



State of Ohio Environmental Protection Agency

FILE COPY

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RECEIVED
FEB 10 2003

OHIO EPA/CDO

CERTIFIED MAIL

February 6, 2003

Frederic Gautier
Liberty Place, LLC
1919 Post Oak Drive, Suite 3101
Houston, Texas 77027

**RE: Issuance of Covenant Not To Sue for the Liberty Place Property
(02NFA135)**

Dear Mr. Gautier:

I am happy to inform you that on February 6, 2003, the Director of the Ohio Environmental Protection Agency ("Director") issued a Covenant Not To Sue ("Covenant") to Liberty Place, LLC for the Liberty Place property located at 100 Liberty Street, Columbus, Ohio. The Covenant was issued as Final Findings and Orders pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300. You will find the certified copy of the Covenant enclosed.

Upon the issuance of these Findings and Orders, and subject to the conditions outlined in the Covenant, the Ohio Environmental Protection Agency covenants not to sue and releases Liberty Place, LLC and its agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the property¹, from all civil liability to the State of Ohio to perform additional investigational and remedial activities at the property for the releases of hazardous substances or petroleum identified in the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

¹ Note that there was a minor difference between the legal property description included in the NFA Letter and the legal property description recorded with the Declaration of Use Restriction on May 23, 2002. On August 12, 2002, Ohio EPA attorney Keith Layton notified attorney Jeff McNealey that if there is a difference, the CNS would be based on the legal property description recorded with the use restriction. On January 10, 2003, Keith Layton notified CP Chris Krumm of VAP's intention to use the legal property description recorded with the use restriction. Because the use restriction was not re-recorded after May 23, 2002, the CNS is effective for the property as described in the legal property description recorded with the use restriction on May 23, 2002.

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

The issuance of the Covenant is a final action of the Director and will be public noticed in accordance with OAC 3745-47-07. The action may be appealed to the Environmental Review Appeals Commission ("Commission"). The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice or issuance of the action. (See ORC 3745.04 and 3745.07.) A copy of the appeal must be served on the Director within three (3) days after the appeal is filed with the Commission. The appeal may be filed with the Commission at 236 East Town Street, Room 300, Columbus, Ohio 43215.

Many parties within the agency, Liberty Place, LLC and R.D. Zande & Associates, Inc. worked hard to remove the environmental barriers associated with redeveloping this property. Congratulations on the issuance of this Covenant. If you have any questions or concerns, please feel free to contact me at (614) 644-2285.

Sincerely,



Amy Yersavich, Manager
Division of Emergency and Remedial Response
Voluntary Action Program

Enclosure

cc: Christopher Krumm, Certified Professional, R.D. Zande & Associates, Inc.

J. Jeffrey McNealy, Esq., Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215-6194

Martin Smith, DERR-CO
Keith Layton, Legal Office
CO DERR-VAP Files

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO R.C. 317.08(A)

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Zona L. Clements or Tonya R. Jackson, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Covenant Not to Sue/Director's Final Findings and Orders issued by the Director and entered in the Ohio EPA Director's Journal on February 6, 2003 regarding the property known as Liberty Place, LLC, located at 100 Liberty Street in Columbus, Franklin County, Ohio, and further described in Exhibit 1 of the attached Covenant Not to Sue.

Zona L. Clements or Tonya R. Jackson
Zona L. Clements or Tonya R. Jackson
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 6th day of February, 2003.



SUSAN C. KROEGER
Attorney at Law
Notary Public
State of Ohio
Lifetime Commission

Susan C. Kroeger
Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:
Keith Layton, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Based upon the information contained in the NFA Letter, the following investigational and remedial activities were undertaken and completed regarding the Property:
 - a. a Phase I Property Assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property;
 - b. a Phase II Property Assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas of concern and affected media, to assess environmental conditions related to any release of hazardous substances and petroleum;
 - c. a Property-Specific Risk Assessment, in accordance with OAC 3745-300-09, used to demonstrate that the remedies and conditions of the property are protective of public health and safety and the environment: 1) for excavation and construction activities that result in direct contact with surface and subsurface soil and ground water, 2) for activities maintaining subsurface utilities and engineering controls that result in direct contact with surface and subsurface soil and ground water, 3) for volatile emissions of volatile organic chemicals ("VOCs") from ground water to indoor air, and 4) for prevention of non-aqueous phase liquids (LNAPL) from emanating off the Property to the Scioto River;
 - d. remedial activities include: 1) excavation and disposal of the upper ten feet of soil and fill material and subsequent filling with ten feet of soil demonstrated to comply with applicable standards, 2) installation of an interception trench to prevent LNAPL from emanating off of the Property to the Scioto River, and 3) implementation of a risk mitigation plan to limit exposure to contaminants during excavation and disposal of the upper ten feet of soil and fill material, and during maintenance of subsurface utilities and engineering controls;
 - e. an institutional control contained in the Declaration of Use Restriction, recorded on May 23, 2002 in the Franklin County Recorder's Office, Instrument No. 200205230128871, (the "Declaration") which prohibits the extraction of ground water located at or underlying the Property, for any purpose, potable or otherwise, except for investigation or remediation of the ground water; and

- f. engineering controls contained in an Operation and Maintenance ("O&M") Plan and O&M Agreement for the Property, providing for the interdiction and recovery of LNAPL and a monitoring well network. The engineering controls include maintenance of an interception trench that will intercept LNAPL migrating off the Property; monitoring, withdrawal and disposal of LNAPL petroleum collecting in the interception trench; monitoring of down gradient monitoring wells for the potential migration of LNAPL off the Property; and the monitoring, reporting, record keeping, financial assurance and other requirements as set forth in the O&M Plan and O&M Agreement.
5. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the applicable standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a covenant not to sue under the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.
6. At the time that analyses were performed, Burgess & Niple, Limited in Columbus, Ohio and American Analytical Laboratories, Inc. in Akron, Ohio were certified laboratories, Nos. CL0042 and CL0010 respectively, as defined in ORC 3746.01(D) and OAC 3745-300-01(A)(7), whose services were used in support of the NFA Letter for the Property (the "Certified Laboratories").
7. According to information provided by the Certified Laboratories in affidavits contained in the NFA Letter, the Certified Laboratories performed analyses for which they were certified and qualified, pursuant to ORC Chapter 3746 and OAC Chapter 3745-300, that formed the basis for the issuance of the NFA Letter by the Certified Professional.
8. The Declaration was recorded on May 23, 2002 in the Franklin County Recorder's Office, in accordance with ORC 3746.14 and OAC 3745-300-13(E)(13). A copy of the Declaration is attached hereto as Exhibit 4. The Declaration prohibits the extraction of ground water at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation of the ground water.
9. To provide for implementation of the engineering controls specified herein, Ohio EPA and Frederic Gautier-Winther, President of Liberty Place, LLC have entered into an O&M Agreement, which is incorporated by reference as if fully written into these Findings and Orders. The O&M Agreement includes and incorporates by

reference an approved O&M Plan. The O&M Agreement is attached hereto as Exhibit 5.

10. Based on the information contained in the NFA Letter and the implementation of the O&M Agreement and all other conditions set forth in these Findings and Orders, the Property meets or will meet the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for restricted residential land use, including but not limited to:
 - a. direct contact soil standards for hazardous substances, in accordance with Tables II, V and VI of OAC 3745-300-08 for generic numerical standards, at a point of compliance from the surface to a depth of ten feet;
 - b. direct contact soil standards for petroleum, in accordance with OAC 3745-300-08(B)(3)(a)(i) for generic numerical standards, at a point of compliance from the surface to a depth of ten feet;
 - c. soil standards, derived through a Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D), for human receptor exposures related to exposures from soil beneath the ten-foot point of compliance. The standards are based on an evaluation of volatile emissions of VOCs from soil to indoor air; an evaluation of direct contact with soil below ten-feet during excavation and construction activities; an evaluation of direct contact with LNAPL and TPH that exceed soil saturation limits below ten-feet;
 - d. soil and ground water standards, derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D), to satisfy the requirements in OAC 3745-300-10(E). The standards were derived to prevent leaching to ground water from on-Property sources or source areas that would result in an exceedence of the unrestricted potable use standards in the limestone bedrock zone, at all points underlying the Property;
 - e. ground water standards for human receptor exposures related to potable use of ground water on or underlying the Property. Even though the ground water contains chemicals of concern in excess of unrestricted potable use standards, the standards are met through the prohibition against extraction of ground water at or underlying the Property as described by the Declaration;

