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September 17, 2001

BY MESSENGER

Illinois Pollution Control Board
Attn: The Honorable Dorothy M. Gunn, Clerk
100 W. Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

Re: Cole Taylor Bank v. Rowe Industries, Inc., et al., PCB-01-173 Citizen's Enforcement

Dear Ms. Gunn:

Enclosed for filing in the above-referenced matter are an original and nine copies of Respondent Rowe Industries, Inc.'s Answer and Affirmative Defenses. There is one extra copy. Please file-stamp it for our files and return it to the messenger.

If you have any questions, please do not hesitate to give me a call. I thank you in advance for your cooperation.

Very truly yours,

William A. Speary, Jr.

WAS/lao

Enclosures

cc: All Counsel of Record

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COLE TAYLOR BANK, not individually, But solely as trustee under a certain Illinois Land trust known as trust 40323; as Successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904,	)	
Complainant,	)	PCB-01-173 Citizen's Enforcement
vs.	)	
ROWE INDUSTRIES, INC., a corporation, successor to COLEMAN CABLE AND WIRE COMPANY, a corporation, and CHAPCO CARTON COMPANY, a corporation,	)	
Respondents.	)	

NOTICE OF FILING

To:

Raymond T. Reott Christina M. Landgraf Jenner & Block LLC One IBM Plaza Chicago, IL 60611	Gerald B. Mullin Gerald B. Mullin, P.C. Suite 3030 55 E. Monroe Street Chicago, IL 60603	Joseph R. Podlewski Schwartz Cooper Greenberger & Krauss Chtd. 180 N. LaSalle, Suite 2700 Chicago, IL 60601

Please take notice that the undersigned caused to be filed on September 17, 2001 with the Pollution Control Board, the Respondent Rowe Industries, Inc.'s Answer And Affirmative Defenses, a copy of which is herewith served upon you.

William A. Speary, Jr.

MUCH SHELIST FREED DENENBERG
AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle, Suite 2100
Chicago, IL 60601
(312) 346-3100
Firm No. 80580

CERTIFICATE OF SERVICE

I, William A. Speary, Jr., one of the attorneys for Chapco Carton Company, certify that on September 17, 2001, I caused copies of the ***Respondent Rowe Industries, Inc.'s Answer And Affirmative Defenses*** and the notice thereof to be sent by first class mail to the attached Service List.

By: _____
One of Their Attorney's

William A. Speary, Jr.
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COLE TAYLOR BANK, not individually, But solely as trustee under a certain Illinois Land trust known as trust 40323; as Successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904,	)	
Complainant,	)	PCB-01-173 Citizen's Enforcement
vs.	)	
ROWE INDUSTRIES, INC., a corporation, successor to COLEMAN CABLE AND WIRE COMPANY, a corporation, and CHAPCO CARTON COMPANY, a corporation,	)	
Respondents.	)	

RESPONDENT ROWE INDUSTRIES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Respondent Rowe Industries, Inc. a Delaware corporation, (**"Rowe"**), by its attorneys, responds to Complainant, Cole Taylor Bank's (**"Cole Taylor"**) Complaint as follows:

1. **Complaint:** Complainant, Cole Taylor Bank, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323, as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904 (hereafter "Cole Taylor") is an Illinois land trust holding legal title to certain real property located in Cook County, Illinois, commonly known as 1810 North Fifth Avenue, River Grove, Illinois.

Answer: Rowe lacks sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and, therefore, it denies each and every one of them.

2. **Complaint:** Respondent, Rowe Industries, Inc., (hereafter "Rowe") successor to Coleman Cable and Wire Company (hereafter "Coleman") is a corporation organized under the laws of Delaware. Complainant is informed and believes, and upon such information and belief alleges that Rowe has its principal place of business in Phoenix, Arizona.

Answer: Rowe denies that its principal place of business is in Phoenix, Arizona. It admits only the remainder of the allegations in Paragraph 2 of the Complaint.

3. **Complaint:** Respondent, Chapco Carton Company (hereafter "Chapco") is a corporation organized under the laws of Delaware.

Answer: Rowe lacks sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint and, therefore, it denies each and every one of them.

4. **Complaint:** On May 21, 1971 Coleman, as lessee, entered into a written lease with Michigan Avenue as lessor, for the rental of certain property commonly known as 1810 North Fifth Avenue, River Grove, Illinois, (hereafter the "Property") which lease terminated on December 31, 1996.

Answer: Rowe admits only that the lease exists as a written document and that the document speaks for itself. To the extent that the allegations in Paragraph 4 seek to characterize the lease and its terms, Rowe denies said allegations. Accordingly, Rowe denies that the lease terminated on December 31, 1996.

5, **Complaint:** In 1984 Coleman, as sublessor, entered into a sublease agreement with Chapco as sublessee. Chapco remained in possession of the Property

from 1984 as Coleman's sublessee until December 31, 1996, the date of expiration of Coleman's lease.

Answer: Rowe admits only that the sub-lease exists as a written document and that the document speaks for itself. To the extent that the allegations in Paragraph 5 seek to characterize the sub-lease and its terms, Rowe denies said allegations. Accordingly, Rowe denies that either the lease or the sub-lease terminated on December 31, 1996. By way of further answer, Rowe states that Chapco remained in possession of the Property under a sub-lease or a lease from 1984 until January 31, 2001.

6. **Complaint:** At various times between 1971 and the date of the filing of this complaint, the exact dates of which are at present unknown to Complainant, and during the time that the Property was in the possession and control of Coleman and/or Chapco, either or both of Coleman and/or Chapco, caused or allowed certain hazardous materials containing, among other substances classified as hazardous substances under the Illinois Environmental Protection Act (the "Act") (414 ILSC 5/3.14) to become deposited in the soil at the Property.

Answer: To the extent that the allegations in Paragraph 6 of the Complaint refer to Coleman and/or Rowe, Rowe denies each and every one of said allegations. To the extent that the allegations in Paragraph 6 of the Complaint refer to Chapco, Rowe states that it lacks sufficient knowledge to form a belief as to the truth of said allegations and, therefore, it denies each and every one of them.

7. **Complaint:** Analyses of soil samples taken in February, 2001 from the Property reveal hazardous substances to be present. Specifically, tetrachlorothene, arsenic benzo(a)pyrene and lead were found in the soil in the following concentrations:

Compound	Boring No.	Depth of Sample (in feet)	Concentration
Tetrachloroethene	B-2	0-3	330 parts per billion (ppb)
Arsenic	B-3	0-3	18,000 ppb
Benzo(a)pyrene	B-1	0-3	230 ppb
Lead	B-1	0-3	440,000 ppb

Answer: Rowe lacks sufficient knowledge with which to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint and, therefore, it denies each and every one of them.

8. **Complaint:** The contamination of the soil at the Property results from the Respondents' use of the hazardous substances at the Property.

Answer: To the extent that the allegations in Paragraph 8 of the Complaint refer to Coleman and/or Rowe, Rowe denies each and every one of said allegations. To the extent that the allegations in Paragraph 8 of the Complaint refer to Chapco, Rowe lacks sufficient knowledge to form a belief as to the truth of said allegations and, therefore, it denies each and every one of them.

9. **Complaint:** Section 3.53 of the Act defines "Waste" as, inter alia, any "discarded material" resulting from commercial operations (415 ILCS 5/3.53).

Answer: The allegations contained in Paragraph 9 of the Complaint are conclusions of law for which no answer is required.

10. **Complaint:** The hazardous substances found in the soil at the Property, including tetrachloroethene, arsenic, benzo(a)pyrene and lead, constitute "Waste" as that term is defined in Section 3.53 of the Act (415 ILCS 5/3.53).

Answer: With respect to the allegations contained in Paragraph 10 that hazardous substances including tetrachloroethene, arsenic, benzo(a)pyrene and lead, were found in the soil at the Property, Rowe lacks sufficient knowledge to form a belief as to the truth of these allegations and, therefore, it denies each and every one of them. Rowe denies each and every one of the remainder of the allegations contained in Paragraph 10.

11. **Complaint:** Section 3.08 of the Act defines "Disposal" as follows:

> "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

415 ILCS 5/3.08.

Answer: The allegations contained in Paragraph 11 of the Complaint are conclusions of law for which no answer is required.

12. **Complaint:** The disposal of waste has occurred at the Property, as evidenced by the existence of hazardous substances, including tetrachloroethene, arsenic, benzo(a)pyrene and lead in the soil at the Property.

Answer: With respect to the allegations contained in Paragraph 12 that hazardous substances including tetrachloroethene, arsenic, benzo(a)pyrene and

lead, exist in the soil at the Property, Rowe lacks sufficient knowledge to form a belief as to the truth of these allegations and, therefore, it denies each and every one of them. Rowe denies each and every one of the remainder of the allegations contained in Paragraph 12.

13. **Complaint:** Section 21 (e) of the Act provides that:

> No person shall . . . [d]ispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

415 ILCS 5/21 (e).

Answer: The allegations contained in Paragraph 13 of the Complaint are conclusions of law for which no answer is required.

14. **Complaint:** The Property does not meet the requirements of a waste disposal site or facility under the Act and applicable Illinois Pollution Control Board regulations.

Answer: Rowe states that it lacks sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and, therefore, it denies each and every one of them.

15. **Complaint:** By causing or allowing the contamination of soil at the Property with hazardous substances, including tetrachloroethene, arsenic, benzo(a)pyrene and lead the Respondents have engaged in the disposal of waste at the Property in violation of Section 21 (e) of the Act.

Answer: Rowe denies each and every one of the allegations *contained in Paragraph 15 of* the Complaint.

16. **Complaint:** Such violation of Section 21 (e) of the Act is continuing, and will continue unless and until abated by order of the Illinois Pollution Control Board.

Answer: Rowe denies each and every one of the allegations contained in Paragraph 16 of the Complaint.

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

FIRST AFFIRMATIVE DEFENSE: DUPLICITOUS ACTION

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin. Code §741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that allegedly results from the alleged release or substantial threat *of a release of* hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations.

[35 Ill. Admin. Code §741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses allowed by law, including the defense that the Board lacks subject matter jurisdiction under Section 31 (d) of the Act. [415 ILCS 5/31 (d).]

3. In order for the Board to have subject matter jurisdiction over a "citizen's suit" under Section 31 (d) of the Act, the proceeding cannot be "duplicitous" or "duplicative", as those terms are used in the Act and Board regulations promulgated pursuant thereto. [415 ILCS 5/ 31 (d) & 35 Ill. Admin. Code Parts 101 & 103.]

4. A "citizen's suit" is "duplicitous" or "duplicative" if it is substantially similar to another proceeding brought before another forum. [35 Ill. Admin. Code § 101.202.]

5. Prior to the filing of its Complaint herein, Cole Taylor filed a lawsuit against Rowe in the Cook County Circuit Court, *Cole Taylor Bank v.Rowe Industries, Inc.,, et al.*, 97 L 004984 (**"the Circuit Court Case"**). (A copy of the complaint in the Circuit Court Case is attached hereto as Exhibit "A" and it is incorporated herein by reference.)

6. As it does in Paragraphs 6 through16 of its Complaint filed herein, in Paragraphs 7 and 11 through13 of its complaint filed in the Circuit Court Case, Cole Taylor alleged that Rowe violated Section 21 (e) of the Act, by "causing or allowing the contamination of the soil at the Property with hazardous substances". [415 ILCS 5/21 (e).]

7. As it has done herein, in the Circuit Court Case, Rowe filed an answer denying those allegations. (A copy of Rowe's answer in the Circuit Case is attached hereto as Exhibit "B" and it is incorporated herein by reference.)

