. The purpose of this assessment is to identify any potential environmental problems to both the purchaser and seller.

If there is contamination identified at the site, from either the past use as a trap and skeet range or some other use, the current owner or future owner may choose to address the contamination on a voluntary basis through the Illinois Site Remediation Program ("SRP"). Upon completion of this process, the site would be issued a "No Further Remediation" ("NFR") letter that would be filed with the County Recorder. It is recommended that if new facilities are to be constructed, these facilities be constructed in areas that have been addressed through the SRP. This insures that new or different users of the property do not have exposure to unacceptable risks from any contamination.

Regarding any potential lead contamination at the site, typically, owners and/or operators of shooting ranges and trap, skeet and shooting sports clubs periodically mine the projectile backstops and shot fall zones to recover the metal values present (primarily lead) as scrap metal. Any residual contamination resulting from the operation of the shooting range would typically be addressed at the end of the operation of the facility on a voluntary basis.

**What permits and application forms need to be completed and where can these be acquired?**

With regard to the potential environmental remediation at the site, forms for enrollment in the SRP are available from the Illinois EPA or from the Illinois EPA SRP web site at "<http://www.epa.state.il.us/land/site-remediation/index.html>". At this web site, it is possible to download the three PDF forms that are necessary for enrollment into the SRP. Some of the potentially necessary remedial activities may need permits, but most do not. Specific questions can be addressed during the planning for any remedial activities based on the types of activities needed.

Presently and historically, no State or Federal environmental permits are required for rifle and pistol ranges, skeet, trap and shooting sports ranges as long as the shooting exercises do not impact environmentally sensitive areas, and are not into or over waters of the State of Illinois including any wetlands. This is consistent with federal court cases considering whether federal environmental regulatory requirements apply to shooting ranges. See *Connecticut Coastal Fishermen's Assoc. v. Remington Arms Co.*, 989 F.2d 1305 (2d Cir.1993); *Long Island Soundkeeper Fund v. New York Athletic Club*, 1996 WL 131863 (S.D.N.Y.); and, *Stone v. Naperville Park District, et al.*, 38 F. Supp. 2d 651 (N.D. Ill. 1999).

August 17, 2001

Letter to Mr. Leonard W. Sapp

Regarding the Redevelopment of the Former Mather Gun Club

Page 3 of 3

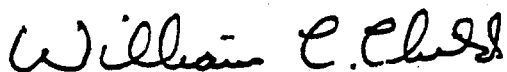
However, the Illinois EPA would like to emphasize that even though no environmental permits were or are generally required for the operation of a shooting range, environmental permits may be required for such activities as moving contaminated soil to other parts of the site, creating piles of contaminated soils, and moving contaminated soils off site. It is important to note that if, during the change in land use from a firearms range to some other use, a situation develops which presents an uncontrolled risk to human health or the environment, the Illinois EPA does have the authority to order or compel the responsible party to conduct the necessary environmental remediation and seek cost recovery from the responsible parties. It is suggested that you contact the Illinois EPA before performing any of these activities.

**What is the name and phone number of the contact person at the Illinois EPA who would be responsible for monitoring this project's completion?**

A project manager would be assigned to the project when/if the site is enrolled in the SRP.

If you should have any additional questions regarding this matter, or wish to discuss any of these issues further, please contact me at 217/785-9407. For additional information regarding the Illinois EPA's Voluntary Site Remediation Program, please contact Lawrence W. Eastep, P.E., Manager of the Bureau of Land's Remedial Project Management Section at 217/782-9802. For additional information regarding lead contamination issues at shooting ranges, please contact Clarence L. Smith, Manager of the Bureau of Land's Federal Site Remediation Section at 217/524-1655.