- f. ground water standards, derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D), for human receptor exposures not related to potable use of ground water on or underlying the Property. The derived standards are based on an evaluation of volatile emissions of VOCs from ground water to indoor air and an evaluation of exposure with ground water during excavation and construction activities. The standards apply to the ground water in the sand and gravel layer at all points underlying the Property;
 - g. ground water standards, derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-08(D) and OAC 3745-300-09(E) for ecological receptor exposures not related to potable use of ground water. Ground water emanating from the property in the sand and gravel ground water zone to the Scioto River meets standards protective of the surface water and ecological receptors, except in areas of the Property not demonstrated to meet standards based on presence of LNAPL, but otherwise addressed by engineering controls to limit or prevent migration of LNAPL off the Property, as described herein;
 - h. ground water standards, derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D), for human receptor exposures not related to potable use of ground water on or underlying the Property. The derived standards are based on an evaluation of volatile emissions of VOCs from ground water to indoor air and an evaluation of exposure with ground water during excavation and construction activities. The standards apply to the ground water in the sand and gravel layer emanating from the Property; and
 - i. ground water standards for human receptor exposures related to potable use of ground water emanating from the Property. Even though the ground water contains chemicals of concern in excess of unrestricted potable use standards, the standards are met through the existence of an urban setting designation (approved 9/24/98) that demonstrates exposures related to the potable use of ground water emanating from the Property are not expected;
11. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, a covenant not to sue may be issued for the Property in accordance with ORC 3746.12(A), and upon implementation of the O&M Agreement, the voluntary action for the Property is protective of public health and safety and the environment.

ORDERS

Covenant

1. Upon the issuance of these Findings and Orders, and subject to the conditions set forth herein, including but not limited to the terms and conditions of the O&M Agreement, Ohio EPA hereby covenants not to sue and releases Liberty Place, LLC and its agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio (the "State") to perform additional investigational and remedial activities at the Property for the releases of hazardous substances or petroleum identified in the Phase I Property Assessment and addressed in the Phase II Property Assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

Conditions and Limitations

2. The Covenant provided in Order No. 1 shall only apply to the approximately 6.729 acre Property described in these Findings and Orders, the NFA Letter and the Exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA Letter were conducted and upon which remedial activities are being conducted in compliance with the O&M Agreement.
3. Pursuant to ORC 3746.12(B), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders, including but not limited to the O&M Agreement.
4. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the use restriction contained in the Declaration), voids the Covenant on and after the date of the commencement of the noncomplying use.
5. Pursuant to ORC 3746.21 and 3746.171, authorized representatives of the Director shall be granted access to the Property for inspection or investigation purposes, including but not limited to determining whether the Property is being used in compliance with the use restriction contained in the Declaration, and determining compliance with the O&M Agreement.

6. The Covenant shall not apply to releases of hazardous substances or petroleum:
 - a. that occur after the issuance of the NFA Letter to the Volunteer;
 - b. on or emanating from the Property, that are not identified in the Phase I Property Assessment or not addressed in the Phase II Property Assessment of the NFA Letter; or
 - c. for which investigational or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.

7. The Covenant shall not apply:
 - a. to claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended;
 - b. to claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or
 - c. as otherwise specifically provided in ORC Chapter 3746.

8. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.

9. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300. Pursuant to ORC 3746.12(A)(2)(c), the Covenant shall be revoked if the engineering controls are violated or are no longer in place and the Volunteer or subsequent property owner has not reinstated the controls within a reasonable period of time as determined by the Director in accordance with the Covenant.

Recordation in Deed Records

10. Pursuant to ORC 3746.14(A), a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), 3 (Executive Summary), 4 (Declaration) and 5 (O&M Agreement), shall be recorded in the Franklin County Recorder's Office, in the same manner as a deed to the Property, within sixty (60) days after the issuance of these Findings and Orders.

Transfer

11. Pursuant to ORC 3746.14 and OAC 3745-300-13(K), the NFA Letter, the Covenant Not to Sue/Findings and Orders and the O&M Agreement may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.

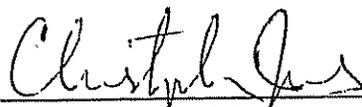
Notice of Use Restrictions upon Property Conveyance

12. In each instrument the Volunteer uses to convey the Property or any portion of the Property, the Volunteer shall include a notice of the Declaration on the Property in accordance with paragraph 9 of the Declaration attached hereto as Exhibit 4. The Volunteer shall submit to the Director a copy of each instrument containing the notice of the Declaration whenever such conveyance occurs.

Notice of Transfer or Assignment of Covenant or Property

13. Pursuant to ORC 3746.12(A)(2)(b), the transferor of the Covenant Not to Sue/Findings and Orders, or the Property or any portion of the Property, shall give written notice to the Director of any such transfer or assignment whenever such transfer or assignment occurs.

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency

FEB - 6 2003

Date

Liberty Place, LLC Property
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 1
Legal Description

EXHIBIT A

Description of the Property

**DESCRIPTION OF 6.729 ACRES OF LAND
SOUTH OF FULTON STREET
WEST OF FRONT STREET**

Situated in the State of Ohio, County of Franklin, City of Columbus, in Half Section 27, Township 5, Range 22, Refugee Lands, being a 6.729 acre tract of land comprised of all of Parcel 1, all of Parcel 2, all of Parcel 3, all of Parcel 4, and part of Parcel 5 as described in a deed to the Harsco Corporation, of record in Deed Book 2152, Page 97, (Parcel 4 being the same as Lot Number Six (6) of the L. Hoster Brewing Company's Sub., of record in Plat Book 5, Page 362), all of Parcel 1, all of Parcel 2, and all of Parcel 3 as described in a deed to the Harsco Corporation, of record in Deed Book 2171, Page 381, and being a part of that Robert Armstrong's Point Pleasant Addition to the City of Columbus, of record in Deed Book 33, Page 122, all of the First Parcel and part of the Second Parcel as described in a deed to the Harsco Corporation of record in Deed Book 3070, Page 116, all references to records being on file in the Recorder's Office, Franklin County, Ohio, said 6.729 acre tract being more particularly described as follows:

Beginning at an iron pin set in the northerly right-of-way line of Liberty Street, at the southeasterly corner of said Parcel 2 as described in Deed Book 2171, Page 381, at the southwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03, and being referenced North 87°53'56" West, a distance of 300.00 feet from a drill hole found at the intersection of the northerly right-of-way line of said Liberty Street and the westerly right-of-way line of Front Street;

Thence North 87°53'56" West, along the northerly right-of-way line of said Liberty Street, along the southerly line of said Parcel 2, Parcel 3 and Parcel 1 as described in said Deed Book 2171, Page 381, a distance of 209.48 feet to an iron pin found (1 foot deep) at the southwesterly corner of said Parcel 1, in the easterly line of said Parcel 5, as described in said Deed Book 2152, Page 97;

Thence North 11°53'46" East, continuing along a right-of-way line of said Liberty Street, along the westerly line of said Parcel 1, along the easterly line of said Parcel 5, a distance of 5.07 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc.;

Thence North 87°53'56" West, continuing along the northerly right-of-way line of said Liberty Street, as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Page 18, crossing through said Parcel 5, a distance of 12.66 feet to an iron pin set at a point of curvature;

Thence continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, along the arc of a curve to the left, having a radius of 276.56 feet, a central angle of

10°50'44", an arc distance of 52.35 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc., at a point of tangency, said arc being subtended by a chord bearing South 86°40'42" West, a chord distance of 52.27 feet;

Thence South 81°15'20" West, continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, a distance of 245.68 feet to an iron pin set in the westerly line of said Parcel 5, in the easterly line of the Columbus Feeder to the Ohio and Erie Canal (abandoned) as described in a Lease of Canal Lands to the Columbus & Southern Ohio Electric Company, of record in Lease Record 83, Page 346, witness an iron pin found with a plastic cap stamped Hockaden and Assoc., in the northerly right-of-way line of said Liberty Street at a point of curvature, bearing South 81°15'20" West, a distance of 22.76 feet.