8. For its relief herein, Cole Taylor seeks an order from the Board that Rowe remediate the Property through the removal of the contamination that is allegedly on the

Property and that allegedly resulted from the disposal of hazardous substances Cole Taylor claims occurred on the Property. For its relief in the Circuit Court Case, Cole Taylor sought a monetary sum ($250,000.00) against Rowe that allegedly equaled the cost to remediate the Property through the removal of the contamination that was allegedly on the Property and that allegedly resulted from the disposal of hazardous substances Cole Taylor claimed occurred on the Property.

9. The "citizen's suit" brought herein is substantially similar to the proceeding brought in the Circuit Court Case. Therefore, the "citizen's suit" brought herein is "duplicitous" or "duplicative" as those terms are used in the Act and Board regulations promulgated pursuant thereto. [415 ILCS 5/ 31 (d) & 35 Ill. Admin. Code Parts 101 & 103.] .

10. Because the "citizen's suit" brought herein is "duplicitous" or "duplicative", the Board lacks subject matter jurisdiction under Section 31 (d) of the Act. [415 ILCS 5/ 31 (d).]

11. Under Section 31 (d) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/31 (d) & 35 Ill. Admin. Code § 741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

SECOND AFFIRMATIVE DEFENSE: LACK OF MATERIAL CAUSATION/CONTRIBUTION

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin. Code §741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that allegedly results from the alleged release or substantial threat of a release of hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, [35 Ill. Admin. Code § 741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses allowed by law, including the limitations set forth in Section 58.9 (a) (2) (A) of the Act. [415 ILCS 5/58.9 (a) (2) (A).]

3. Under Section 58.9 (a) (2) (A) of the Act, a "citizen's suit" such as the one herein is barred against any "person who neither caused nor contributed to in any material respect a release of [hazardous substances] on, in or under the site". [415 ILCS 5/58.9 (a) (2) (A).]

4. On information and belief, at all relevant times several of the hazardous substances for which Cole Taylor alleges to have found in the soil at the Property and for which it seeks to hold Rowe liable to remediate are found to exist naturally in all soils throughout the North American continent and/or the world.

5. On information and belief, at all relevant times the hazardous substances Cole Taylor alleges to have found in the soils at the Property and for which it seeks to hold Rowe liable to remediate were processed, stored or otherwise used by the manufacturing and other businesses located on the various parcels of real estate adjoining or near the Property. At all relevant times these other businesses were owned and/or operated by third parties over whom Rowe had no control and for whose acts it cannot be held responsible.

6. At no time did Coleman or Rowe cause, allow or contribute in any way to the presence of the hazardous substances Cole Taylor claims to have found at the Property. If the Board finds that hazardous substances do exist at the Property, their existence is due to an act of God and/or to the acts or omissions of unaffiliated third parties over whom Rowe had no control and for whose acts it cannot be held responsible.

7. Rowe neither caused nor contributed to in any material respect a release of hazardous substances on, in, under or from the Property as those terms are used in Section 58.9 (2) (A) of the Act. [415 ILCS 5/58.9 (a) (2) (A).]

8. Under Section 58.9 (a) (2) (A) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/58.9 (a) (2) (A) & 35 Ill. Admin. Code § 741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

THIRD AFFIRMATIVE DEFENSE: ACT OF GOD

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin. Code §741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that allegedly results from the alleged release or substantial threat of a release of hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations. [35 Ill. Admin. Code § 741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) (1) (A) of the Act. [415 ILCS 5/22.2 (j) (1) (A).]

3. Under Section 22.2 (j) (1) (A) of the Act, no person shall be held liable to remediate any release or threatened release of a hazardous substance and the damages resulting therefrom if it can be shown by the preponderance of the evidence that said release was caused solely by an act of God. [415 ILCS 5/22.2 (j) (1) (A).]

4. On information and belief, at all relevant times several of the hazardous substances for which Cole Taylor alleges to have found in the soil at the Property and for which it seeks to hold Rowe liable to remediate are found to exist naturally in all soils throughout the North American continent and/or the world.

5. At no time did Coleman or Rowe cause, allow or contribute in any way to the presence of the hazardous substances Cole Taylor claims to have found at the Property. If the Board finds that hazardous substances do exist at the Property, their existence is due to an act of God as that term is used in Section 22.2 (j) (1) (A). [415 ILCS 5/22.2 (j) (1) (A).]

6. Under Section 22.2 (j) (1) (A) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/22.2 (j) (1) (A) & 35 Ill. Admin. Code § 741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

FOURTH AFFIRMATIVE DEFENSE: ACT OF A THIRD PARTY

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin Code § 741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that allegedly results from the alleged release or substantial threat of a release of hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations. [35 Ill. Admin. Code §741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) (1) (C) of the Act. [415 ILCS 5/22.2 (j) (1) (C).]

3. Under Section 22.2 (j) (1) (C) of the Act, no person shall be held liable to remediate any release or threatened release of a hazardous substance and the damages resulting therefrom if it can be shown by the preponderance of the evidence that said release was caused solely by an third party, "other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a

contractual relationship, existing directly or indirectly, with the defendant". [415 ILCS 5/22.2 (j) (1) (C).]

4. On information and belief, at all relevant times several of the hazardous substances Cole Taylor alleges to have found in the soils at the Property and for which it seeks to hold Rowe liable to remediate were processed, stored or otherwise used by the manufacturing and other businesses located on the various parcels of real estate adjoining or near the Property. At all times relevant these other businesses were owned and/or operated by third parties as that term is used in Section 22.2 (j) (1) (C) of the Act. [415 ILCS 5/22.2 (j) (1) (C).]

5. At no time did Coleman or Rowe cause, allow or contribute in any way to the presence of the hazardous substances Cole Taylor claims to have found at the Property. If the Board finds that hazardous substances do exist at the Property, their existence is due to the acts or omissions of third parties as that term is used in Section 22.2 (j) (1) (C) of the Act. [415 ILCS 5/22.2 (j) (1) (C).]

6. Under Section 22.2 (j) (1) (C) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/22.2 (j) (1) (C) & 35 Ill. Admin. Code § 741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

FIFTH AFFIRMATIVE DEFENSE:
RELEASE PERMITTED BY STATE OR FEDERAL LAW

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin. Code §741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that allegedly results from the alleged release or substantial threat of a release of hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations. [35 Ill. Admin. Code §741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) (2) of the Act. [415 ILCS 5/22.2 (j) (2).]

3. Under Section 22.2 (j) (2) of the Act, no person shall be held liable to remediate any release or threatened release of a hazardous substance and the damages resulting therefrom if it can be shown by the preponderance of the evidence that said release is "permitted by State or federal law". [415 ILCS 5/22.2 (j) (2).]

4. Under Title XVII of the Act, the Board and/or the IEPA have established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is to be used for "commercial/industrial purposes". These regulations are commonly referred to as the Tiered Approach To Corrective Action Objectives or **"TACO"** Regulations. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

5. As part of the TACO Regulations, the Board and/or the IEPA have also established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is to be used such that any "engineered barriers" to exposure to said contamination will not be disturbed. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

6. As part of the TACO Regulations, the Board and/or the IEPA have also established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is located in a community that has an ordinance outlawing the use of groundwater for potable purposes. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

7. On information and belief, at all times relevant the Property has been located in the center of a large commercial/industrial complex and it is surrounded by numerous facilities that are used primarily for commercial/industrial purposes. At all relevant times, the Village of River Grove has had in effect a zoning ordinance whereby the entire area where the Property is located is zoned for commercial/industrial purposes.

8. On information and belief, at all relevant times the hazardous substances Cole Taylor alleges to have found in the soils at the Property and for which it seeks to

hold Rowe liable to remediate were processed, stored or otherwise used by the manufacturing and other businesses located on the various parcels of real estate adjoining or near the Property. At all relevant times these other businesses were owned and/or operated by third parties over whom Rowe had no control and for whose acts it cannot be held responsible.

9. At no time did Coleman or Rowe cause, allow or contribute in any way to the presence of the hazardous substances Cole Taylor claims to have found at the Property.

10. On or about January 31, 2001, the lease terminated and the Property was vacated. On information and belief, from that point forward and until they leased the Property to an unaffiliated third party in May of 2001, the Property was under the exclusive possession and control of Cole Taylor and the Property's beneficial owners.

11. On information and belief, although they knew of the alleged existence of hazardous substances on the Property, from the time they took exclusive possession and control of the Property until the present neither Cole Taylor nor the beneficial owners of the Property have made any effort to remove or otherwise remediate this alleged contamination.

12. On information and belief, in about May 2001, Cole Taylor and the beneficial owners of the Property leased the Property to an unaffiliated third party, whereby that third party is allowed to use the Property for commercial/industrial purposes for a period of up to 10 years. On information and belief, the third party tenant intends to use the Property for commercial/industrial purposes during the period of the lease.

13. On information and belief, at all relevant times there have existed on the Property structures that act as engineered barriers to exposure to the alleged contamination at the Property. On information and belief, the third party tenant does not intend to remove or disturb these structures during his/her occupation and use of the Property.

14. On information and belief, at all relevant times the Village of River Grove has had an ordinance in effect that outlaws the use of groundwater for potable purposes.

15. On information and belief, the third party tenant is aware of the allegations of contamination at the Property. Yet, he/she has occupied the Property without any remediation of the alleged contamination at the Property that Cole Taylor claims herein is necessary.

16. On information and belief, if the Board finds that the alleged contamination at the Property does exist, at all times relevant said contamination has never exceeded the Board's standards for commercial/industrial use. Nor has it ever exceeded the Board's standards that are applicable if engineered barriers remain in place. Nor has it ever exceeded those standards that are applicable because the Village of River Grove has an ordinance outlawing the use of groundwater for potable purposes.

17. On information and belief, if the Board finds that the alleged contamination does exist at the Property, then at all times relevant said contamination has constituted a release of hazardous substances permitted under State law, as set forth in Section 22.2 (j) (2) of the Act.

18. Under Section 22.2 (j) (2) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/22.2 (j) (2) & 35 Ill. Admin. Code §741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

SIXTH AFFIRMATIVE DEFENSE: SECTION 33 (c) CRITERIA

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin. Code §741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that results from the alleged release or substantial threat of a release of hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations. [35 Ill. Admin. Code §741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses

allowed by law, including the defenses set forth in Section 33 (c) of the Act. [415 ILCS 5/33 (c).]

3. Under Section 33 (c) of the Act, in making its order and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges and deposits involved, including, but not limited to:

i. the character and degree of injury to, of interference with the protection of the health, general welfare and physical property of the people;

ii. the social and economic value of the pollution source;

iii. the suitability or unsuitability of the pollution source in the area in which it is located, including the priority of location in the area involved;

iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, deposits resulting from such pollution source; and

v. any subsequent compliance.

[415 ILCS 5/33 (c).]

4. Under Title XVII of the Act, the Board and/or the IEPA have established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is to be used for "commercial/industrial purposes". These regulations are commonly referred to as the Tiered Approach To Corrective Action Objectives or **"TACO"** Regulations. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

5. As part of the TACO Regulations, the Board and/or the IEPA have also established a set of standards for contaminants in the soils of the State of Illinois that

are permissible if the site in question is to be used such that any "engineered barriers" to exposure to said contamination will not be disturbed. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

6. As part of the TACO Regulations, the Board and/or the IEPA have also established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is located in a community that has an ordinance outlawing the use of groundwater for potable purposes. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

7. On information and belief, at all times relevant the Property has been located in the center of a large commercial/industrial complex and it is surrounded by numerous facilities that are used primarily for commercial/industrial purposes. At all times relevant, the Village of River Grove has had in effect a zoning ordinance whereby the entire area where the Property is located is zoned for commercial/industrial purposes.

