

SARATOGA COUNTY CLERK
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RECEIPT NO.: 196298

INDEXED BY: 

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BOOK OF DEEDS

BOOK 01506 PAGE 00001

NO. PAGES 139

INSTRUMENT CODE: AGM

INSTRUMENT NO.: 980015532

RECORDING:

RECORDING PAPER FEES	455.00
EDUCATION FEE	5.00
DEEDS - EA-5217	0.00
FILING FEE	0.00

TOTAL: 460.00

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STATE OF NEW YORK
SARATOGA COUNTY CLERK

RECORDED ON 12/15/98 AT 11:04 AM

IN BOOK DEEDS PAGE 00001 OF 01506

Kathleen A. Marchione
SARATOGA COUNTY CLERK

THIS PAGE IS PART OF THE INSTRUMENT

[EXECUTION COPY]

THIS DOCUMENT PREPARED BY AND
RECORDING REQUESTED BY AND
AFTER RECORDATION MAIL TO:

King & Spalding
191 Peachtree Street
Atlanta, GA 30303-1763

Attn: Lewis B. Jones

Declaration of Covenants and Restrictions

Made by

Orkin Exterminating Company, Inc.

Premises:	former Abalene Pest Control site (Route 9 and Reservoir Road)
Section:	1
Block / Lot:	62.02 / 19
County:	Saratoga
Dated:	October 23, 1998

SARATOGA COUNTY CLERK
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FILED 12/15/98 11:04 AM

BOOK 1506

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DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration of Covenants and Restrictions is made as of the 23rd day of October, 1998, by Orkin Exterminating Company, Inc., 2170 Piedmont Road, N.E., Atlanta, Georgia 30324 (together with its successors and assigns, collectively "Owner").

WITNESSETH

WHEREAS, Owner is the owner in fee simple of certain real property (the "Site") more particularly described on Exhibit I attached hereto and made a part hereof; and,

WHEREAS, the New York Department of Environmental Conservation ("DEC") has designated the Site as the Abalene / Orkin Inactive Hazardous Waste Site, Inactive Hazardous Waste Site Number 5-46-035; and,

WHEREAS, the DEC in January, 1996, approved a Record of Decision ("ROD") concerning the Abalene / Orkin Inactive Hazardous Waste Site, which ROD is attached hereto as Exhibit A to Exhibit II; and,

WHEREAS, in accordance with 6 N.Y.C.C.R. Part 375, the DEC required in the ROD the use of this Declaration of Covenants and Restrictions as a component of the selected remedy; and,

WHEREAS, the United States District Court for the Northern District of New York has entered a Consent Order in the case of State of New York v. Blank, et. al., Civil Action Number 88-CV-0163 ("Consent Order"), which Consent Order is attached hereto as Exhibit II; and,

WHEREAS, in accordance with the terms of the Consent Order, Owner is undertaking to implement the ROD and to remediate pesticide contamination located at the Site; and,

WHEREAS, in accordance with the ROD, certain contaminated soil will be placed in an area in the northeast portion of the Site (the "Affected Area"), which is delineated and marked as a "covered pit" in Figure 3-3 on page 19 of the ROD attached hereto as Exhibit A to Exhibit II; and,

WHEREAS, the Affected Area will be marked by a geotextile layer and covered with 12 inches of top-soil (the "Cap"); and,

WHEREAS, in accordance with the terms of the Consent Order and to protect the integrity of the Cap, Owner has agreed to subject the Affected Area of the Site to restrictions, as set forth below, upon certain activities which might affect the integrity of the Cap; and,

WHEREAS, in accordance with the ROD the drinking water well at the Site will be abandoned as a component of the selected remedy; and,

WHEREAS, this Declaration of Covenants and Restrictions itself is not intended to create any interest in real estate in favor of the DEC, nor to create a lien against the Site, but merely is intended to provide record or deed notice of certain conditions and restrictions on the property and to reflect the regulatory and statutory obligations imposed as a condition of using institutional controls.

NOW THEREFORE, Owner agrees to the restrictions listed below and hereby notifies all interested parties, owners, and operators that the applicable regulations and statutes require of each owner and operator of the Site the following:

1. NOTICE. This Site is subject to the Consent Order set forth in Exhibit II and to the restrictions set forth in ¶ 2.
2. RESTRICTED USES.
 - a. The Affected Area, as delineated in Figure 3-3 on page 19 of the ROD, which is attached hereto as Exhibit A to Exhibit II, shall not be excavated or otherwise disturbed without the DEC's prior written approval.
 - b. The Site shall not be utilized for residential purposes.
 - c. The Site shall not be utilized for the "storage," "treatment" or "disposal" of "hazardous wastes," as those terms are defined at 40 C.F.R. § 260.10 (1998).
3. ACCESS. While this Declaration of Covenants and Restrictions is in effect, the Owner agrees to allow any duly designated employee, consultant, contractor or agent of the State of New York to enter upon the Site for purposes of inspection, sampling and testing, and to assure compliance with the Consent Order.
4. NOTICE TO THE STATE OF NEW YORK. In the event that Owner proposes to convey the whole or any part of its ownership interest in the Site, or in the event that title to the real property at the Site is conveyed, in whole or in part, to any other person by operation of law, Owner shall, not fewer than sixty (60) days prior to the proposed conveyance, notify the State of New York in writing of the name and address of the proposed transferee or successor in title, and of the nature and date of the proposed transfer or conveyance. Notice shall be made to the New York State Department of Law to the attention of Maureen F. Leary, Assistant Attorney General, with a copy to the DEC.
5. NOTICE TO LESSEES AND OTHER HOLDERS OF PROPERTY INTERESTS. Owner shall cause all leases, grants, and other written transfers of interest in the Site to contain a provision expressly requiring all holders thereof to take the Site subject to the restrictions contained herein and to comply with all, and not to violate any, of the conditions of this Declaration

of Covenants and Restrictions. Nothing contained in this Paragraph shall be construed as limiting any obligation of Owner to provide any notice required by any law, regulation, or order of any governmental authority.

6. ENFORCEMENT OF RESTRICTIONS. A violation of this Declaration of Covenants and Restrictions shall not affect the status of the ownership of or title to the Site.
7. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Declaration of Covenants and Restrictions is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such a nature that this provision cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this Declaration of Covenants and Restrictions shall remain in full force and effect.
8. SUCCESSORS AND ASSIGNS. This Declaration of Covenants and Restrictions shall be binding upon Owner and upon Owner's successors and assigns.
9. TERMINATION.
 - a. This Declaration of Covenants and Restrictions shall terminate only upon recording of an instrument, executed by the DEC, in the office of the Saratoga County Clerk and the Registry of Deeds of Saratoga County, State of New York, expressly terminating this Declaration of Covenants and Restrictions.
 - b. The Owner may request in writing at any time that the DEC modify or terminate this Declaration of Covenants and Restrictions or initiate termination proceedings based on, for example, a proposal that the Site does not pose an unacceptable risk to public health and safety or the environment.

[Signatures on following page]

IN WITNESS WHEREOF, Owner has executed this Declaration of Covenants and Restrictions as of the date first written above.

Orkin Exterminating Company, Inc.

Joseph P. Malinowski

Joseph P. MALINOWSKI

By: _____

Title: Vice President

Date: 10-23-98

STATE OF Georgia)
) ss.:
COUNTY OF Fulton)

On the 23rd day of October, 1998, before me personally came Joseph P. Malinowski, to me known, who, being by me duly sworn, did depose and say that he/she resides at c/o 2170 Piedmont Rd, Atlanta, GA 30324 and that he/she is vice president of Orkin Pest Control, a Delaware corporation that is described in and which executed the foregoing instrument and that he/she signed his/her name thereto pursuant to the authority of the board of directors of said corporation, acting on behalf of said corporation.

Melia K. Kern

Notary Public

Notary Public, Fulton County, Georgia.
My Commission Expires March 2, 2001.

EXHIBIT I: Legal Description of Site

ALL that certain parcel of land situate in the Town of Moreau, County of Saratoga and State of New York, being part of Lot #12 of the 23rd Allotment of the Kayaderosseras Patent, bounded and described as follows:

Beginning at a point in the easterly bounds of New York State Route #9 and at the southwest corner of a parcel of land conveyed by Henry S. and Catherine West to Lawrence Loveland by deed dated May 10, 1961 and recorded in the Saratoga County Clerk's Office in Liber 705 of deeds at page 220; running thence S-58-31-E for a distance of 147.30 feet to the southeast corner of said Loveland parcel; thence continuing the same course of S-58-31-E for a distance of 20.61 feet to the northeast corner of the parcel herein described; thence S-6-56-W and passing through a point which is situate at a distance of 10.00 feet on a course of S-83-04-E from the northeast corner of a one story concrete block building located on the parcel herein described, for a distance of 108.00 feet to the northerly bounds of the Reservoir Road; thence N-83-04-W along said northerly bounds for a distance of 203.27 feet; thence N-21-37-W along the northeasterly line of a triangular parcel of land conveyed by Lillian A. Higgins to the County of Saratoga by deed dated October 5, 1931 and recorded in Liber 368 of deeds at page 330, for a distance of 61.18 feet; to the easterly bounds of New York State Route #9; thence N-39-50-E along the said easterly bounds of Route #9 for a distance of 147.00 feet to the place of beginning.

Being the same premises as conveyed by Henry S. West and Catherine West to Walter T. Blank and Jane F. Blank dated April 13th, 1965 and recorded in the Saratoga County Clerk's Office on April 16, 1965 in Liber 769 of Deeds at Page 253.