Thence North 08°32'59" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 5, the westerly line of said Parcel 4, as described in Deed Book 2152, Page 97, a distance of 190.21 feet to a concrete canal marker with ¾" steel rod;

Thence North 02°41'46" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 4, the westerly line of said Parcel 1 and Parcel 3, as described in Deed Book 2152, Page 97, a distance of 641.63 feet to an iron pin set in the southerly right-of-way line of Fulton Street;

Thence South 78°00'27" East, along the southerly right-of-way line of said Fulton Street, along the northerly line of said Parcel 3, the northerly line of said Parcel 2, as described in Deed Book 2152, Page 97, the northerly line of said First Parcel as described in said Deed Book 3070, Page 116, a distance of 426.03 feet to a drill hole found at the intersection of the southerly right-of-way line of said Fulton Street and the westerly right-of-way line of Second Street;

Thence South 00°01'21" West, along the westerly right-of-way line of said Second Street, the easterly line of said First Parcel, along the easterly line of said Second Parcel as described in said Deed Book 3070, Page 116, a distance of 365.46 feet to an iron pin found (1 foot deep), at a northeasterly corner of that Parcel #1 as described in a deed to Front & Fulton Real Estate Trust, of record in Deed Book 2852, Page 519;

Thence South 89°34'54" West, into said original Second Parcel, along a northerly line of said Parcel #1, a distance of 154.50 feet to an iron pin set;

Thence South 04°24'37" West, continuing through said original Second Parcel, along the westerly line of said Parcel #1, a distance of 158.80 feet to an iron pin set at a southwesterly corner of said Parcel #1, in the southerly line of said original Second Parcel, in the northerly line of said Parcel 4 as described in said Deed Book 2152, Page 97;

Thence South 78°33'20" East, along a southerly line of said Parcel #1, the northerly line of said Parcel 4, a distance of 149.95 feet to a railroad spike found at the northeasterly corner of said Parcel 4;

Thence South $11^{\circ}53'46''$ West, along a westerly line of said Parcel #1, along the easterly line of said Parcel 4, a distance of 17.19 feet to an iron pin set at a southwesterly corner of said Parcel #1, at the northwesterly corner of said Parcel 1, as described in said Deed Book 2171, Page 381;

Thence South $87^{\circ}53'56''$ East, along the southerly line of said Parcel #1, along the northerly line of said Parcel 1, the northerly line of said Parcel 3 and Parcel 2 as described in said Deed Book 2171, Page 381, a distance of 186.18 feet to an iron pin set at the northeasterly corner of said Parcel 2, at the northwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03;

Thence South $02^{\circ}06'04''$ West, along the easterly line of said Parcel 2, the westerly line of said 1.093 acre tract, a distance of 135.00 feet to the True Place of Beginning and containing an area of 6.729 acres of land.

For the purpose of this description a bearing of North $87^{\circ}53'56''$ West was used on the northerly right-of-way line of Liberty Street (50') as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Pages 18,19 & 20, and all other bearing relate to this basis of bearing.

This description was prepared from an actual field survey of the premises in September, 2000 by ms consultants, inc., under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159. All iron pins set are $5/8''$ x 30" rebar with a yellow plastic cap stamped "ms cons, colum".

Liberty Place, LLC Property
Director's Final Findings and Orders / Covenant Not to Sue

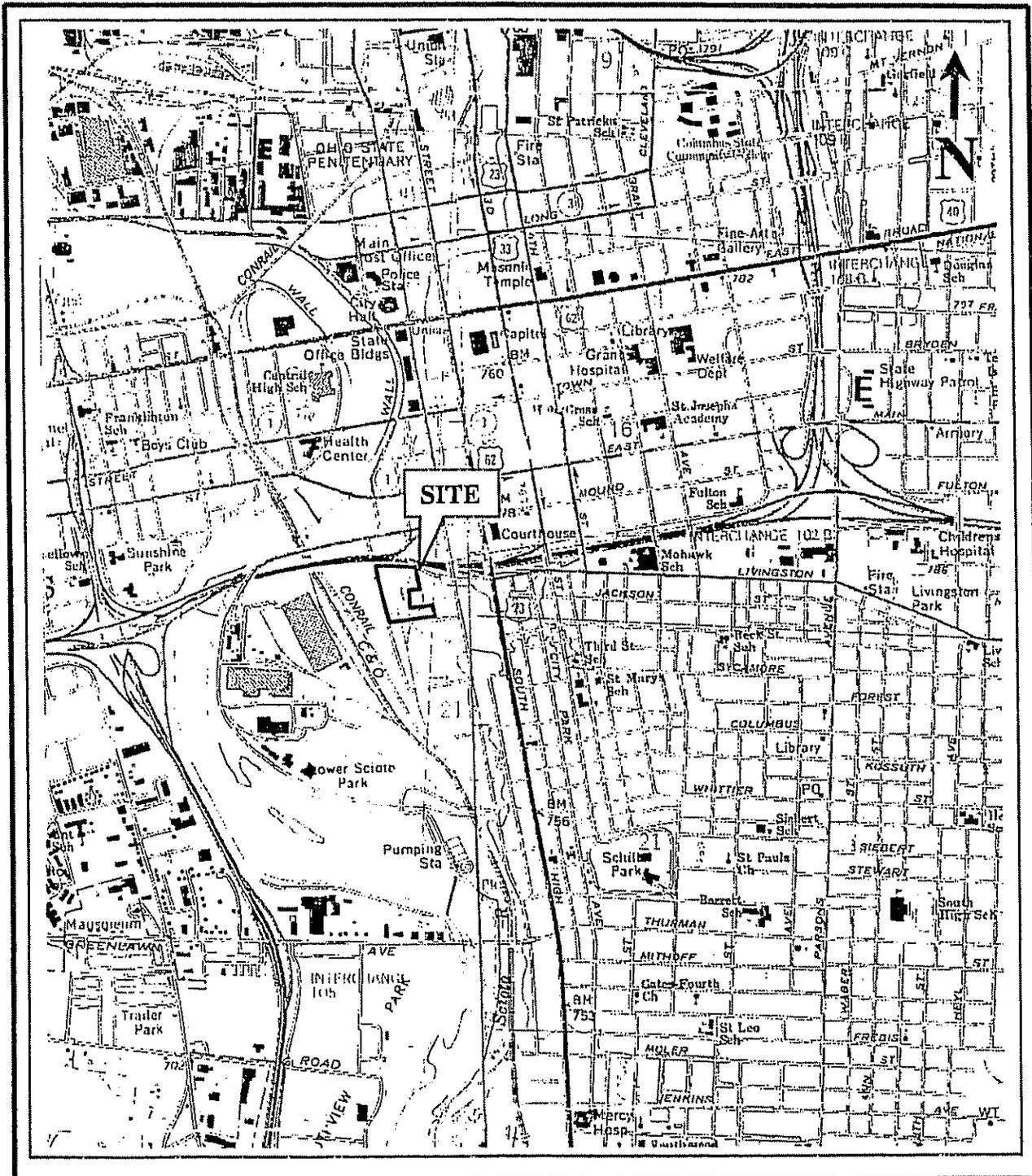
Exhibit 2
Property Location Map

R.D. Zande & Associates

SITE MAP

SITE: Liberty Place, 100 Liberty Street, Columbus OH
JOB #: 5986 **DATE:** May 23, 2002
MAP: USGS 7.5 Minute Topo Map -- 1: 24,000 scale
QUAD: Southwest Columbus and Southeast Columbus, OH Quads

SUBJECT: NFA Letter Section J



Liberty Place, LLC Property
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 3
Executive Summary

NFA LETTER
SECTION B – EXECUTIVE SUMMARY

of

LIBERTY PLACE
100 LIBERTY STREET
COLUMBUS, OHIO 43215

Prepared for:

LIBERTY PLACE, LLC
an Ohio Limited Liability Company
100 LIBERTY STREET
COLUMBUS, OHIO 43215

Prepared by:

R.D. Zande 
& Associates

JANUARY 2003

SECTION B EXECUTIVE SUMMARY

1.0 Introduction

A No Further Action Letter was submitted to the Ohio Environmental Protection Agency (Ohio EPA), Division of Emergency and Remedial Response (DERR) Voluntary Action Program (VAP) on behalf of the Volunteer, Liberty Place, L.L.C. an Ohio Limited Liability Company on May 28, 2002, under the authority of Certified Professional #177, Christopher W. Krumm P.G., C.P.

Addendums to the NFA were submitted on October 18, 2002 and January 10, 2003 under the authority of Certified Professional #177, Christopher W. Krumm, P.G., C.P.

The NFA letter describes the Phase I and Phase II Property Assessments for the 6.729 acre property known as Liberty Place, LLC, located at 100 Liberty Street, Columbus, Ohio 43215.

The Executive Summary of the NFA Letter has been prepared pursuant to OAC 3745-300-13 (I) and may be obtained from the Franklin County Recorder's Office, 373 South High Street, Columbus, Ohio 43215. A complete copy of the NFA letter is on file and will be available by the Ohio EPA, Department of Emergency and Remedial Response, Voluntary Action Program in accordance with the filing requirements of OAC 3745-300-13(J).

The legal description of this property is included as Attachment A to this Summary.

2.0 Summary of No Further Action Letter

The subject property, the former Capitol Manufacturing Company, consisting of approximately 6.729 acres, is located south of West Fulton Street, with Second Street bordering the property to the East, Short Street bordering to the west, and Liberty Street to the south. The topography of the property is generally flat, with a downward slope to the west towards the Scioto River. The elevation of the property ranges from 710 to 740 feet above MSL (Mean Sea Level). The property is owned by the Volunteer.