8. On information and belief, at all relevant times the hazardous substances Cole Taylor alleges to have found in the soils at the Property and for which it seeks to hold Rowe liable to remediate were processed, stored or otherwise used by the manufacturing and other businesses located on the various parcels of real estate adjoining or near the Property. At all relevant times these other businesses were owned and/or operated by third parties over whom Rowe had no control and for whose acts it cannot be held responsible.

9. At no time did Coleman or Rowe cause, allow or contribute in any way to the presence of the hazardous substances Cole Taylor claims to have found at the Property.

10. On or about January 31, 2001, the lease terminated and the Property was vacated. On information and belief, from that point forward and until they leased the Property to an unaffiliated third party in May of 2001, the Property was under the exclusive possession and control of Cole Taylor and the Property's beneficial owners.

11. On information and belief, although they knew of the alleged existence of hazardous substances on the Property, from the time they took exclusive possession and control of the Property until the present neither Cole Taylor nor the beneficial owners of the Property have made any effort to remove or otherwise remediate this alleged contamination.

12. On information and belief, in about May 2001, Cole Taylor and the beneficial owners of the Property leased the Property to an unaffiliated third party, whereby that third party is allowed to use the Property for commercial/industrial purposes for a period of up to 10 years. On information and belief, the third party tenant intends to use the Property for commercial/industrial purposes during the period of the lease.

13. On information and belief, at all times relevant there have existed on the Property structures that act as engineered barriers to exposure to the alleged contamination at the Property. On information and belief, the third party tenant does not intend to remove or disturb these structures during his/her occupation and use of the Property.

14. On information and belief, at all relevant times the Village of River Grove has had an ordinance in effect that outlaws the use of groundwater for potable purposes.

15. On information and belief, the third party tenant is aware of the allegations of contamination at the Property. Yet, he/she has occupied the Property without any remediation of the alleged contamination at the Property that Cole Taylor claims herein is necessary.

16. On information and belief, if the Board finds that the alleged contamination at the Property does exist, at all times relevant said contamination has never exceeded the Board's standards for commercial/industrial use. Nor has it ever exceeded the Board's standards that are applicable if engineered barriers remain in place. Nor has it ever exceeded those standards that are applicable because the Village of River Grove has an ordinance outlawing the use of groundwater for potable purposes.

17. If the Board finds that the alleged contamination does exist at the Property, then at all times relevant said contamination has constituted a reasonable emission, discharge and/or deposit as set forth in Section 33 (c) of the Act:

i. there has been no injury to, or interference with, the protection of the health, general welfare and physical property of the people;

ii. the alleged pollution source has social and economic value;

iii. the alleged pollution source is suitable to the area in which it is located, including the question of priority of location in the area involved;

iv. it is technically impractical and economically unreasonable to reduce or eliminate the alleged emissions, discharges or deposits resulting from the alleged pollution source; and

v. any alleged non-compliance is due exclusively to the acts or omissions of Cole Taylor, the beneficial owners and/or unaffiliated third parties and not Rowe.

18. Under Section 33 (c) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/22.2 (j) (2) & 35 Ill. Admin. Code § 741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

SEVENTH AFFIRMATIVE DEFENSE: ARBITRARY AND UNREASONABLE HARDSHIP UNDER SECTION 31 (e) OF THE ACT

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Rowe alleges as follows:

1. Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations provides that:

> "Liability to perform or pay for the response that results from the release or substantial threat of a release of [hazardous substances] on, in, under or from a site is subject to all defenses allowed by law, including the defenses set forth in Section 22.2 (j) of the Act, and the limitations set forth in Section 58.9 (a) (2) of the Act. The respondent raising a defense set forth in Section 22.2 (j) or a limitation set forth in Section 58.9 (a) (2) of the Act must prove the defense or limitation by a preponderance of the evidence."

[35 Ill. Admin. Code §741.205 (b) (2).]

2. In the "citizen's suit" brought herein, Cole Taylor seeks to have Rowe perform a response that allegedly results from the alleged release or substantial threat of a release of hazardous substances on, in, under or from a site, as those terms are used in Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations. [35 Ill. Admin. Code §741.205 (b) (2).] Therefore, this "citizen's suit" is subject to all defenses allowed by law, including the defenses set forth in Section 33 (e) of the Act. [415 ILCS 5/33 (c).]

3. Under Section 33 (e) of the Act, in determining liability for alleged violations Act and Board regulations, the Board shall take into consideration whether compliance with the Act and the Board's regulations would impose an arbitrary or unreasonable hardship on the respondent. [415 ILCS 5/33 (e).]

4. Under Title XVII of the Act, the Board and/or the IEPA have established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is to be used for "commercial/industrial purposes". These regulations are commonly referred to as the Tiered Approach To Corrective Action Objectives or "TACO" Regulations. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

5. As part of the TACO Regulations, the Board and/or the IEPA have also established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is to be used such a manner that any "engineered barriers" to exposure to said contamination will not be disturbed. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

6. As part of the TACO Regulations, the Board and/or the IEPA have also established a set of standards for contaminants in the soils of the State of Illinois that are permissible if the site in question is located in a community that has an ordinance outlawing the use of groundwater for potable purposes. [415 ILCS 5/58.11 & 35 Ill. Admin. Code Part 742.]

7. On information and belief, at all times relevant the Property has been located in the center of a large commercial/industrial complex and it is surrounded by numerous facilities that are used primarily for commercial/industrial purposes. On information and belief, at all times relevant, the Village of River Grove has had in effect a zoning ordinance whereby the entire area where the Property is located is zoned for commercial/industrial purposes.

8. On information and belief, at all relevant times the hazardous substances Cole Taylor alleges to have found in the soils at the Property and for which it seeks to hold Rowe liable to remediate were processed, stored or otherwise used by the manufacturing and other businesses located on the various parcels of real estate adjoining or near the Property. At all relevant times these other businesses were owned and/or operated by third parties over whom Rowe had no control and for whose acts it cannot be held responsible.

9. At no time did Coleman or Rowe cause, allow or contribute in any way to the presence of the hazardous substances Cole Taylor claims to have found at the Property.

10. On or about January 31, 2001, the lease terminated and the Property was vacated. From that point forward, on information and belief, until they leased the

Property to an unaffiliated third party in May of 2001, the Property was under the exclusive dominion and control of Cole Taylor and the Property's beneficial owners.

11. On information and belief, in about May 2001, Cole Taylor and the beneficial owners of the Property leased the Property to an unaffiliated third party, whereby that third party is allowed to use the Property for commercial/industrial purposes for a period of up to 10 years. On information and belief, the third party tenant intends to use the Property for commercial/industrial purposes during the period of the lease.

12. On information and belief, at all times relevant there have existed on the Property structures that act as engineered barriers to exposure to the alleged contamination at the Property. On information and belief, the third party tenant does not intend to remove or disturb these structures during his/her occupation and use of the Property.

13. On information and belief, at all times relevant the Village of River Grove has had an ordinance in effect that outlaws the use of groundwater for potable purposes.

14. On information and belief, the third party tenant is aware of the allegations of contamination at the Property. Yet, he/she has occupied the Property without any remediation of the alleged contamination at the Property that Cole Taylor claims herein is necessary.

15. On information and belief, if the Board finds that the alleged contamination at the Property does exist, at all times relevant said contamination has never exceeded the Board's standards for commercial/industrial use. Nor has it ever exceeded the

Board's standards if engineered barriers remain in place. Nor has it ever exceeded those standards that are applicable because the Village of River Grove has an ordinance outlawing the use of groundwater for potable purposes.

16. If the Board finds that the alleged contamination does exist at the Property, then at all times relevant removal of some or all of said contamination in order to comply with any TACO standard more stringent than that related to commercial/use, taking into consideration engineered barriers and other institutional controls, including a local groundwater ordinance such as the Village of River Grove has in effect, would impose an arbitrary or unreasonable hardship on Rowe.

17. Under Section 33 (e) of the Act, as incorporated by Section 741.205 (b) (2) of the Board's Proportionate Share Liability Regulations, this "citizen's suit" is barred. [415 ILCS 5/33 (e) & 35 Ill. Admin. Code § 741.205 (b) (2).]

Wherefore, Rowe asks that the Board render a judgment in its favor and against Cole Taylor; and that the Board enter an order that Cole Taylor be awarded nothing as against Rowe and denying Cole Taylor any and all of the relief it seeks herein against Rowe; and such other and further relief to which Rowe is entitled under the law.

Rowe Industries, Inc.,
A Delaware Corporation,
Respondent

By: William A. Speary
One of its Attorneys

William A. Speary, Jr.
Much Shelist Freed Denenberg Ament & Rubenstein
200 North La Salle St., Suite 2100
Chicago, IL 60601-109
(312) 621-1753
ID # 80580
ARDC # 6189961

Exhibit A

MOTION CALL W

Attorney No. 90700

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

COLE TAYLOR BANK, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323; as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904,

Plaintiff,

vs.

ROWE INDUSTRIES, INC., a corporation, successor to COLEMAN CABLE AND WIRE COMPANY, a corporation, and CHAPCO CARTON COMPANY, a corporation,

Defendants.

NO. 97L04984

97L 004984
CALENDAR W
BREACH OF CONTRA

COMPLAINT AT LAW

Plaintiff, Cole Taylor Bank, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323; as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904; complains against the defendants Rowe Industries, Inc., a corporation, successor to Coleman Cable and Wire Company, a corporation, and Chapco Carton Company, a corporation, and in support of its complaint states:

1. Plaintiff, Cole Taylor Bank, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323, as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904 (hereafter "Michigan Avenue") is an Illinois land trust holding legal title to certain real property located in Cook County, Illinois, commonly known as 1810 North Fifth Avenue, River Grove, Illinois.

2. Defendant, Rowe Industries, Inc., (hereafter "Rowe") successor to Coleman Cable and Wire Company (hereafter "Coleman") is a corporation organized under the laws of Delaware. Plaintiff is informed and believes, and upon such information and belief alleges that Rowe has its principal place of business in Phoenix, Arizona.

3. Defendant, Chapco Carton Company (hereafter "Chapco") is a corporation organized under the laws of Delaware, having its principal place of business in River Grove, Cook County, Illinois.

ALLEGATIONS COMMON TO ALL COUNTS

4. On May 21, 1971 Coleman, as lessee, entered into a written lease with Michigan Avenue as lessor, for the rental of certain property commonly known as 1810 North Fifth Avenue, River Grove, Illinois, (hereafter the "real estate") which lease terminated on December 31, 1996. A copy of that lease is attached hereto as Exhibit 1.

5. Plaintiff is informed and believes, and upon such information and belief alleges that in 1984 Coleman, as sublessor, entered into a sub-lease agreement with Chapco as sub-lessee. Chapco remained in possession of the aforesaid rental real estate from 1984 as Coleman's sub-lessee until December 31, 1996, the date of expiration of Coleman's lease.

6. At no time during the term of its lease with plaintiff was Coleman released by plaintiff from any of Coleman's obligations under the lease aforesaid.

7. At various times between 1971 and the date of the filing of this Complaint, the exact dates of which are at present unknown to plaintiff, and during the time that the real estate was in the possession and control of Coleman and/or Chapco, either or both of Coleman and/or Chapco, knowingly caused or negligently permitted and allowed certain hazardous materials

containing, among other hazardous substances, significant concentrations of cadmium, ethylbenzene, toluene, xylene chromium and lead, to become deposited in the soil at the real estate.

8. As a direct and proximate result of the actions of Coleman and Chapco, the real estate has been significantly damaged, and plaintiff will be forced to spend large amounts of money to remediate the real estate.