Respectfully,



William C. Child, Chief  
Bureau of Land

cc: Mr. Chris Danos  
Wal-Mart Stores, Inc.  
2001 Southeast 10<sup>th</sup> Street  
Bentonville, Arkansas 72716-0550



April 30, 2002

Mr. Jerry Sedlacek, President  
Illinois Trapshooters Association  
2730 Riggins Road  
Troy, IL 62294

Mr. John E. Childress  
Brown, Hay & Stephens  
205 S. Fifth Street  
P.O. Box 2459  
Springfield, IL 62705

Re: Mather Gun Club  
Notice of Breach of Contract

Dear Sirs:

This letter is to give you written notice, pursuant to paragraphs 9. B. and 22 of the October 13, 1998 "Real Estate Purchase Agreement" ("Agreement") between the Illinois State Trapshooters Association, Inc. ("Trapshooters") and the Panther Creek Office Park, LLC, of the Trapshooters' default under the terms of the Agreement.

Specifically, paragraph 7. v. of the Agreement provides that the Trapshooters shall keep the Mather Gun Club Real Estate free from all pollutants and hazardous substances. This provision has been breached in that pollutants, including lead and certain polynuclear aromatic hydrocarbons, have been detected at the Mather Gun Club property. Additional breaches of implied terms of the Agreement may also have occurred. Finally, the presentation of a September 1998 Phase I Environmental Site Assessment prepared by Hanson Engineers disclosing no recognized environmental conditions on the property constitutes a misrepresentation of site conditions, and as such, a further breach of the Agreement.

In accordance with paragraph 9.B. of the Agreement, you have thirty (30) days after receipt of this notice to cure this default. If you fail to cure the

Suite 800 Illinois Building  
607 East Adams Street  
P.O. Box 5131  
Springfield, IL 62705  
P: 217.544.1144  
F: 217.522.3173  
[www.sorlinglaw.com](http://www.sorlinglaw.com)

Charles J. Northrup  
Attorney at Law  
[cinorthrup@sorlinglaw.com](mailto:cinorthrup@sorlinglaw.com)

R. Gerald Barris  
Stephen A. Tagge  
Michael A. Myers  
C. Clark Germann  
Gary A. Brown  
Stephen R. Kaufmann  
Frederick B. Hoffmann  
William R. Enlow  
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Jeffrey R. Jurgens

Charles H. Northrup  
Philip E. Hanna  
Patrick V. Reilly  
William S. Hanley  
William B. Bates  
Mark H. Ferguson  
of counsel

Sorling, Catron and Hardin  
1944-1975

Carl A. Sorling  
1944-1991

B. Lacey Catron Jr.  
1944-1959

John H. Hardin  
1945-1978

George W. Cullen  
1950-1986

Thomas L. Cochran  
1956-1994

EXHIBIT

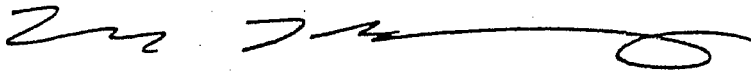
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April 30, 2002

default within the time frame provided, the Panther Creek Office Park, LLC shall take all appropriate action to remedy the default.

If you have any questions, or would like to discuss how the Trapshooters intend to cure the default identified, please do not hesitate to contact me.

Very truly yours,



Charles J. Northrup

cc: Rich Ahern  
Susan Brandt

0342907.002

4/30/2002CJN

## Service areas

---



### Land Pollution and Solid Waste Services

Today's business climate and regulatory framework demand you make prudent decisions for each step your business takes. Whether purchasing property for expansion, remediating a contaminated site or adding a new process or line to increase production, each decision has environmental implications--and each decision directly affects the bottom line of your business.

Hanson can assist you in making these decisions by helping you answer the following questions.

- What is the environmental risk and how will it affect existing or planned operations?
- How will it affect production?
- How will it affect the bottom line?

After you've answered these questions, Hanson can identify the specific services you will need to make the important decisions that will affect your business and the environment. We provide a full range of land pollution and solid waste services and have extensive experience involving:

- Aboveground storage tanks
- Brownfield redevelopment
- Comprehensive environmental responsibility
- Environmental assessments/audits
- Environmental management programs
- Hydrogeologic/geologic studies
- Manufactured gas plants
- Remediation
- Resource Conservation and Recovery Act (RCRA) compliance
- Risk-based corrective action
- Site characterization
- Underground storage tanks

Click here for highlights of our project experience.