The proposed use of the property is Liberty Place Apartments, a multi unit residential development. A total of 314 separate residential units, two parking garages and several open areas are planned.

The Phase I and Phase II Property Assessments evaluated the subject property and determined that the property's historical use has had measurable impact on the soil and the groundwater beneath the property. Chemicals of Concern were located in three Identified Areas. An evaluation of the COCs determined with the use of a risk assessment approach that COCs have been released above applicable standards in some cases. However, with excavation and replacement of the top 10 feet of soil, all of the fill

material will meet all the VAP applicable standards above the residential point of compliance and the planned property use can proceed.

Complete copies of the Phase I and Phase II Property Assessments are contained in the NFA Letter as Sections E and F. The planned remedial activities are included in Section I and the Operation and Maintenance Plan in Section J. A summary of these documents are provided in the following subsections.

2.1 Phase I Property Assessment

Winther Investments, Inc. retained R. D. Zande and Associates, Inc. to conduct an Ohio EPA Voluntary Action Program (VAP) Phase I Property Assessment of the Liberty Place, LLC, located at 100 Liberty Street, Columbus, Ohio. Property maps are included in Section E, Appendix 1. The assessment was completed in compliance with OAC 3745-300-06.

In conducting the Phase I Property Assessment, our objective was to gather as much information about the property as was readily available to determine whether any obvious areas of environmental contamination or other environmental concerns exist at the property. R. D. Zande gathered information from a number of sources including records maintained by various environmental regulatory agencies, past aerial photographs of the property and interviews with personnel familiar with the property. Appendix 2, Section E contains copies of the interview and regulatory review records prepared during the course of the assessment. The purpose of the records search was to assimilate information about the property and identify areas of known or suspected environmental contamination.

R. D. Zande and Associates, Inc. representatives performed the on-property survey portion of the assessment on September 13, 2000. The on-property survey consisted of a visual inspection of the property with emphasis on (a) possible sources of environmental contamination by potentially hazardous or toxic materials (e.g., hazardous wastes, polychlorinated biphenyls and asbestos), (b) the potential presence of underground storage tanks, (c) property operations which could lead or contribute to environmental contamination, and (d) the potential presence of wetlands on undeveloped property. To the extent possible, we also considered the potential effect on the environmental quality of the property from conditions on surrounding properties. The field survey checklist is included in Appendix 3, Section E. Photographs taken during the on-property survey are contained in Appendix 4, Section E.

The property had formerly been used for manufacture of machined steel fittings by Capitol Manufacturing Company. Operations ceased in 1989. Much of the property buildings were demolished in 1991. Eight USTs were removed in 1991 and 1992.

Based upon the review of available information gathered during the Phase I Property Assessment and the on-property survey conducted by R. D. Zande and Associates, Inc.

staff, three (3) Identified Areas of environmental concern are associated with the subject property.

These are Identified Area One which is located in the north west central portion of the property, Identified Area Two which is located in the south west central portion of the property, and Identified Area 3.

These Identified Areas were delineated using data from the prior environmental investigation of the property by ATEC Environmental Consultants, Lawhon & Associates, Petro Environmental Technologies, and Dames & Moore. Identified Area 1 primary COC is the LNAPL which occurs just above the saturated zone in two main portions of this Area. Identified Area 2 primary COCs are the chlorinated solvents found at just above detection limits in the soil and groundwater around MW-4-25. Identified Area 3 have had very little environmental data and was therefore examined for the COCs (heavy metals and petroleum products) typically used in Capitol Manufacturing Products operating processes. The Phase I recommended additional investigation in these areas.

An examination of the eligibility issues determined that three (3) former Underground Storage Tanks were under BUSTR jurisdiction. An NFA letter has been issued for these USTs which have been removed. No other eligibility issues were identified.

2.2 Phase II Property Assessment

The purpose of the Phase II Property Assessment was to determine the nature and extent of environmental impairment on environmental media of the property. Three Identified Areas had been delineated by the R. D. Zande & Associates, Inc. Phase I Property Assessment based on historical information, property visits, and prior investigations by ATEC Environmental Consultants, Lawhon & Associates, Petro Environmental Technologies, and Dames & Moore. Chemicals of Concern were identified for each of these areas. The Phase II Property Assessment was based on characterizing the Identified Areas and was initiated in September 2000 and completed in May 2002.

During the Phase II Property Assessment 18 soil borings were drilled on the investigation area, and soil samples collected for laboratory analysis from these borings. Geotechnical samples were also collected from 15 of the soil borings to obtain physical soil data on the subsurface. Three of the soil borings were converted to monitoring wells. Two rounds of ground water sampling were conducted on selected monitoring wells on the property, once in October 2000, and a second in April 2002. Each round of sampling consisted of two sampling events, 15 to 30 days apart, as per VAP requirements.

2.2.1 Soil Investigation and Findings

The Phase I investigation determined a number of areas of concern identified by Dames & Moore in their investigation (Draft Remedial Action Plan, April 7, 1995) are the primary areas to be addressed. These are:

- Area A – Area around former USTs 5 and 6. Soils contaminated by petroleum LNAPL including toluene and xylene at the water table. Carcinogen benzo(a)pyrene has been detected in the groundwater.
- Area B – Area centered around Tank 3. Soils contaminated by petroleum LNAPL including toluene at the water table.
- Area D – Small area centered around well MW-4-25 where low concentrations of trichlorethene were detected in the groundwater samples.
- Area F – Area around former UST 7. Soils contaminated by TPH, toluene, and xylene.
- Area G – Area centered around storm sewer junction. Soils contaminated by TPH, ethyl benzene, and xylene.

The above areas of concerns, which are depicted in Figure 2, Section E were combined into several identified areas for the property based on the information collected by the Phase I investigation and the mentioned prior reports. These Identified Areas consist of:

1. Areas containing petroleum hydrocarbons or LNAPLs (former Dames & Moore Areas A & B),
2. Areas where chlorinated solvents or BTEX products have been identified by soil sampling or ground water sampling (former Dames & Moore Areas D, F, and G),
3. The areas of the property not part of prior investigations but within the Capitol Manufacturing property.

The Identified Areas are delineated in Figure 3, Section E. Identified Area #1 is outlined near a number of underground storage tanks which were removed by the prior UST investigations. These USTs contained primarily heating oil, diesel fuel, or cutting or lubricating oils. Prior investigation had found TPH in soils, LNAPL just above the saturated zone, some semivolatile compounds, and PCBs in one recovery well (DMR-1) location. Therefore the suspected and known chemicals of concern consisted of petroleum hydrocarbons, semivolatile compounds, heavy metals, and PCBs. The soil samples collected from six soil borings (ZB-7 to ZB-12) within this area were to be analyzed for VOCs, SVOCs, TPH, RCRA metals, and PCBs.

Identified Area #2 is outlined by several small areas where prior investigations have detected BTEX or chlorinated compounds in soil or groundwater, centered around UST #7, which contained reclaimed oil. Therefore the suspected and known chemicals of concern consist of chlorinated solvents, BTEX compounds, petroleum hydrocarbons, heavy metals, and PCBs. The soil samples collected from three soil borings (ZB-13, ZB-14, ZB-15) within this area were analyzed for VOCs, TPH, RCRA metals, and PCBs.

Identified Area #3 is outlined by areas which were part of Capitol Manufacturing Company but were not part of Areas 1 and 2. All of these areas were used for the

manufacturing operations, and it was assumed the COCs found in Identified Areas #1 and #2 may be found in Identified Area #3. Therefore the suspected and known chemicals of concern consisted of volatile organic compounds, petroleum hydrocarbons, semivolatile compounds, heavy metals, and PCBs. The soil samples collected from six soil borings (ZB-1 to ZB-6) within this area were analyzed for VOCs, SVOCs, TPH, RCRA metals, and PCBs.

The soil borings were drilled using a truck mounted rig with hollow stem augers and split spoons. The samples were transferred from the split spoons to the laboratory bottles and kept in coolers for transportation to a VAP certified laboratory.

A total of four distinct soil layers were found in the unconsolidated materials above bedrock at the property. These are:

1. fill layer - primarily 10 to 15 feet thick.
2. Native silty clay to clayey silt with intermittent sand lenses, approximately 10 to 15 feet thick.
3. Silt till - 3 to 7 feet in thickness.
4. Sand and gravel, the primary water bearing unit.

The saturated sand and gravel unit was underlain by a confining silty clay layer which decreases in thickness to the east. The underlying bedrock is the weathered shale followed by the limestone bedrock. These are the Delaware and Columbus shale and limestone. Both formations are Devonian in age.