COUNT I
BREACH OF CONTRACT

9. Section 601 of the lease between Coleman and plaintiff provides:

> "USE.
>
> Section 601. The demised premises shall be used for any business or purpose permitted by present zoning classifications, or as the said demised premises may be rezoned from time to time hereafter. Lessee shall not use or occupy the demised premises or permit the demised premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would violate any Certificate of Occupancy affecting the same, or which would cause structural injury to the improvements or cause the value or usefulness of the demised premises or any part thereof to diminish or which would constitute a public or private nuisance or waste, and Lessee agrees that it will promptly upon discovery of any such use, take all necessary steps to compel the discontinuance of such use and to oust the subtenants or occupants guilty of such use." (underlining supplied)

10. Section 701 of the lease between Coleman and plaintiff provides:

> Section 701. After the completion of the building by Lessor, Lessee agrees, at its expense, to keep the demised premises in good repair and in a clean and wholesome condition and to at all times fully comply with the health and police regulations in force and also that it will keep the improvements at any time situated upon the demised premises and all sidewalks and

areas and adjacent thereto as well as in the area thereof, safe and secure and conformable to the lawful and valid requirements of any municipality in which said demised premises may be situated and of all other public authorities, and will make at its own expense, all additions, improvements, alterations and repairs on the demised premises and on and to the appurtenances and equipment thereof required by any lawful authorities or which may be made necessary by the act or neglect of any other person or corporation (public or private), including supporting the streets and alleys adjoining the demised premises, and will keep Lessor harmless and indemnified at all times against any loss, damage, cost or expense by reason of the failure so to do in any respect or by reason of any accident, loss or damage resulting to persons or property from any use which may be made of said premises or of any improvements at any time situated thereon or by reason of or growing out of any act or thing done or omitted to be done upon said premises or in any building at any time situated thereon; and Lessee agrees that it will save, hold and keep Lessor and the demised premises free and clear of and from any and all claims, demands, penalties, liabilities, judgments, costs and expense, including reasonable attorneys' fees, arising out of any damage which may be sustained by adjoining property or adjoining owners or other persons or property in connection with any remodeling, altering or repairing of any building or buildings on the demised premises or the erection of any new building or buildings thereon, unless such action is underaken by Lessor pursuant to its obligations under this Lease." (underlining supplied)

11. At all relevant times there were in full force and effect a statute of the State of Illinois known as the Environmental Protection Act 415 ILCS 5/1 *et. seq.* (the "Act") prohibiting the disposal of waste except as specifically permitted therein, a relevant portion thereof which in words and figures is as follows:

> No person shall...[d]ispose, treat, store or abandon any waste, or transport any waste into this State for disposal treatment, storage or abandonment, except as a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

415 ILCS 5/21(e).

12. The real estate does not meet the requirements of a waste disposal site or facility under the Act and applicable Illinois Pollution Control Board regulations.

13. By causing or allowing the contamination of soil at the real estate with hazardous substances, the defendants have engaged in the disposal of waste at the real estate in violation of Section 21(e) of the Act.

14. The acts complained of herein that were done, suffered or permitted to be done by defendant constitute a violation and breach of the terms of Sections 601 and 701 of the lease attached as Exhibit 1.

15. As a result of the breaches of the lease aforesaid, plaintiff has been injured and the value of its property diminished by the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

WHEREFORE, plaintiff prays for judgment against defendant Rowe Industries, Inc., individually and as successor to Coleman Cable and Wire Company, in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

COUNT II
NEGLIGENCE AGAINST COLEMAN AND CHAPCO

16-23. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 8 inclusive as and for its allegations in paragraphs 16 to 23 inclusive in this Count II.

24. Plaintiff repeats and realleges the allegations contained in paragraph 12 as and for its allegations in paragraph 24 of this Count II.

25. At all relevant times plaintiff was in the exercise of due care and caution for itself and for others.

26. The acts of defendant Coleman and Chapco were in violation of the statute aforesaid, negligent and in disregard of the rights of plaintiff and of the general public and caused harm to plaintiff and its real property.

WHEREFORE, plaintiff prays for judgment for compensatory damages against defendants Rowe Industries, Inc., individually and as successor to Coleman Cable and Wire Company, and Chapco Carton Company, jointly and severally in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

COLE TAYLOR BANK, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323; and as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904

Dated: April 29, 1997

One of its Attorneys

GERALD B. MULLIN
JOSEPH R. PODLEWSKI, JR.
Rosenthal and Schanfield
55 East Monroe Street
46th Floor
Chicago, Illinois 60603
(312) 236-5622

EXHIBIT A

LEASE

THIS INDENTURE, made May 21, 1971, between Michigan Avenue National Bank of Chicago, as Trustee under Trust #1904, dated May 1, 1971 (hereinafter sometimes referred to as Lessor), and Coleman Cable & Wire Company, a Delaware corporation (hereinafter sometimes referred to as Lessee); wherein the parties covenant and agree as follows:

CONSIDERATION AND PROPERTY.

Section 101. Lessor, for and in consideration of the rents herein reserved and of the covenants and agreements herein contained on the part of the Lessee to be kept, observed and performed, does by these presents, demise and lease to Lessee and Lessee hereby hires and lets from Lessor the real estate and all improvements now located thereon or provided to be constructed thereon, as particularly described and set forth in SCHEDULE A attached hereto. Said real estate and improvements are sometimes hereinafter referred to as "demised premises."

TERM OF LEASE.

Section 201. The term of this Lease shall commence upon the dates and under the circumstances provided for in the attached SCHEDULE B and the term as so fixed is sometimes hereinafter referred to as "original term."

CONSTRUCTION OF IMPROVEMENTS.

Section 301. Lessor agrees to construct on the demised premises a structure and improvements in accordance with the provisions contained in SCHEDULE A attached.

Section 302. Lessor shall obtain all necessary permits at its expense, shall diligently proceed with such construction and shall complete the same and shall deliver possession thereof to Lessee in accordance with the provisions set forth in said SCHEDULE A.

RENTAL.

Section 401. In consideration of the leasing, Lessee aforesaid agrees to pay Lessor rent as specified and provided in SCHEDULE C attached hereto.

TAXES AND ASSESSMENTS.

Section 501. Lessee further agrees to pay as additional rent for the demised premises, all taxes and assessments, general and special, water rates, utilities and all other impositions, ordinary and extraordinary, of every kind and nature whatsoever, which may be levied, assessed or imposed upon the demised premises or any part thereof or upon any building or improvements at any time situated thereon, accruing or becoming due and payable during the term of this Lease and any extension thereof (such matters being sometimes referred to herein as "impositions"), provided, however, that the general taxes levied against the demised premises shall be prorated between Lessor and Lessee as of the date of commencement of the term hereof for the first year of the term for the last year of the term hereof and any extensions thereof, all on the basis of the then last available tax bills. Benefit may be taken by Lessee of the provisions of any statute or ordinance permitting any assessment to be paid over a period of years.

Section 502. Nothing herein contained shall be construed to require Lessee to pay any capital levy, excise, franchise, inheritance, estate, succession or transfer tax of Lessor or any income or excess profits tax assessed upon or in respect of any income of Lessor or chargeable to or required to be paid by Lessor unless such tax shall be specifically levied against the income of Lessor derived from the rent by this Lease reserved, expressly and as and for a specific substitute for the real estate taxes, in whole or in part, upon the demised premises or the improvements situated thereon in which event said rent shall be considered as though it were the sole income of Lessor.

Section 503. Lessee further agrees to deliver to Lessor, duplicate receipts or photostatic copies thereof showing the payment of all said taxes, assessments, and other impositions, within thirty (30) days after the respective payments evidenced thereby.

Section 504. Lessor shall, at its option, have the right at all times during the term hereof to pay any impositions not paid by Lessee, and the amounts so paid, including reasonable expenses, shall be so much additional rent due at the next rent date after any such payments, with interest at the rate of ten per cent (10%) per annum from the date of payment thereof.

Section 505. Lessee may contest the amount or validity of any imposition by appropriate proceedings at Lessee's cost and expense and, notwithstanding the provisions

of section 501, the Lessee may postpone or defer payment of any such imposition if the Lessee shall have deposited with Lessor or such bank or trust company as Lessor may in writing direct, the amount so contested and unpaid, plus interest and penalties thereon and all charges that may or might be assessed against or become a charge on the demised premises in said proceedings, unless the demised premises or any part thereof be, by reason of such deferment, in imminent danger of being forfeited or lost. Upon the termination of such proceedings, Lessee shall pay the amount of such imposition, or part thereof as finally determined, together with any costs, fees, interest, penalties or other liability in connection therewith, and upon such payment Lessor shall return or cause to be returned to the Lessee the amount deposited as aforesaid, without interest. If at any time during the continuance of such proceedings the amount deposited as aforesaid shall be less than such unpaid imposition plus penalties, costs and interest, Lessee shall, upon demand, deposit an additional sum equal to such deficiency, and upon failure of Lessee so to do, the amount theretofore deposited may be applied by Lessor to the payment of such imposition, and interest and penalties in connection therewith, and any costs, fees or other liability accruing in any such proceedings. Lessor shall not be required to join in any such proceedings, unless law shall require that such proceedings be brought by or in the name of the owner of the demised premises, in which event Lessor shall join in such proceedings or permit the

same to be brought in Lessor's name, but shall not be subject to any liability in connection with any such proceedings, and Lessee shall indemnify and save harmless Lessor from such liability. Lessee shall be entitled promptly to all refunds with respect to any imposition paid by it.

USE.

Section 601. The demised premises shall be used for any business or purpose permitted by present zoning classifications, or as the said demised premises may be rezoned from time to time hereafter. Lessee shall not use or occupy the demised premises or permit the demised premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would violate any Certificate of Occupancy affecting the same, or which would cause structural injury to the improvements or cause the value or usefulness of the demised premises or any part thereof to diminish or which would constitute a public or private nuisance or waste, and Lessee agrees that it will promptly upon discovery of any such use, take all necessary steps to compel the discontinuance of such use and to oust the subtenants or occupants guilty of such use.

MAINTENANCE OF PREMISES.

Section 701. After the completion of the building by Lessor, Lessee agrees, at its expense, to keep the demised premises in good repair and in a clean and wholesome condition and to at all times fully comply with all health and po-

lice regulations in force and also that it will keep the improvements at any time situated upon the demised premises and all sidewalks and areas adjacent thereto, as well as in the area thereof, safe and secure and conformable to the lawful and valid requirements of any municipality in which said demised premises may be situated and of all other public authorities, and will make, at its own expense, all additions, improvements, alterations and repairs on the demised premises and on and to the appurtenances and equipment thereof required by any lawful authorities or which may be made necessary by the act or neglect of any other person or corporation (public or private), including supporting the streets and alleys adjoining the demised premises, and will keep Lessor harmless and indemnified at all times against any loss, damage, cost or expense by reason of the failure so to do in any respect or by reason of any accident, loss or damage resulting to persons or property from any use which may be made of said premises or of any improvements at any time situated thereon or by reason of or growing out of any act or thing done or omitted to be done upon said premises or in any building at any time situated thereon; and Lessee agrees that it will save, hold and keep Lessor and the demised premises free and clear of and from any and all claims, demands, penalties, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, arising out of any damage which may be sustained by adjoining property or adjoining owners or other persons or property in connection with any remodeling, alter-

ing or repairing of any building or buildings on the demised premises or the erection of any new building or buildings thereon, unless such action is undertaken by Lessor pursuant to its obligations under this Lease.

Section 702. Section 701 shall not apply to any obligation or liability arising in connection with Lessor's duty to construct, repair, or reconstruct the building and improvements pursuant to the terms of this Lease.