Based on your project needs, Hanson will assemble a team of environmental specialists from our staff of engineers, geologists, hydrogeologists, scientists and technicians. Our staff is skilled at working on projects at every level ranging from small, uncomplicated projects such as underground storage tank remediation at a single site to large, complex projects such as implementing comprehensive environmental programs for national or international clients or remediating a Superfund site. A team leader manages and facilitates the project team, integrating your needs into the project and meshing the project goals with regulatory framework services.

Hanson continues to provide these and other types of environmental services to clients ranging from small businesses to Fortune 500 companies, as well as local, state, federal and international agencies.



*Service areas*



## Land Pollution and Solid Project Experience

### RCRA

- Remedial investigation/design for combined RCRA and aboveground storage tank releases at an educational facility's power plant (c01)

### Brownfields

- Phase I/II environmental site assessment and remedial response actions for former power generating station on the Illinois riverfront (j02)

### CERCLA

- CERCLA remedial investigation/feasibility study, remedial design and implementation of corrective action (j03)

### Environmental Management Program Site Characterization

- Illinois Environmental Protection Agency - Multi-sites (f05)
- Provided site characterizations, hazard evaluations, remedial investigations, feasibility studies, remedial designs and other supporting activities at U.S. Air Force bases. (e06)
- Characterized and identified landfill ground water impacts/leachate and developed corrective action measures for a municipality (i06)

### Hydrologic/Geologic Studies

- Radio relay station design (e07)
- Hydrogeologic study and assessment of environmental conditions at a fly ash landfill (g07)

### Manufactured Gas Plants

- Assessment of 10 former manufactured gas plant sites for potential impacts to the environment (j08)

### Remediation

- Ground water and free product recovery trench design and observation (c09)
- Design and construction of a high-volume ground water recovery and treatment system at coal tar site (j09)

### Risk-based Corrective Action

- Investigated sodium dichromate released into soil and ground water and assessed concentrations against Illinois risk-based corrective action rules (g10a)

### Underground Storage Tanks

- Engineering, environmental and project management services for underground storage tank removals and site remediation

IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS

MATHER INVESTMENT PROPERTIES, LLC,  
an Illinois Limited Liability Company,  
Plaintiff

vs.  
ILLINOIS STATE TRAPSHOOTERS ASSOCIATION,  
INC., an Illinois not-for-profit  
corporation, and HANSON PROFESSIONAL  
SERVICES, INC., a Foreign Corporation,  
d/b/a HANSON ENGINEERS INCORPORATED,  
Defendants.

NO. 2003L 0144

SUMMONS

To each defendant: Illinois State Trapshooter's Association, c/o James W. Bruner,  
Registered Agent, 205 S. 5th Street, 700 Suite, P. O. Box 2459, Springfield, IL 62705-2459

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court, 200 South 9th Street, Room 405, Springfield, Illinois 62701, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.

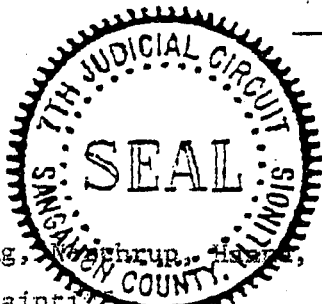
To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

WITNESS, May 14, 20 03

Anthony P. [Signature]  
Clerk of the Court

Associate Circuit Clerk - Int. Deputy



Name Sorling, [Signature], Cullen & Cochran, Ltd.

Attorneys for Plaintiff 607 E. Adams, 800 Illinois Bldg., P. O. Box 5131

Address Springfield, IL 62705

City 217-544-1144

Telephone

Date of service: \_\_\_\_\_ 20 \_\_\_\_  
(To be inserted by officer on copy left with defendant or other person)

ORIGINAL (White)

COURT FILE (Yellow)

Defendant (Pink)

Clerk of the Circuit Court  
Sangamon County, Illinois