During the subsurface investigation, no field indications, either visual, by odor, or by PID field instrumentation were found that the eastern portion of the property (Identified Area 3) had been contaminated with volatile organic compounds (VOCs) or total petroleum hydrocarbons (TPH). Total petroleum hydrocarbons were detected in limited concentrations in the soils on the eastern side. These concentrations were well below VAP cleanup standards. Only one soil sample (ZB-2/0-10) detected a solvent (trichloroethene) in the soils, but its concentration of 21 ug/kg is also below the VAP residential direct contact standards. No PCBs were detected in the soil samples. Low levels (480 to 1700 ug/kg) of 10 semivolatile compounds were detected in the soils taken from a gravel and asphalt parking lot (ZB-6/-10). These compounds are typically found as residuals of asphalt paving. Of these compounds, only the benzo(a)pyrene concentration (870 mg/kg) exceeded VAP residential direct contact standards.

Soil borings ZB-7 to ZB-12 were drilled in Identified Area 1 and soil samples collected from those borings were analyzed for Chemicals of Concern TPH, VOCs, SVOCs, PCBs, and RCRA metals. Of the RCRA metal analyses, the only metal to exceed residential direct contact standards was arsenic. It was detected in concentrations of 9.7 to 18.0 mg/kg, with the standard being 6.9 mg/kg. No volatile organic compounds were detected in the soil samples collected from

Identified Area 1. A suite of semivolatile compounds was detected in the soils from samples ZB-8/0-10, ZB-9/0-10, ZB-9a/15, ZB-11/0-10, and ZB-12/0-10. Residential direct contact standards were exceeded for benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene. In addition TPH was detected in almost every soil sample collected from Identified Area 1, with maximum concentrations of 28,700 mg/kg in ZB-11/0-10 and 23,100 mg/kg in ZB-12/20. These exceed the hydrocarbon soil saturation values of 20,000 listed for heavy distillates. These maximum detections correspond to locations where LNAPL has collected in the capillary zone of the sand and gravel aquifer.

No PCBs were detected in the soil samples collected from Identified Area 1. Because no volatile organic compounds, including chlorinated solvents were detected in the soil samples as well, it would appear that Area 1 is not contaminated by dense non aqueous phase liquid compounds (DNAPLs). However just above the water table LNAPLs have collected in the soils in Identified Area 1.

Soil borings ZB-13, ZB-14, and ZB-15 were drilled in Identified Area 2 and soil samples collected from those borings were analyzed for Chemicals of Concern TPH, VOCs, SVOCs, PCBs, and RCRA metals. As in Identified Areas 1 and 3, the RCRA metal analysis determined that arsenic concentrations in the three soil samples collected from these soil borings (10.7, 11.1, and 11.2) exceed VAP residential direct contact standards (6.9 mg/kg). These concentrations appear to be relatively uniform throughout the property.

No PCBs were detected in any soil samples in Identified Area 2. Two solvents cis-1,2-dichloroethene and trichloroethene were only detected in low concentrations (18 – 69 ug/kg) in three soil samples, ZB-13/9-10.5, ZB-13/15-16.5, and ZB-15/3.5-5.0. None of these concentrations exceeded VAP residential direct contact standards. Soil boring ZB-13 was placed in the area of MW-4-25 and MW-4-38 in order to verify the presence of the chlorinated compounds which were first detected and delineated by the Dames & Moore investigation. The chlorinated compounds were detected in low concentrations in the soils in the area of MW-4-25 and MW-4-38.

In summary, the western portion of the property (Identified Areas 1 and 2) has been much more severely affected by the manufacturing operations than the eastern portion (Identified Area 3). The major contamination is petroleum products and semivolatile compounds in the areas where LNAPL occurs in the capillary zone of the sand and gravel aquifer in Identified Area 1. This in accordance with prior investigations. Chlorinated compounds were detected in low concentrations in the soils in the area of MW-4-25 and MW-4-38 in Identified Area 2. Only low levels of TPH (27 to 200) were detected in Identified Area 2. The investigation of the subsurface found petroleum contaminated soils in two areas previously identified as contaminated by petroleum products, Identified

Area 1, which consists of Dames & Moore A and B contained petroleum LNAPL. Examination of the soils determined that the amount of PCS in the upper 10 foot was limited. However below 10 feet soils saturated with LNAPL were found. Water levels and oil levels in the wells in Identified Area 1 confirm that this area has significant LNAPL saturated soils.

Therefore the major source areas for ground water contamination from chemicals of concern in the western area (Identified Areas 1 and 2) appears primarily to be total petroleum hydrocarbon, SVOC, and chlorinated compound contamination in the areas.

2.2.2 Ground Water Investigation and Findings

R. D. Zande installed three monitoring wells during the subsurface investigation. Monitoring wells MWZB-4 was constructed on 9/20/00 and MWZB-16 and MWZB-18 were constructed on 10/4/00. Each well was constructed using a 10-foot long, 0.01-inch slot, two-inch diameter schedule 40 PVC screen. The screen was attached to a two-inch diameter schedule 40 PVC riser and placed in the lower sand and gravel zone. MWZB-4 is an upgradient well, and MWZB-16 and MWZB-18 downgradient wells. During demolition of the former Capitol Manufacturing buildings MWZB-4 was damaged and abandoned. Replacement monitor well MWZB-4a was installed on April 5, 2002.

These wells and the other wells in the network were sampled for ground water and floating product as part of this investigation. The initial sampling round started on 9/29/00 and was completed on 10/9/00. A second confirmation round was collected on 10/27/00. The wells were also sampled on 4/11/02 and on 4/29/02.

All wells that could be located were opened and water and LNAPL (if any) within them was measured on 9/26/00, 10/29/00, 4/11/02, and 4/29/02. The water level elevations measurements in MWZB-4, MWZB-16, and MWZB-18 indicate the ground water trend of the water table is to the west toward the river, and is generally about 704 feet MSL on the eastern boundary and 700 feet MSL in the western boundary of the property. Additional water and LNAPL measurements were collected on 3/20/01 and 3/28/01 during the LNAPL pumping test conducted by R. D. Zande. An oil-water probe was utilized to measure the depth of any LNAPL found in the wells. This probe was used in all wells where LNAPL was suspected. In other wells, a Soloist water level indicator was used.

Based on Dames & Moore estimates of LNAPL thickness, the total LNAPL in Identified Area 1 is estimated to be 1,050 cubic feet or 82,033 gallons. All of the LNAPL saturated soils are 10.35 to 17.45 feet to below the ground surface, based on the measured LNAPL levels in the monitoring wells. Dames & Moore conducted LNAPL removal activities in June 3 to July 12, 1995 and recovered approximately 217.45 gallons of LNAPL. R.D. Zande attempted to use a vacuum truck with hose

inserted directly into wells to remove LNAPL and collected 490 gallons of liquid, of which approximately 50 to 75 gallons was LNAPL. Based on these limited recoveries during the two remediation attempts, it appears that either the estimates of LNAPL quantities are high, or the LNAPL is bound by the clay and silt particles in the soil allowing very little movement. In any case it does not appear the LNAPL has migrated from the original areas defined in the initial investigations from 1992 to 1995, especially since there are no signs of LNAPL in the R. D. Zande downgradient wells MWZB-16 and MWZB-18.

The ground water samples were collected from the decontaminated peristaltic pump or teflon bailers and transferred to laboratory prepared bottles. Two oil product samples (MW-7-25 and MW-1-25) were collected using a decontaminated peristaltic pump and transferred to laboratory prepared bottles. Chain-of-custody (COC) forms accompanied each group of soil and ground water samples for chemical analysis. The samples were delivered to Burgess-Niple, a VAP-certified analytical laboratory.

The property subsurface investigation determined that the first saturated zone below property is the sand and gravel formation within the alluvial deposits. This sand and gravel zone begins between 695 to 715 feet MSL and is as much as 28 feet thick. The second aquifer is the limestone aquifer. Based on the neighboring borings and Bulletin 30 the top elevation of the limestone bedrock is about 630 feet MSL. Between the two aquifers is a discontinuous layer of silty clay on the western portion of the property. In the eastern portion the sand and gravel is separated from the limestone aquifer by Delaware shale.

Based on the pumping rates recorded in ODNR well logs, R.D. Zande slug tests, and the Dames & Moore transmissivity calculations it is concluded the sand and gravel aquifer has a yield capacity of over 100 gpm. As a result the sand and gravel aquifer can be classified as a Critical Resource aquifer.

Based on information in historical ODNR well logs the underlying bedrock limestone aquifer has been determined to be Devonian in age, and called the Columbus/Delaware limestone. It is an aquifer capable of yielding up to 175 gpm according to ODNR's Bulletin 30, based on production rates of historical ODNR well logs in the area. On page 11 of this document is a discussion demonstrating that the limestone aquifer is protected from potential migration of COCs in the shallow sand & gravel aquifer of the property and therefore protected against exceedences of UPUS.