INSURANCE COVERAGE.

Section 801. Lessee further agrees that it will at all times during the term hereof, at its own cost and expense, carry and maintain, for the mutual benefit of Lessor and Lessee, such policy or policies of insurance with companies reasonably satisfactory to Lessor and in such amounts as are set forth and provided in SCHEDULE D attached hereto. All such policies shall provide that the same may not be cancelled or altered except upon ten (10) days' prior written notice to Lessor.

Section 802. In case any action or proceeding shall be commenced against Lessor growing out of any casualty loss, cost, damage or expense (other than matters arising in connection with Lessor's construction or restoration of the building and improvements as provided herein), Lessor may give written notice of the same to Lessee and thereafter Lessee shall assume and discharge all obligations to defend the same and save and keep Lessor harmless from all expenses, counsel fees, costs, liabilities, judgments and executions in any manner growing out of, pertaining to or connected therewith.

as insureds thereunder, and shall provide that losses shall be paid to said insureds as their respective interest may appear. At the request of Lessor, a mortgage clause may be included in said policies covering Lessor's mortgagee. Said policies shall contain a waiver by the insurance company of recourse against Lessee and its agents because of any act or negligence of Lessee and shall further provide that the same shall not be cancelled or altered except upon ten (10) days' prior written notice to Lessor and to mortgagee. The original of such policies shall be deposited with the mortgagee and a duplicate shall be deposited with Lessor.

Section 806. Not less frequently than once in each five (5) years after the commencement of the term hereof, Lessee shall furnish, at its expense, to Lessor, insurance appraisals such as are regularly and ordinarily made by insurance companies, if procurable for such purpose, in order to determine the then insurable value of the building or buildings and improvements on the demised premises.

Section 807. It is further agreed that, in the event of loss under any such policy or policies, Lessee may elect to have the insurance proceeds paid to a corporate trustee selected by Lessor from among the five largest Chicago banks, to be held for the benefit of Lessor and Lessee, and to be paid to the Lessor by said trustee upon presentment of architects' or engineers' certificates for the expense of repairing or rebuilding the buildings or improvements which have been damaged or destroyed. Upon the completion of said re-

pairs or rebuilding, free from all liens of mechanics and materialmen and others, any surplus of insurance money shall be paid to Lessor. The fees and expenses of the corporate trustee shall be paid by Lessee.

Section 808. Lessee further agrees that, at Lessor's written request, and provided such insurance is obtainable from an agency of the United States Government, if and when obtainable, it will procure and maintain so-called war risk and war damage insurance on the improvements located upon the demised premises for not less than ninety per cent (90%) of their full insurance value above foundation. Such insurance shall provide for payment of loss thereunder to Lessor and Lessee, as their interests may appear, and shall at Lessor's request, contain a mortgage clause in favor of Lessor's mortgagee, and the policies or certificates evidencing such insurance shall be delivered to Lessor within sixty (60) days after demand, and renewals thereof shall be delivered to Lessor at least ten (10) days prior to the expiration date of the respective policies. The provisions of Section 807 of this Lease shall apply with respect to any loss payable under any such policy or policies of insurance.

DAMAGE OR DESTRUCTION.

Section 901. Lessor further agrees that in case of damage to or destruction of any building or improvements on the demised premises or of the fixtures and equipment therein, by fire or other casualty, it will promptly, at its expense, repair, restore, or rebuild the same to the extent

that it shall deem necessary or desirable in connection with the requirements of Lessee's business, provided that, upon the completion of such repairs, restoration or rebuilding, the value and rental value of the buildings and improvements upon the demised premises shall be substantially equal to the value and rental value of the buildings and improvements thereon immediately prior to the happening of such fire or other casualty. Rent shall not abate during the period of such repair, restoration or rebuilding irrespective of whether the improvements are not tenantable because of such damage or destruction.

Section 902. Lessee may make such alterations to the building as it may desire during the term of this Lease. Before commencing alterations involving an estimated cost of more than $25,000, (a) plans and specifications therefor, prepared by a reputable licensed architect or engineer, shall have been submitted to and approved by Lessor, (b) Lessee shall have furnished to Lessor, an estimate of the cost of the proposed work, certified to by the architect or engineer by whom such plans and specifications shall have been prepared; and (c) Lessee shall either have furnished to Lessor a bond on which Lessee shall be principal, and a surety company, authorized to do business in the state where the demised premises are located, satisfactory to Lessor, shall be surety, and which bond shall be in form satisfactory to Lessor, conditioned upon the completion of and payment in full

for such work within a reasonable time, subject, however, to delays occasioned by strikes, lockouts, acts of God, governmental restrictions or similar causes beyond the control of Lessee, or other security satisfactory to Lessor to insure payment for the completion of all work free and clear of liens.

Section 903. If, during the last two years of the original term, or during the renewal term, the building on the demised premises is so damaged by fire or other casualty as to render it untenantable in its entirety, Lessee may elect to terminate this Lease upon notice to the Lessor given not later than sixty days following the occurrence of such casualty. This Lease shall terminate upon the giving of such notice, and all payments due the Lessor shall be prorated to that date. If this Lease is so terminated, Lessor shall have no obligation to rebuild the buildings, and shall be entitled to the full amount of the insurance proceeds, if any.

LIENS.

Section 1001. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to said demised premises, nor shall the interest or estate of Lessor in said demised premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Lessee, and any claim to or lien upon said demised premises arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee and shall in all respects be subject and subordinate to the paramount title and rights of

Lessor in and to said premises and the buildings and improvements thereon. Lessee will not permit the demised premises to become subject to any mechanics', laborers' or materialmen's lien of record on account of labor or material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed on the demised premises by or at the direction or sufferance of Lessee. Lessee may contest the validity of any such lien or claimed lien at Lessee's cost, and thereby defer payment thereof, if Lessee shall have deposited with Lessor or such bank or trust company as Lessor may direct, the amount so contested and unpaid. Upon the termination of such proceedings, Lessee shall pay the amount of any judgment rendered, with all proper costs and charges, and will, at its expense, have the lien released and any judgment satisfied, whereupon Lessor shall return or cause to be returned to Lessee the amount deposited as aforesaid, without interest.

Section 1002. In case Lessee shall fail to contest the validity of any such lien or claimed lien referred to in section 1001 hereof and give security to Lessor to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, then Lessor may, at its election (but shall not be required so to do), remove or

discharge such lien or claim for lien (with the right, in its discretion, to settle or compromise the same), and any amounts advanced by Lessor for such purposes shall be so much additional rental due from Lessee to Lessor at the next rent date after any such payment, with interest at the rate of ten per cent (10%) per annum from the date of payment thereof.

CONDEMNATION.

Section 1101. If, during the term of this Lease, the entire demised premises shall be taken as a result of the exercise of the power of eminent domain or a conveyance in lieu thereof, this Lease shall terminate on the date of delivery of possession to condemnor under such eminent domain proceedings or conveyance in lieu thereof, and all rental and other sums payable by Lessee hereunder shall be prorated to the date of such delivery. Notwithstanding any judicial allocation of any award, the award is to be divided between Lessor and Lessee in accordance with the value of their respective estates in the demised premises, which shall be valued as of the date of delivery to condemnor as if this Lease had not been terminated. For this purpose the value of Lessor's estate in the demised premises shall be deemed to be an amount equal to the sum of the commuted value of the rent for the remainder of the term of this Lease and the commuted value of Lessor's reversionary interest in the demised premises (but not less than the then unpaid balance of Lessor's mortgage), and the value of Lessee's estate in the demised premises shall be deemed to be an amount equal to the balance of the award.

Section 1102. If thirty percent (30%) or more of the usable floor area of the building on the demised premises shall be taken as a result of the exercise of the power of eminent domain or a conveyance in lieu thereof, but less than the entire demised premises, or if a part of the demised premises is taken which results in a physical separation of the demised premises from the property contiguous thereto which is owned by Lessee so as to prevent Lessee from gaining access to the demised premises by travelling directly from its own property, and either of these two stated contingencies occurs within the last two years of the original term or during any extension thereof, Lessee may terminate this Lease by notice in writing given not more than sixty (60) days after delivery of possession in such proceeding, and shall specify a date not more than sixty (60) days after the giving of such notice as the date for such termination. Upon the date specified in such notice, this Lease shall terminate, and all rent and other sums payable by Lessee shall be prorated to the date of such termination. Notwithstanding any judicial allocation of the award, the award is to be allocated in the manner provided in section 1101 for a taking of the entire demised premise

Section 1103. If less than thirty percent (30%) of the usable floor area of the building on the demised premises shall be taken as a result of the exercise of the power of eminent domain, or if thirty percent (30%) or more of the usable floor area of the building is taken but Lessee does not terminate this Lease as provided in section 1102, this

Lease shall not terminate but shall continue in full force and effect for the remainder of the term of this Lease and extensions (if any), subject to the provisions hereof. Notwithstanding any judicial allocation of the award, the award is to be divided between Lessor and Lessee in accordance with the damage to the value of their respective estates in the demised premises, which shall be determined as of the date of delivery of possession to condemnor. Rent shall abate equitably. For the purpose of this section 1103 the damage to Lessor's estate in the demised premises shall be deemed to be an amount equal to the sum of the commuted value of the rent abated for the remainder of the stated term of this Lease and the commuted value of Lessor's reversionary interest in the demised premises, and the value of Lessee's estate in the demised premises shall be deemed to be an amount equal to the balance of the award. Lessor shall promptly restore (except for unavoidable delays) that portion of the building not so taken to an economically useful and architecturally complete unit of the same general character and condition (as nearly as may be possible) as the building existing before such taking.

Section 1104. If all or any portion of the demised premises shall be taken by the exercise of the right of eminent domain for governmental occupancy for a limited period, this Lease shall not terminate and Lessee shall continue to perform and observe all of its obligations hereunder as though such taking had not occurred except only to the extent that it may be prevented from so doing by reason of such taking. Les-

see, however, shall in no event be excused from the payment of rent and all other sums and charges required to be paid by Lessee under this Lease. In the event of such taking as in this section referred to, Lessee shall be entitled to receive the entire amount of any award made for such taking (whether paid by way of damages, rent or otherwise, provided, however, where the award is not to be paid as rent in substantially equal installments over the period of governmental occupancy, Lessor may require Lessee to deposit all or a portion of the award with Lessor which shall hold it in a separate bank account as a trust fund for Lessee's benefit to be applied against rent as it accrues hereunder) and Lessor hereby assigns such award to Lessee, unless the period of governmental occupancy extends beyond the termination of the term of this lease, in which case the award shall be apportioned between Lessor and Lessee at the time of such award and, in such apportionment, Lessor shall receive the full amount, if any, of any portion of said award which represents the cost of restoration at the termination of any such governmental occupancy. Lessee, at the termination of any such governmental occupancy, shall at its sole cost and expense restore the building as nearly as may be reasonably possible to the condition in which the same was prior to such taking, ordinary wear excepted, but Lessee shall not be required to do such restoration work if on or prior to the date of such termination of governmental occupancy, the term of this Lease shall have terminated or if such date of termination of governmental occupancy shall oc-

cur less than 2 years prior to the termination of the term of this Lease, in which event Lessee shall be entitled to the proceeds of the award, except for any part thereof representing the cost of restoration.

Section 1105. In applying the foregoing sections 1101-1104, the following provisions shall govern:

(a) In any proceeding Lessor shall be entitled to collect the entire award from the condemnor, without deduction for any estate or interest of Lessee under this lease. Lessor shall hold the award when collected in a separate bank account as a trust fund and shall turn over to Lessee its share of the award in accordance with said sections if no default then exists under this Lease.

(b) Whenever a determination is to be made as to the fair market value of the demised premises and the building at any future time (as in determining the commuted value of Lessor's reversionary interest in the demised premises and the building), such value shall be conclusively assumed to be the same as the value at the time the determination is being made.

(c) The discount rate to be used in determining the commuted value at any time of future money payments or of a reversionary interest in the demised premises or the building shall be the average of the prime rates then being charged by the two largest banks in Chicago, Illinois for ninety (90) day unsecured loans to borrowers of the highest credit standing, plus one percent (1%).

(d) Disputes arising under sections 1101-1105 shall be determined by arbitration pursuant to section 3101 hereof.

RENT ABSOLUTE.

Section 1201. Except as otherwise specifically provided herein, damage to or destruction of any portion or all of the buildings, structures and fixtures upon the demised premises, by fire, the elements or any other cause whatsoever, whether with or without fault on the part of Lessee, shall not terminate this Lease or entitle Lessee to surrender the demised premises or entitle Lessee to any abatement of or reduction in the rent payable, or otherwise affect the respective obligations of the parties hereto, any present or future law to the contrary notwithstanding. If the then-existing use of the demised premises should, at any time during the term of this Lease, be prohibited by law or ordinance or other governmental regulation, or prevented by injunction, or if there be any eviction by title paramount, this Lease shall not, except as otherwise specifically provided herein, be thereby terminated, nor shall Lessee be entitled by reason thereof to surrender the demised premises or to any abatement or reduction in rent, nor shall the respective obligations of the parties hereto be otherwise affected unless such eviction is due to the act of Lessor or any person or persons claiming any interest in the demised premises by or under Lessor.

ASSIGNMENT BY LESSEE.

Section 1301. Lessee shall not assign this Lease, without the written consent of Lessor, which consent shall not

be unreasonably withheld. In the event of an assignment under the provisions hereof, Lessee shall require the written acceptance of this Lease by such assignee and the assignee's agreement to be bound under the terms thereof. In such event, Lessee shall thereafter be secondarily liable hereunder. Lessee shall have the unrestricted right to sublet, subject, however, to Lessee's obligations under this Lease, but no such subletting shall relieve Lessee of said obligations.

Section 1302. Lessee may, without Lessor's consent, assign this Lease to any corporation in connection with a merger or consolidation, provided that the total assets and net worth of such assignee after such transaction shall be more than that of Lessee immediately prior to such transaction, and provided that Lessee is not at such time in default hereunder, and provided further that such successor shall execute an instrument in writing fully assuming all of the obligations and liabilities imposed upon Lessee hereunder and deliver the same to Lessor; whereupon Lessee shall be dis-charged from any further liability hereunder.

Section 1303. Lessee shall not allow or permit any transfer of this Lease, or any interest hereunder, by operation of law, or convey, mortgage, pledge, or encumber this Lease or any interest hereunder, except as provided herein.

ANNUAL STATEMENTS.

Section 1401. Lessee further agrees to furnish Lessor annually within ninety (90) days of the end of each fiscal year, with a copy of its annual audited statement, and agrees that Lessor may deliver such statements to its mortgagee.

INDEMNITY FOR LITIGATION.

Section 1501. Lessee further agrees to pay all costs and expenses, including attorneys' fees, which may be incurred by or imposed on Lessor in any litigation relating to Lessee's use or occupancy of the demised premises to which Lessor, without fault on its part, may be made a party, and if paid by Lessor, shall be so much additional rent due on the next rent date after such payment together with interest at ten per cent (10%) per annum from the date of payment.

ESTOPPEL CERTIFICATE BY LESSEE.

Section 1601. Lessee further agrees at any time and from time to time, upon not less than twenty (20) days' prior written request by Lessor, to execute, acknowledge and deliver to Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), and the date to which the rental and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Section 1601, may be relied upon by any prospective purchaser of the fee, or mortgagee or assignee of any mortgage upon the fee, of the demised premises.

INSPECTION OF PREMISES.

Section 1701. Lessee agrees to permit Lessor and the authorized representatives of Lessor, to enter the demised premises at all reasonable times during business hours for the purpose of inspecting the same.

FIXTURES.

Section 1801. All buildings and improvements and all plumbing, heating, lighting, electrical and air conditioning fixtures and equipment and other articles of personal property used in the operation of such buildings as such (as distinguished from operations incident to the business of Lessee) now or hereafter located upon said land, together with all duct electrical lines, whether or not attached or affixed to said land or any buildings thereon, sometimes herein referred to as "building fixtures," shall be and remain a part of the real estate and shall constitute the property of Lessor.

Section 1802. All of Lessee's trade fixtures and all personal property, fixtures, apparatus, machinery and equipment nor or hereafter located upon said land, other than building fixtures as defined in Section 1801 hereof, and owned by Lessee or any other occupants of the demised premises and whether or not the same are affixed thereto, shall be and remain the personal property of Lessee or such other occupants, and the same are herein sometimes referred to as "Lessee's equipment."

Section 1803. Lessee's equipment may be removed from time to time by Lessee or other occupants of the demised premises, provided, however, that if such removal shall injure or damage the premises, Lessee shall reasonably repair the damage and place the premises in the same condition as it would have been if such equipment had not been installed.

RE-ENTRY UPON DEFAULT.

Section 1901. Lessee further agrees that any one or more of the following events shall be considered events of default as said term is used herein, that is to say, if

(a) Lessee shall be adjudged a bankrupt, or a decree or order approved, as properly filed, a petition or answer asking reorganization of Lessee under the Federal bankruptcy laws as now or hereafter amended, or under the laws of any State, shall be entered, and by any such decree or judgment or order shall not have been vacated or stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

(b) Lessee shall file or admit the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal bankruptcy laws as now or hereafter amended, or Lessee shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Lessee under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; or

(c) Lessee shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Lessee or any of the property of Lessee; or

(d) A decree or order appointing a receiver of the property of Lessee shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of entry or granting thereof; or

(e) Lessee shall vacate and abandon the leased premises during the term hereof; or

(f) Lessee shall make default in any monthly payments of basic rent required to be made by Lessee hereunder when due as herein provided and such default shall continue for twenty (20) days after notice thereof in writing to Lessee; or

(g) Lessee shall make default in any of the other covenants and agreements herein contained to be kept, observed and performed by Lessee, and such default shall continue for sixty (60) days after notice thereof in writing to Lessee.

Upon the occurrence of any one or more of such events of default, it shall be lawful for Lessor, at its election, to declare the said term ended, and the said demised premises and the buildings and improvements then situated thereon or any part thereof, either with or without process of law, to re-enter and to expel, remove and put out, Lessee and all persons occupying said premises under Lessee, using such force as may be necessary in so doing, and the said premises and the buildings and improvements then situated thereon, again to repossess and enjoy as in their first and former estate, without such re-entry and repossession working a forfeiture of the rents to be paid and the covenants to be performed by Lessee during the full term of this Lease. If default shall be made in any covenant, agreement, condition or undertaking herein contained to be kept, observed and performed by Lessee, other than the payment of rent as herein provided, which cannot with due diligence be cured within a period of sixty (60) days, and if notice thereof in writing shall have been given to Lessee, and if Lessee, prior to the expiration of sixty (60) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure such default, then Lessor shall not have the right to declare the said term ended by reason of such default; pro-

vided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Lessor to declare the said term ended and enforce all of its right and remedies hereunder for any other default not so cured.

Section 1902. The foregoing provisions for the termination of this Lease for any default in any of its covenants, shall not operate to exclude or suspend any other remedy of Lessor for breach of any of said covenants or for the recovery of said rent or any advance of Lessor made thereon, and in the event of the termination of this Lease as aforesaid, Lessee agrees to indemnify and save harmless Lessor from any loss arising from such termination and re-entry in pursuance thereof and to that end Lessee agrees to pay Lessor, after such termination and re-entry and upon demand, all reasonable expenses of re-letting, including, without limiting the generality of the foregoing, the reasonable costs of decorating and restoring the premises, brokers' commissions and Lessor's reasonable attorneys' fees, plus, at the end of each month of the demised term, the difference between the net income actually received by Lessor from said demised premises during such month and the rent agreed to be paid by the terms of this Lease during such month.

LESSOR'S PERFORMANCE OF LESSEE'S COVENANTS.

Section 2001. Should Lessee at any time fail to do any of the things required to be done by it under the provi-

sions of this Lease, Lessor, at its option and pursuant to the provisions relating to notice contained in Section 1901, may (but shall not be required to) do the same or cause the same to be done, and the amounts paid by Lessor in connection therewith shall be so much additional rent due on the next rent date after such payment together with interest at ten per cent (10%) per annum from the date of payment.

SUBORDINATION TO MORTGAGES.

Section 2101. At the option of Lessor's mortgagee, this Lease shall be subject and subordinate to any first mortgage or deed of trust now upon the demised premises and any mortgage or deed of trust hereafter placed upon the demised premises, provided that the mortgagee or the trustee and beneficiary under such deed of trust agrees in writing with Lessee or adequate provision is made in such mortgage or deed of trust, that, regardless of any default or breach under such mortgage or deed of trust or of any possession or sale of the whole or any part of the premises under or through such mortgage or deed of trust, that this Lease and Lessee's possession shall not be disturbed by mortgagee or beneficiary or any other party claiming under or through such mortgage or deed of trust, provided, however, that Lessee shall continue to observe and perform Lessee's obligations under this Lease and pay rent to whomsoever may be lawfully entitled to same from time to time. Lessee hereby agrees to execute, if same is required, any and all instruments in writing which may be re-

quested by Lessor to subordinate Lessee's rights acquired by this Lease to the lien of any such mortgage or deed of trust, all as aforesaid. Irrespective of whether or not this Lease is subordinated to any such mortgage or deed of trust, the mortgagee or beneficiary under such mortgage or deed of trust, shall agree in writing that proceeds of insurance, or awards, payable to Lessee in the event of partial condemnation as provided in Section 1103 shall be made available to Lessor for the purpose of repairing, restoring and rebuilding, as provided in this Lease, or adequate provisions relative thereto shall be made in such mortgage or deed of trust.

REMEDIES TO BE CUMULATIVE.

Section 2201. No remedy herein or otherwise conferred upon or reserved to Lessor, shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient. No delay or omission of Lessor to exercise any right or power arising from any default, shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein.

Section 2202. No waiver of any breach of any of the covenants of this Lease shall be construed, taken, or held to be a waiver of any other breach or waiver, ac-

cence in or consent to any further or succeeding breach of the same covenant.

Section 2203. Neither the rights herein given to receive, collect, sue for or distrain for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall in any way affect or impair or toll the right or power of Lessor to declare the term hereby granted ended, and to terminate this Lease as provided for in this Lease, because of any default in or breach of the covenants, provisions or conditions of this Lease.

SURRENDER OF POSSESSION.

Section 2301. Whenever the said term herein demised shall be terminated, whether by lapse of time, forfeiture or in any other way, Lessee agrees that it will at once surrender and deliver up said premises, including the buildings and improvements thereon and the fixtures and equipment belonging to Lessor therein contained, peaceably to Lessor and if Lessee shall thereafter remain in possession thereof, it shall be deemed guilty of forcible detainer of the premises under the statute and shall be subject to all the conditions and provisions above named and to ejection and removal, forcibly and otherwise, with or without process of law as above stated.

Section 2302. In connection with said surrender of possession, Lessor agrees to permit Lessee to come onto the

demised premises at reasonable times for the purpose of removing connections, such as breeeeways and water mains, between the building and the property contiguous to the demised premises owned by Lessee. Such disconnections shall be made at Lessee's cost and expense.

COVENANT OF QUIET ENJOYMENT.