The chemicals of concern (COCs) for the ground water consist of volatile organic compounds because of the detection of BTEX and chlorinated solvents; RCRA metals because of the presence of arsenic above direct contact standards; semivolatile organic compounds because of the presence of semivolatiles in the LNAPL and some semivolatiles in the soils; and PCBs because of the prior detection of these compounds in the LNAPL in prior studies.

In MW-4-25, cis-1,2-dichloroethene was detected 8 and 10 ug/l and vinyl chloride at 6 and 4 ug/l in the two sampling. Groundwater collected from MW-19 contained vinyl chloride at 14 and 22 ug/l respectively according to laboratory analysis. No volatile organic compounds were detected in groundwater samples collected from MW-10. A common plasticizer, bis-(2-ethylhexyl)phthalate, was detected at 27 ug/l and 46 ug/l in MW-10 groundwater samples. It is a common contaminant of sampling and laboratory equipment which use so many of the plastics that are based on this compound. No volatile organics or semivolatile organics were detected in the groundwater upgradient or downgradient of the property, indicating the vinyl chloride and cis-1,2-dichloroethene are limited in their extent and have not moved off the property. Trichloroethene (TCE) was not detected in the monitoring wells, unlike prior investigations. However TCE is a parent compound of 1,2-dichloroethene and vinyl chloride, which would indicate that the chlorinated solvents which may have been introduced into the groundwater at the property are decomposing by natural breakdown processes.

Total petroleum hydrocarbons (TPH) were detected in low concentrations (400 to 960 mg/l) in the groundwater samples both upgradient and downgradient of the property and within the LNAPL area (MW-5-40). This is the only evidence that the groundwater has been effected by the petroleum contamination at the property. However, the presence of the TPH in the upgradient well suggests TPH contamination of groundwater from other locations in the Brewery District have also affected the subject property.

The analysis of the RCRA metals was inconsistent in the 10/4/00 and 10/29/00 rounds of sampling. The 10/4/00 sampling found no metal concentrations above USEPA drinking water maximum contaminant levels (MCLs) in both upgradient and downgradient groundwater samples. In the 10/29/00 round the metal results were much higher in the groundwater samples collected by a factor of 5 to 20 times. Chromium, cadmium, barium, arsenic, and lead MCLs were exceeded in the upgradient ZB-4 well and chromium, cadmium, arsenic, and lead MCLs were exceeded in the downgradient wells ZB-16 and ZB-18.

In the 4/10/02 and 04/26/02 samplings the number of wells sampled was restricted to the upgradient and downgradient R. D. Zande wells and the isolated well in the ODNR canal which has had consistent detections of vinyl chloride (MW-19). In both April samplings analysis of the ground water determined only MW-19 had a VOC above detection limits, vinyl chloride at 9 and 14 respectively. No SVOCs or TPH were detected in any of the wells, indicating no organic compounds were migrating off property from the property in detectable concentrations in these two samplings.

The analysis of RCRA metals in ground water was again inconsistent in the 4/10/02 and 4/26/02 samplings. The metal arsenic, chromium, cadmium, and lead concentrations exceeded standards in both upgradient and downgradient wells in the

4/10/02 sampling. Because of this, and because turbidity values based on field observations were high in the samples collected in the wells, it was decided to collect both filtered and unfiltered RCRA metal samples in the 4/26/02, to determine if the elevated metal results were due to sediment in the samples. In addition, extra caution was used when sampling the wells in the 4/26/02 sampling, using lower flow rates and purging longer. As a result the RCRA metal filtered and the unfiltered sample results from the MWZB-4A well were significantly different. Standards were exceeded for arsenic, cadmium, chromium, and lead in the unfiltered sample, but not in the filtered, indicating entrained sediment in the sample. The downgradient wells MWZB-16 and MWZB-18 RCRA metal filtered and unfiltered sample results were not significantly different, and no standard was exceeded, indicating the entrained sediment problem had been reduced by the more careful sampling procedures in these ground water samples. The nature of the formation the wells are screened in provides a probable explanation for the difference in entrained sediment in the upgradient and downgradient wells. MWZB-4A is screen in a sand layer which, although is hydrologically connected to the sand and gravel layer, contains a higher silt fraction. The downgradient wells are screened in the coarser sand and gravel, with less potential for entrained sediments, although they were observed in these wells in the 10/29/00 and 4/10/02 samplings.

Petroleum LNAPL samples were collected from monitoring wells MW-1-25 and MW-7-25. Two samples were collected from each of these wells. The LNAPL samples were analyzed for TPH, VOCs, SVOCs, PCBs, and RCRA metals. In the analytical results of the LNAPL no constituents were detected in high enough concentrations which would classify the LNAPL product as hazardous. The lone detection of Arochlor 1254 in the first LNAPL sample MW-7-25 is below the standard of 50 mg/kg, above which the LNAPL is classified as PCB containing LNAPL and must be disposed of accordingly. This detection was not confirmed in the second sample.

One volatile organic compound, trans-1,4-dichloro-2-butene, was detected in the LNAPL collected from monitoring well MW-1-25 (Area A) in concentrations of 53,000 and 83,000 ug/kg. Although this is a carcinogen, it is also very volatile, and at these concentrations will not prevent the petroleum LNAPL from being classified as nonhazardous.

The arsenic concentrations of 79 and 35.3 mg/kg in the first round of sampling and 74.2 and 28.5 mg/kg indicate low levels of arsenic in the LNAPL. Low levels of chromium (0.32 to 1.50 mg/kg), cadmium (0.10 to 0.42 mg/kg), and lead (2.75 to 5.08 mg/kg) were also found in the LNAPL. It may indicate the presence of metal shavings in the former cutting oils, which is resulting in the elevated metal content in the petroleum LNAPL plumes.

The subject property is part of an Urban Setting Designation (USD) area established in 1998 for the Miranova, Atwell, City of Columbus, and Harsco (now Liberty Place, LLC) properties. The presence of a USD means that ground water

is restricted from drinking water uses in this area and it is served by the City of Columbus municipal water system.

As part of the Phase II investigation, the current status of this Urban Setting was investigated. The area within ½ mile of the USD boundary was checked for the presence of new wells using the Ohio Department of Natural Resources Well Log Database. In addition the Columbus Health Department provided a letter on September 4, 2002 to R.D. Zande. This letter stated that no new wells have been installed within the USD or within ½ mile of the USD boundary, the communities' ground water use plans have not changed, and there have been no enforceable restriction changes to the USD area.

From the analytical findings it is concluded that historical operations have affected the ground water on the subject property. This is primarily demonstrated by the LNAPL within the soils at the top of the water table in the western portion of the property, the total petroleum hydrocarbons which may be a dissolved fraction within the ground water from the LNAPL which has been found in some wells, and the presence of chlorinated solvents in one well MW-4-25 within the property boundaries and the presence of bis(2-ethyl hexyl)phthalate in two wells (MW-10 and MW-5-40). One of the chlorinated solvents (vinyl chloride) occurred in concentrations above MCL standards (concentrations of 6 and 4 ug/L versus a standard of 2 ug/L) which means the ground water on the property exceeds Unrestricted Potable Use Standards (UPUS). The phthalate detection also exceeds standards (detections of 27, 46, and 87 ug/L as compared to a standard of 6 ug/L), but is questionable since it is a common laboratory artifact and there is no history of it being used at the property. The vinyl chloride within well MW-19 is not considered related to the past operations on the property because it is west of the property boundary, and the well is screened within the fill of the canal, isolated from the sand and gravel aquifer.

Examination of the groundwater analytical results upgradient and downgradient of the property indicates, that although groundwater within restricted areas on the property has been affected, the downgradient groundwater has been little if at all affected. No confirmed chlorinated compounds were detected in concentrations above detection limits, or above standards. Trichloroethene was observed at 7 ug/L in MWZB-16, the 10/4/00 sampling, but it has not been detected in either downgradient wells in the second round (10/29/00) sampling, nor in either round of the April samplings (4/10/02 and 4/26/02). Total petroleum hydrocarbons were observed in the dry season sampling (10/4/00 and 10/29/00) in both upgradient and downgradient wells, in comparable concentrations, but not in the wet season sampling (4/10/02 and 4/26/02) indicating little if any dissolved fraction from the LNAPL on property in the sand and gravel aquifer. Heavy metal results have occurred in two samplings (10/29/00 and 4/10/02) in both upgradient and downgradient wells, but taking both filtered and unfiltered samples in the final sampling on 4/26/02 has indicated these analyses were probably due to the turbidity of the samples collected on those rounds. Based on these results it is

concluded the groundwater downgradient of the property does not exceed UPUS.