Section 2401. Lessor further agrees that at all times when Lessee is not in default under the terms of and during the term of this Lease, Lessee's quiet and peaceable enjoyment of the demised premises shall not be disturbed or interfered with by Lessor or by any person claiming by, through or under Lessor.

SHORT FORM LEASE.

Section 2501. This Lease shall not be recorded, but the parties agree, at the request of either of them, to execute a Short Form Lease for recording, containing the name of the parties, the legal description and the term of the Lease.

LESSEE'S OPTION TO EXTEND.

Section 2601. Lessee shall have no option to extend the term of this Lease except to the extent that such option of extension is given in the attached SCHEDULE B.

NOTICES OR DEMANDS.

Section 2701. All notices to or demands upon Lessor or Lessee desired or required to be given under any of the provisions hereof, shall be in writing. Any notices or de-

mands from Lessor to Lessee shall be deemed to have been duly and sufficiently given if a copy thereof has been mailed by United States registered or certified mail in an envelope properly stamped and addressed to the Lessee at the demised premises, or at such other address as Lessee may theretofore have furnished by written notice to Lessor. Any notices or demands from Lessee to Lessor shall be deemed to have been duly and sufficiently given if mailed by United States registered mail or certified mail in an envelope properly stamped and addressed to Lessor, c/o Theodore G. Gaines, 221 North LaSalle Street, Chicago, Illinois 60601, or at such other address as Lessor may theretofore have furnished by written notice to the Lessee. The effective date of such notice shall be three (3) days after delivery of the same to the United States Post Office for mailing.

COVENANTS RUN WITH LAND.

Section 2801. All of the covenants, agreements, conditions and undertakings in this Lease contained shall extend and inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, the same as if they were in every case specifically named, and shall be construed as covenants running with the land, and wherever in this Lease reference is made to either of the parties hereto, it shall be held to include and apply to, wherever applicable, the heirs, executors, administrators, successors and assigns of such party. Nothing herein

contained shall be construed to grant or confer upon any person other than the parties hereto, their heirs, executors, administrators, successors and assigns, any right, claim or privilege by virtue of any covenant, agreement, condition or undertaking in this Lease contained.

Section 2802. The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the demised premises, and in the event of any transfer or transfers of the title to such fee, Lessor herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved, from and after the date of such transfer or conveyance, of all personal liability as respects the performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed; provided that any funds in the hands of such Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be turned over to the grantee, and any amount then due and payable to Lessee by Lessor or the then grantor under any provisions of this Lease, shall be paid to Lessee; provided, further, that Lessee may elect to have such funds paid to a corporate trustee selected by Lessor from among the five largest Chicago banks, to be held in trust for the benefit of Lessor and Lessee, as their respective interests may appear, and dealt with

in accordance with the section of this Lease under which the funds become payable. The fees and expenses of the corporate trustee shall be paid by Lessee.

SECURITY DEPOSIT.

Section 2901. As security for the faithful performance of the terms, covenants, conditions and provisions of this Lease as well as indemnification to Lessor from any damages, costs, expenses, fees or other burdens to which Lessor may be put by reason of any default by Lessee hereunder, of the terms of this Lease, Lessee hereby agrees to deposit with Lessor the sum of $141,000 as a security deposit. One-half of the security deposit shall be paid to Lessor upon execution hereof; the other half shall be paid upon commencement of the term of this Lease.

In the event Lessee shall be in default hereof and should such default not be remedied by Lessee in accordance with the provisions herein, then Lessor may apply all or any portion of the security deposit in payment of Lessor's costs, expenses, damages, fees and burdens suffered or accrued in enforcing the terms, covenants, conditions and provisions of this Lease. Nothing herein contained shall be construed to mean that the recovery of damages by Lessor against Lessee shall be limited to the amount of the security deposit. In the event any portion or all of the security deposit is applied by Lessor in accordance with the foregoing, during the term hereof, then the Lessee shall upon request of the Lessor

deposit with Lessor additional sums so that the amount of the security deposit in the hands of the Lessor shall at all times be not less than the sum total of security deposit as provided for hereunder.

Interest at the rate of seven percent (7%) per annum shall be paid to Lessee on the balance of the security deposit on hand from time to time during the first four years of the term of this Lease and interest at six percent (6%) shall be paid during the remainder of said term, payable on the anniversary date of this Lease during the term hereof and all extensions and provided that no defaults have occurred hereunder which have not been cured as provided herein.

Lessor shall return to the Lessee a portion of the security deposit in the principal amount of $100,000, payable in 83 equal monthly installments of $1,200 and one final monthly installment of $400, the first installment being payable thirteen months after commencement of the term.

Lessor shall have the free and unrestricted right to treat such security deposit in any manner or mode which suits its convenience and necessity. The security deposit not theretofore returned to Lessee shall be returned to Lessee upon the expiration of the term of this Lease and upon compliance by Lessee with all the provisions and terms hereof. In the event the term of this Lease shall not commence without fault of the Lessee, then Lessor shall return the entire security deposit upon demand of the Lessee.

TIME OF ESSENCE.

Section 3001. Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

ARBITRATION

Section 3101. Whenever a dispute arises which under the terms of this Lease is to be determined by arbitration, either party may demand arbitration by written notice to the other party setting forth the point or points in dispute. The rules of the American Arbitration Association shall govern. Costs incurred as a result of such arbitration shall be borne equally by Lessor and Lessee.

MISCELLANEOUS.

Section 3201. The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

Section 3202. If any term or provisions of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 3203. This Lease shall be construed and enforced in accordance with the laws of the state where the demised premises are located.

Section 3204. In the event Lessor proposes to sell the fee to the demised premises to a prospective pur-

chaser thereof, it shall give Lessee written notice of said proposal, stating the terms and conditions of sale submitted by said prospective purchaser and tentatively agreed to by Lessor. Lessee shall have a prior right to purchase said fee upon said terms and conditions, exercisable upon written notice to Lessor within twenty (20) days following receipt of notice from Lessor as aforesaid. If notice of exercise of said right is not given within said period by Lessee, Lessee's right shall thereupon terminate as to the proposed sale in question.

Section 3205. In the event Lessee is obligated to make sinking fund deposits for real estate taxes with any mortgagee on primary mortgage financing covering the demised premises hereafter, then Lessee agrees that it will make sinking fund deposits dairectly to the mortgagee for such purpose in partial satisfaction of its obligations under section 501.

Section 3206. Lessor agrees that it will obtain primary mortgage financing covering the demised premises from an institutional investor.

EXECUTION CLAUSE.

Section 3301. This Lease is executed by Michigan Avenue National Bank of Chicago, a national banking association, not personally, but as Trustee under Trust No. 1904, as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee as such, which authority it possesses, and it is expressly understood and agreed that nothing in said Lease contained shall be construed creating any liability on said Trustee personally to pay

indebtedness accruing thereunder, or to perform any covenants, either express or implied in said Lease (all such liability, if any, being expressly waived by the said Lessee and by every person now or hereafter claiming any right or security hereunder) and the Lessee and anyone claiming thereunder shall look solely to the trust property and the premises described therein for the payment or enforcement thereof, it being understood that the said Trustee merely holds legal title to the premises therein described and has no control over the management thereof or the income therefrom, and has no knowledge respecting rentals, leases or other factual matters with respect to said premises, except as represented to it by the beneficiary or beneficiaries of the said Trust.

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year first above written.

MICHIGAN AVENUE NATIONAL BANK AND TRUST COMPANY, a National Banking Association, not personally but as Trustee under Trust No. 1904.

(SEAL)

By _____
Its Vice President
J. V. Meyering Jr., Senior Vice President

ATTEST:

_____
Its Assistant Secretary
Elsie C. Gadzinski,

COLEMAN CABLE & WIRE COMPANY, a Delaware corporation

(SEAL)

By _____
Its President

ATTEST:

_____
Its Assistant Secretary

SCHEDULE A

PROPERTY

Schedule annexed to Lease dated May 21, 1971, for property known as 1810 Fifth Avenue, River Grove, Illinois

The demised premises, commonly known as 1810 Fifth Avenue, Village of River Grove, State of Illinois, will be improved by the Lessor, at Lessor's sole cost, with a building and other improvements to be constructed in accordance with Plans and Specifications attached hereto and identified as Exhibit E, on real estate having the following legal description:

> The South 260.0 feet of that part of the North West Quarter of the South West Quarter which lies Northeasterly of the Minneapolis, St. Paul and Sault Ste. Marie Railroad right of way of Section 35, Township 40 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Lessor shall commence construction of the improvements in accordance with Plans and Specifications and Working Drawings on or before July 1, 1971, and after obtaining necessary building permits so to do. It is estimated that the improvements shall be substantially completed and ready for occupancy by the Lessee on or before December 1, 1971. Lessor shall diligently proceed with such construction but if such construction is delayed because of delay in securing a building permit, failure of Lessee to approve the Plans and Specifications, changes in construction required by Lessee, strikes, lockouts, acts of God or the public enemy, govern-

mental restrictions, unavailability of materials, or other matters beyond the control of Lessor, then the time of completion of such construction shall be extended for an additional time caused by such delay.

SCHEDULE B

TERM

Schedule annexed to Lease dated May 21, 1971, for property known as 1810 Fifth Avenue, River Grove, Illinois.

The original term of this Lease shall be for twenty-five (25) years, said term to commence on December 1, 1971 (or the date that the improvements to be made to the real estate described in SCHEDULE A are substantially completed and ready for occupancy by Lessee, if later than the stated date). Lessor shall notify Lessee in writing at least fifteen (15) days in advance of the completion date, and Lessee shall thereafter accept the premises in accordance with the completion date specified by Lessor (estimated to be on or about December 1, 1971). Determination of the building's availability for use and occupancy by the Lessee shall be made by the Certificate of the Architect or by a Certificate of Occupancy issued by the governmental agency having jurisdiction or control. If the issuance of a Certificate of Occupancy is a legal prerequisite to occupancy of the demised premises, Lessor shall procure said Certificate at its expense.

Lessee shall have the option to extend the term of this Lease for one period of five years (the "renewal term"), which shall be on the terms and conditions of the Lease to which this schedule is attached, except as otherwise provided in Schedule C. If Lessee desires to extend the original term

of this Lease by the period of the renewal term, it shall give Lessor written notice to that effect not later than one year prior to the expiration of the original term.

SCHEDULE C

RENTAL

Schedule annexed to Lease dated May 21, 1971, for property known as 1810 Fifth Avenue, River Grove, Illinois

During the original term of this Lease, Lessee agrees to pay Lessor, without prior demand, in coin or currency which at the time or times of payment is legal tender for public or private debts in the United States of America, monthly rent of $12,833.33, payable in advance, commencing on the first day of the term and continuing on the first day of each month thereafter for the next succeeding 299 months. Any installment of rent accrued under the provisions of this Lease which shall not be paid when due shall bear interest at the rate of 10% per annum from the date when the sum is due hereunder until the same shall be paid.

In the event that the commencement date of the term of this Lease is not on the first day of a calendar month, then for that period from the commencement date of the Lease to the end of the calendar month rent shall be prorated so that all other rentals due hereunder shall fall due on the first day of each calendar month of the term hereof; and, in addition, the term of this Lease shall be extended to the last day of the calendar month in the final year of the Lease. Rent

SCHEDULE D

INSURANCE

Schedule annexed to Lease dated May 21, 1971, for property known as 1810 Fifth Avenue, River Grove, Illinois

The casualty insurance coverages which Lessee shall provide to Lessor under the provisions of this Lease are as follows:

1. Insurance against loss or damage by fire, the risks covered by what is commonly known as "extended coverage," and malicious mischief and vandalism in an amount equal to $1,300,000.

2. General public liability insurance for the mutual benefit of Lessor and Lessee against claims for personal injury, sickness or disease, including death and property damage, in, on or about the demised premises, or in, on or about the streest, sidewalks or premises adjacent to the demised premises, such insurance to provide protection to the limit of not less than $300,000, in respect to each person, and to the limit of not less than $1,000,000, in respect to any one occurrence causing bodily injury or death, and to the limit of not less than $50,000, in respect to property damage. All such policies shall provide that the same may not be cancelled or altered except upon ten (10) days' prior written notice to Lessor.

3. Steam boiler insurance, for the mutual benefit of Lessor and Lessee, on all steam boilers, pressure vessels, and other such apparatus, including piping, in such amounts as Lessor may from time to time reasonably request. All such policies shall require that they may not be cancelled or altered except upon ten (10) days' prior written notice to Lessor.

for each month of the period of the renewal term shall be that agreed upon by Lessor and Lessee; provided, however, that if Lessor and Lessee have not agreed upon said rent within thirty (30) days from the date of the notice to extend given by Lessee pursuant to Schedule B, monthly rent shall be determined by appraisal. Lessor and Lessee shall each select an appraiser who is a member of the M.A.I. Said appraisers shall each determine what they consider an appropriate rent. If the difference between the two appraisals is less than ten percent (10%), rent shall be the average of the two appraisals. If the difference between the two appraisals is ten percent (10%) or greater, the two appraisers shall jointly select a third appraiser who shall also make an appraisal, and rent shall be the average of the three appraisals. Lessor and Lessee shall each pay the fee charged by the appraiser selected by it, and shall each pay one-half of the fee charged by the third appraiser.

Exhibit B

Id. No. 80580

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

COLE TAYLOR BANK, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323; as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904,	)	
Plaintiff,	)	
vs.	)	No. 97 L 04984
ROWE INDUSTRIES, INC. a corporation, successor to COLEMAN CABLE AND WIRE COMPANY, a corporation, and CHAPCO CARTON COMPANY, a corporation,	)	
Defendants.	)	

ANSWER

Defendant Rowe Industries, Inc., successor to Coleman Cable and Wire Company ("Coleman"), and Chapco Carton Company ("Chapco") (at times, collectively "Defendants"), by their attorneys, respond as follows to Plaintiff's Complaint at Law:

1. **COMPLAINT:** Plaintiff, Cole Taylor Bank, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323, as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904 (hereafter "Michigan Avenue") is an Illinois land trust holding legal title to certain real property located in Cook County, Illinois, commonly known as 1810 North Fifth Avenue, River Grove, Illinois.

ANSWER: Defendants lack sufficient information upon which to form a belief as to the truth of the allegations of Paragraph 1 and therefore deny the same.

2. **COMPLAINT:** Defendant, Rowe Industries, Inc., (hereafter "Rowe") successor to Coleman Cable and Wire Company (hereafter "Coleman") is a corporation organized under the laws of Delaware. Plaintiff is informed and believes, and upon such information and belief alleges that Rowe has its principal place of business in Phoenix, Arizona.

ANSWER: Defendants deny that Coleman's principal place of business is in Phoenix, Arizona. Defendants admit the remaining allegations of Paragraph 2.

3. **COMPLAINT:** Defendant, Chapco Carton Company (hereafter "Chapco") is a corporation organized under the laws of Delaware, having its principal place of business in River Grove, Cook County, Illinois.

ANSWER: Chapco admits Paragraph 3. Coleman lacks sufficient information upon which to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies the same.

ALLEGATIONS COMMON TO ALL COUNTS

4. **COMPLAINT:** On May 21, 1971, Coleman, as lessee, entered into a written lease with Michigan Avenue as lessor, for the rental of certain property commonly known as 1810 North Fifth Avenue, River Grove, Illinois, (hereafter the "real estate") which lease terminated on December 31, 1996. A copy of that lease is attached hereto as Exhibit 1.

ANSWER: Defendants deny that the Lease terminated on December 31, 1996. Defendants admit the remaining allegations of Paragraph 4.

5. **COMPLAINT:** Plaintiff is informed and believes, and upon such information and belief alleges that in 1984 Coleman, as sublessor, entered into a sublease agreement with Chapco as sub-lessee. Chapco remained in possession of the aforesaid rental real estate from 1984 as Coleman's sublessee until December 31, 1996, the date of expiration of Coleman's lease.

ANSWER: Defendants deny that the Lease and Sublease terminated on December 31, 1996. Defendants admit the remaining allegations of Paragraph 5.

6. **COMPLAINT:** At no time during the term of its lease with plaintiff was Coleman released by plaintiff from any of Coleman's obligations under the lease aforesaid.

ANSWER: Defendants neither admit nor deny Paragraph 6 on the ground that it calls for a legal conclusion.

7. **COMPLAINT:** At various times between 1971 and the date of the filing of this Complaint, the exact dates of which are at present unknown to plaintiff, and during the time that the real estate was in the possession and control of Coleman and/or Chapco, either or both of Coleman and/or Chapco, knowingly caused or negligently permitted and allowed certain hazardous materials

containing, among other hazardous substances, significant concentrations of cadmium, ethylbenzene, toluene, xylene chromium and lead, to become deposited in the soil at the real estate.

ANSWER: Chapco denies the allegations of Paragraph 7 directed to it. Coleman denies the allegations of Paragraph 7 directed to it. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations of Paragraph 7 and therefore deny the same.

8. **COMPLAINT:** As a direct and proximate result of the actions of Coleman and Chapco, the real estate has been significantly damaged, and plaintiff will be forced to spend large amounts of money to remediate the real estate.

ANSWER: Chapco denies the allegations of Paragraph 8 directed to it. Coleman denies the allegations of Paragraph 8 directed to it. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations of Paragraph 8 and therefore deny the same.

COUNT I
BREACH OF CONTRACT

9. **COMPLAINT:** Section 601 of the lease between Coleman and plaintiff provides:

"USE.

Section 601. The demised premises shall be used for any business or purpose permitted by present zoning classifications, or as the said demised premises may be rezoned from time to time hereafter. Lessee shall not use or occupy the demised premises or permit the demised premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would violate any Certificate of Occupancy affecting the same, or which would cause structural injury to the improvements or cause the value or usefulness of the demised premises or any part thereof to diminish or which would constitute a public or private nuisance or waste, and Lessee agrees that it will promptly upon discovery of any such use, take all necessary steps to compel the discontinuance of such use and to oust the subtenants or occupants guilty of such use." (underlining supplied)

ANSWER: Defendants deny the allegations of Paragraph 9 and state that the lease is the best evidence of its terms and effect.

10. COMPLAINT: Section 701 of the lease between Coleman and plaintiff provides:

> Section 701. After the completion of the building by Lessor, Lessee agrees, at its expense, to keep the demised premises in good repair and in a clean and wholesome condition and to at all times fully comply with the health and police regulations in force and also that it will keep the improvements at any time situated upon the demised premises and all sidewalks and areas and adjacent thereto as well as in the area thereof, safe and secure and conformable to the lawful and valid requirements of any municipality in which said demised premises may be situated and of all other public authorities, and will make at its own expense, all additions, improvements, alterations and repairs on the demised premises and on and to the appurtenances and equipment thereof required by any lawful authorities or which may be made necessary, by the act or neglect; of any other person or corporation (public or private), including supporting the streets and alleys adjoining the demised premises, arid will keep Lessor harmless and indemnified at all times against any loss, damage, cost or expense by reason of the failure so to do in any respect or by reason of any accident, loss or damage resulting to persons or property from any ..use which may be made of said premises or of any improvements at any time situated thereon or by reason of or growing out of any act or thing done or omitted to be done upon said premises or in any building at any time Situated thereon; and Lessee agrees that it will save, hold and keep Lessor and the demised premises free and clear of and-from any and all claims, demands, penalties, liabilities, judgments, costs and expense, including reasonable attorneys' fees, arising out of any damage which may be sustained by adjoining property or adjoining owners or other persons or property in connection with any remodeling, altering or repairing of any building or buildings on the demised premises or the erection of any new building or buildings thereon, unless such action is undertaken by Lessor pursuant to its obligations under this Lease." (underlining supplied)

ANSWER: Defendants deny the allegations of Paragraph 10 and state that the lease is the best evidence of its terms and effect.

11. COMPLAINT: At all relevant times there were in full force and effect a statute of the State of Illinois known as "the Environmental Protection Act 415 ILCS 5/1 *et. seq.* (the "Act") prohibiting the disposal of waste except as specifically permitted therein, a relevant portion thereof which in words and figures is as follows:

> No person shall...[d]ispose, treat, store or abandon any waste, or transport any waste into this State for disposal treatment, storage or abandonment, except as a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

415 ILCS 5/21/(e)

ANSWER: Defendants lack sufficient information upon which to form a belief as to the truth of the allegations of Paragraph 11 and therefore deny the same.

12. COMPLAINT: The real estate does not meet the requirements of a waste disposal site or facility under the Act and applicable Illinois Pollution Control Board regulations.

ANSWER: Defendants neither admit nor deny the allegations of Paragraph 12 on the ground that they call for a legal conclusion.

13. COMPLAINT: By causing or allowing the contamination of soil at the real estate with hazardous substances, the defendants have engaged in the disposal of waste at the real estate in violation of Section 21 (e) of the Act.

ANSWER: Defendants deny the allegations of Paragraph 13.

14. COMPLAINT: The acts complained of herein that were done, suffered or permitted to be done by defendant constitute a violation and breach of the terms of Sections 601 and 701 of the lease attached as Exhibit 1.

ANSWER: Defendants deny the allegations of Paragraph 14.

15. COMPLAINT: As a result of the breaches of the lease aforesaid, plaintiff has been injured and the value of its property diminished by the sum of Two Hundred Fifty Thousand Dollars ($250,000.00.

ANSWER: Defendants deny the allegations of Paragraph 15

WHEREFORE, Defendants Rowe Industries, Inc., successor to Coleman Cable and Wire Company, and Chapco Carton Company request that judgment be entered in their favor and against Plaintiff.

COUNT II
NEGLIGENCE AGAINST COLEMAN AND CHAPCO

16-23. COMPLAINT: Plaintiff repeats and realleges the allegations contained in paragraph 1 through 8 inclusive as and for its allegations in paragraphs 16 to 23 inclusive in this Count II.

ANSWER: Defendants incorporate their answers to Paragraphs 1-8 as their answers to Paragraphs 16-23.

24. COMPLAINT: Plaintiff repeats and realleges the allegations contained in paragraph 12 as and for its allegations in paragraph 24 of this Count II.

ANSWER: Defendants incorporate their answers to Paragraphs 16-23 as their answers to Paragraphs 24.

25. **COMPLAINT:** At all relevant times plaintiff was in the exercise of due care and caution for itself and for others.

ANSWER: Defendants lack sufficient information upon which to form a belief as to the truth of the allegations of Paragraph 25 and therefore deny the same.

26. **COMPLAINT:** The acts of defendant Coleman and Chapco were in violation of the statute aforesaid, negligent and in disregard of the rights Of plaintiff and of the general public and caused harm to plaintiff and its real property.

ANSWER: Defendants deny the allegations of Paragraph 26.

WHEREFORE, Defendants Rowe Industries, Inc., successor to Coleman Cable and Wire Company, and Chapco Carton Company request that judgment be entered in their favor and against Plaintiff.

ROWE INDUSTRIES, INC. a corporation, successor to COLEMAN CABLE AND WIRE COMPANY, a corporation, and CHAPCO CARTON COMPANY, a corporation, Defendants,

By: Arthur E. Rosenson
One of Their Attorneys

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