An examination was made on whether the detected chlorinated solvents in the sand and gravel aquifer and the presence of soils saturated with LNAPL on property may effect the lower limestone aquifer.

1. For the limestone aquifer to be affected, there must be a contamination source capable of affecting it. However, because there was no evidence of large concentrations of DNAPLs in the soils, and the concentrations of chlorinated compounds in the sand and gravel aquifer are low and appear to be decreasing, it is concluded that a large release of DNAPL did not occur at the property, and therefore a contamination source capable of reaching the limestone bedrock is not present.
2. Ground water samples collected and analyzed of the deeper zones of the sand and gravel aquifer has shown no evidence of confirmed contamination. It is concluded from this data that the ground water contamination from the sand and gravel aquifer did not and has not reached the lower aquifer. Because the remaining contaminants are primarily LNAPL, which tend to float on the upper part of the saturated zone, it is concluded any downward movement will remain very restricted.
3. If the sand and gravel aquifer and the limestone aquifer are not separated by any formation, it is surmised they are hydrologically connected. The subsurface record of neighboring properties indicates either a clay and silt aquitard occurs under the sand and gravel aquifer, or a restrictive shale zone, and in most cases, the upper sand and gravel aquifer is separated from the limestone aquifer.
4. The top of the bedrock aquifer is approximately 60 to 70 feet from the nearest soil contamination source.
5. The replacement of 10 feet of soil to achieve residential compliance will remove much of any potential soil sources from the property which could contaminate the sand and gravel aquifer and limestone aquifer.
6. The property will undergo limited recharge to transport any remaining sources to the limestone aquifer after development because of the apartment buildings and storm water capture and drainage from the property. This will limit any potential downward migration of any remaining sources downward to the limestone aquifer.
7. The natural attenuation of any contaminant moving down through the water column of the sand and gravel aquifer will disperse the already very low concentrations of any COCs (particularly the chlorinated ones which are just above standards now) to below standards before reaching the

limestone aquifer.

Based on the above discussion of the conditions at the property, and the physical nature of the detected COCs, it is concluded:

1. There is no indication that the lower limestone aquifer has been affected by past operations of the property,
2. There are no indications that conditions or sources exist that can potentially contaminate the lower limestone aquifer in the future, and
3. Planned remediation and development will further reduce any risk to the limestone aquifer by reducing remaining sources and minimizing potential for transference to the limestone aquifer.

It is therefore concluded that conditions of the property are met for achieving protection of ground water meeting unrestricted potable use standards (POGWMUPUS) for the lower limestone bedrock aquifer.

2.3 Determination of Applicable Standards

VAP standards which are appropriate to the property include those which are applicable to soils, and those applicable to the groundwater, in the form of use restrictions, protection, and evaluation of potential pathways and risks to downgradient population and ecological resources.

Because Liberty Place, LLC is a residential complex, the development must meet residential Point-of-Compliance (POC) and the generic Residential Direct Contact Soil Standards (RDCSS). Soils and fill presently on the property contain arsenic at levels which exceed the RDCSS, isolated semi-volatiles, and, largely at depth, petroleum contaminated soils.

The applicable standards for the property also include direct contact standards for soil for exposure to remediation/construction workers. A Property-specific Risk Assessment (PSRA) was used to determine applicable standards for exposure to soil and ground water during excavation and construction activities. The PSRA was also used to address applicable standards for volatilization of COCs in the ground water to indoor air.

2.4 Determination of Compliance with Applicable Standards

As described in the following sections, Liberty Place, LLC will achieve compliance with standards applicable to on-property soils by excavation, removal and disposal of soil to at least 10 feet below finish grade of soil with proper characterization as necessary for disposal or use acceptable and/or licensed properties, and replacement with 10 feet of clean fill from a greenfield (sources), with verification by the Environmental Consultant. The property will satisfy VAP standards for unrestricted residential use.

An Operation and Maintenance (O&M) Plan and Agreement will be implemented by Liberty Place, LLC as described below. Based on groundwater monitoring to date, the findings of the Risk Assessment, and the removal of impacted soils, all briefly described in the following sections, the O&M provisions are primarily precautionary in nature. They will serve to detect and monitor contaminants which may move off-property in with groundwater, and provide a means to intercept and remove petroleum product (oil) which is the principal contaminant of concern that has been detected, largely bound with the deeper silty-clayey soils under the property.

2.4.1 Methods for Demonstrating Compliance

A Risk Assessment was used to compare concentrations of COCs to applicable standards. The COCs in soils were divided into two groups, surface soils (0 to 10 feet) and subsurface soils (below 10 feet). The COCs for groundwater were taken from the 2000 and 2002 monitoring sessions conducted by R.D. Zande. There are no surface water or sediment COCs as there are no surface water bodies on the property or directly adjacent to the property. The risk assessment used both a modeling approach (groundwater to vapor intrusion pathway to sub-surface structures and construction/utility worker groundwater to vapor inhalation pathway) and comparison of concentrations of COCs to applicable standards (construction workers to subsurface soils and groundwater to surface water pathway to ecological receptors in surface water and sediments).

2.4.2 Compliance with Generic Numerical Standards

The Property Specific Risk Assessment examined the COCs in the surface and the subsurface soils for construction/utility workers for the ingestion, dermal, and inhalation pathways. All six of these pathways were considered complete. No applicable standard was exceeded for the construction and excavation activities category either individually or in combination for all three Identified Areas. Therefore, no multi-chemical adjustment was necessary for these areas. An evaluation of lead and PCBs to applicable standards revealed that these compounds were not detected in concentrations which exceed generic numerical standards. One soil sample collected in subsurface soils in Identified Area 1 exceeded the heavy fraction distillates applicable standard. The O&M Plan will address this exposure pathway for construction and utility workers.

2.4.3 Risk Assessment

A Property Specific Risk Assessment evaluated groundwater for the property. Only vinyl chloride and bis(2-ethylhexyl)phthalate (probable laboratory or sampling artifact) were present in the ground water at levels that exceed the generic unrestricted standard. Therefore the vapor intrusion into buildings from ground water pathway was examined using the Johnson and Ettinger Vapor Intrusion Model. The concentrations of volatile constituents from groundwater in

air were modeled using the TSCREEN model in Lagoon Emission mode in order to evaluate the inhalation exposures to construction/utility workers from groundwater. Dermal exposures from groundwater were evaluated from a spreadsheet provided by OEPA which uses Ohio VAP guidance for the specific physical parameters for each chemical. The groundwater to surface water migration pathway to ecological receptors was evaluated by comparing concentrations to Ohio Surface Water Quality Standards.

The Property Specific Risk Assessment concluded that no direct contact exposure pathways to soil or groundwater are complete for future residents due to the planned remediation by excavation and replacement with 10.5 feet with greenfield soil to achieve residential compliance point. Groundwater use is restricted through an enforceable deed restriction in association with the Urban Setting Designation and precludes potable and unpotable use. Evaluation of volatile constituents in groundwater migrating to indoor air concluded no risk. Construction worker pathways were evaluated for on property soils and determined no engineering or restrictions are necessary, except for exposure to TPH in the subsurface soils. Groundwater to ecological receptors were determined to not exceed applicable standards.

2.4.4 Determination of Whether Remedial Activities Are Required

Remedial Activities are required for the Ingestion/Dermal/Inhalation Pathways for Surface Soils (0 to 10 feet) in order to achieve the 10-foot point of residential compliance. Removal of present soils and replacement with 10.5 of engineered fill from a certified greenfield location will complete this portion of the remediation. The migration pathway of LNAPL in the underlying subsoils is to be mitigated by placement of an interception trench along the western border of the property. The potable and non-potable pathways are rendered incomplete by institutional control (Restriction of Use Declaration with USD) and ground water monitoring. The remedies are presented in detail in Section I and an Operation and Maintenance (O&M) Plan is included in Section J.

2.5 Remedial Activities

The Remedial Action Plan for the property incorporates five distinct procedures. First, removal of petroleum product (PFP, or oil) below 10 feet by pumping. Second, excavation and removal off-property of soil and fill to at least 10 feet below final grade, and replacement with greenfields fill. Third, segregation, screening, laboratory analyses as required, and removal of Petroleum Contaminated Soil (PCS) within the upper 10 feet of soil to ensure it is disposed/treated at a licensed PCS property. In all instances the ten feet depth is measured from the final surface grade. Fourth, biotreatment of excavated areas that show evidence of PCS. Fifth, construction of an interception/isolation trench on the western border of the property downgradient to capture any PFP that may be attempting to move off-property. LNAPL monitoring, downgradient of the trench, will also be conducted to detect if any LNAPL has moved off-property.

2.5.1 Removal of Petroleum Hydrocarbons (LNAPL)

LNAPL recovery and removal has been conducted on the property in several episodes, initially by previous consultants, and most recently by R. D. Zande. Dames & Moore began recovery of oil from several recovery and monitoring wells in 1994. These included wells in the Ohio Feeder Canal, which is not part of the current property covered by the NFA. Initially, oil was recovered from monitoring wells by bailing. Recovery on 11 visits averages five gallons per visit. In late 1994, two dedicated recovery wells were installed, and began operation in February 1995. Nine visits were made through August 1995, when pumping was discontinued. A total of 217.45 gallons of LNAPL was recovered.

In March, 2001, R. D. Zande engaged a subcontractor with a vacuum recovery pump/tuck to extract LNAPL from sewer wells on the property. A total of 490 gallons of liquid (LNAPL/water mix) was recovered. Measurement of the wells one day and eight days after pumping indicated very slow recovery of LNAPL levels. Based on the small volumes of LNAPL that was able to be recovered in these events, the LNAPL at depths under the property is not mobile, but appears to be adsorbed to the fine silty-clayey soils under the property. No further LNAPL product removal by well pumping/extraction is proposed.

2.5.2 Removal of Arsenic and Petroleum Contaminated Soils (PCS)

Construction of Liberty Place, LLC will involve the excavation/removal of fill/soil now on the property to at least 10 feet below final grade, and replacement with ten (10) feet of clean soil from a greenfield source(s) verified by the Certified Professional. This will satisfy the VAP Point of Compliance (POC) requirements for unrestricted residential use.

The removed soils contain arsenic at concentrations exceeding the VAP Residential Direct Contact Soil Standard; however, they do not exceed any standard for solid or hazardous waste. Arsenic concentrations are similar to those found naturally in many Ohio soils. These soils will be removed to a fill site. Excavation on the north and east end of the sites is substantially complete as of this date. All excavation and fill contractors will be provided a copy of the Risk Mitigation Plan (RMP).

Most soils exceeding VAP or BUSTR standards for PCS are found at depths greater than 10 feet on the property. A very limited, isolated area of soils with elevated semi-volatile compounds (SVOCs), poly aromatic hydrocarbons (PAHs) essentially the same as PCS, was found in the upper 10 feet of soils near a proposed parking structure. The consultant will use a field instrument, a Flame Ionization Detector (FID) to screen suspect soils, as well as visual and obvious odor indications, to ensure that PCS/SVOC soils are properly segregated, analyzed if necessary, and removed to a licensed PCS property for

disposal/biodegradation. As of this date the PCS has been substantially removed from the property.

2.5.3 Biotreatment of Excavated Areas

During deeper excavation, such as for utilities/sewer connections, and the interception trench described below, biotreatment may be applied to PCS areas encountered below the soils to be removed (i.e., below the 5-10 feet excavated and 10 feet or more below final grade). This process involves the application of a patented nutrient/microbe mix to enhance biodegradation of the PCS to carbon dioxide, water, and oxygen. Follow-up bioscan monitoring will be conducted to ascertain the effectiveness of any such treatment.

2.5.4 Interception Trench

During construction of Liberty Place, LLC, an interception trench will be installed along 400 feet of the western property boundary downgradient of the areas of heaviest oil contamination. It will be a French-drain type installation of perforated PVC bedded in gravel type media at a depth of about 20 feet. The pipe will be sloped from each end to a sump in the middle, with access points to the surface at both ends. The purpose of the French-drain is to allow for the interception of any oil that might move off-property to the west. It allows any accumulated oil, oil/water pumped out for treatment. It will also allow for biotreatment directly into the trench/pipe to enhance biodegradation of the oil. Follow-up bioscan monitoring will be conducted after any such applications to determine effectiveness.

2.5.5 LNAPL Monitoring

A monitoring network of two downgradient wells has been installed at the property. The two down-gradient wells (MW ZB-16, 18) are located west of the interception trench. The purpose of the monitoring wells is to allow the detection of LNAPL off-property or downgradient of the trench in order to evaluate the effectiveness of the trench.

2.5.6 Institutional Controls/Declaration of Use Restriction

Liberty Place, LLC is within the boundaries of an Urban Setting Designation (USD) established by EPA in September, 1998. The area is completely served by the City of Columbus water and sewer. A Declaration of Use Restriction has been recorded with the property which prohibits the use of groundwater for potable or non-potable purposes. The only use of groundwater will be for monitoring, remedial, or similar purposes as provided for in the Declaration of Use Restriction.

2.6 Planned Operation and Maintenance Remedies

The purpose of the O&M provisions at the property is to provide: 1) a trench/drain system to intercept any such LNAPL that might migrate so that it can be removed for treatment/disposal, and possibly treated with bionutrient media if appropriate, and 2) a monitoring network for detecting any movement of LNAPL downgradient, i.e. to the west of the trench in order to evaluate the effectiveness of the trench. Due to the soil removal and replacement with clean soil fill from verified greenfield source(s) to a final depth of at least 10 feet below final grade, the site will satisfy the VAP POC requirements for unrestricted residential land use. The O&M Plan will provide a RMP to workers or contractors (such as utility workers) whose work has the potential to expose them to the soils below the compliance level.

2.6.1 Interception Trench

The Interception Trench/French Drain system will be installed as part of the Remedial Action at the time of construction. It consists of 400 foot long French drain type perforated PVC pipe bedded in porous media at approximately 20' depth, along the western boundary of The property. It will slope from surface access ports at both ends towards a sump in the center that will allow any mobile oil/water product to collect and be pumped out for treatment/disposal. The trench will be inspected twice during the first year, and once during the second (during proposed ground water monitoring events). If conditions warrant (LNAPL accumulation), the trench will be inspected more frequently, and a remediation firm under contract with the owner will respond as needed to remove the oil and maintain the trench/pipe system.

If appropriate, biotreatment media will be applied to the trench through the access points to enhance biodegradation of any oil intercepted and accumulated, followed by bioscan monitoring which will check the effectiveness of the biotreatment. Based on experience with previous efforts to actively pump/remove oil, only minimal amounts have been recovered because it is largely bound with the deeper silty-clayey soils. If experience with the trench is similar, actively removal treatment will be discontinued after two years. The trench will then be checked as part of normal maintenance operations at The property, LLC for three more years. If minimal LNAPL is being collected, the trench will then be abandoned.

If sufficient oil continues to be collected, a determination will be made with OEPA regarding continued removal/treatment operations and the O&M Plan modified accordingly.

2.6.2 LNAPL Monitoring

The LNAPL monitoring network consists of two downgradient wells at the western boundary of the property (MW ZB-16,18). The downgradient wells are so located as to detect any movement of LNAPL with water from the property.

Based on monitoring events by previous consultants, and by R. D. Zande in October 2000, and April 2002, the LNAPL is adsorbed to the silty-clayey soils under the property. The known or suspected sources of the LNAPL (largely Underground Storage Tanks – USTs) have all been removed. The deep storm sewer under the property has been re-lined by the City of Columbus, eliminating that as a potential source of contaminants on the property.

The interception trench is designed to prevent any LNAPL migration off-property. The sole purpose of the monitoring of the two wells, MWZB-16 and MWZB-18 is to verify the absence (or presence) of LNAPLs downgradient of the trench. The verification of LNAPL absence/presence will be done first by field observations (such as absence/presence of sheen, odor, FID readings) and if necessary by laboratory analysis. The wells will be checked quarterly for up to four quarters.

During the four quarters of active monitoring the wells will initially be checked and maintained by the environmental consultant, and thereafter be periodically checked for integrity/availability as part of normal property maintenance by property personnel. If property personnel note indicators of presence of LNAPL, the environmental consultant will be contacted for further examination. If no longer needed for monitoring, the wells will be abandoned per ODNR protocols after five years.

If LNAPLs are detected during the monitoring period the results will be evaluated with regard to the findings of the risk assessment or potential effects on downgradient receptors, and a determination will then be made with OEPA regarding the need for expanded, modified and/or continued LNAPL monitoring and the O&M plan modified accordingly.

2.6.3 Institutional Controls

Liberty Place, LLC is within a USD established by OEPA in September 1998, and the area is completely served by Columbus Water and Sewer; therefore it is unlikely groundwater will be used in the area. Liberty Place, LLC has established and recorded with the deed a Declaration of Use Restriction which continues with any sale or transfer of the property that prohibits and potable or non-potable use of groundwater, except for monitoring, remedial, or similar purposes, as provided for in the Declaration of Use Restriction.

3.0 Conclusions

With removal and replacement of soil from a certified greenfield source the the fill material at the property will meet all VAP applicable standards above the residential point of compliance of 10 feet. The LNAPL present below the point of compliance will be prevented from movement off-property by a passive interception trench. The

interception trench and downgradient wells will be monitored for the presence of LNAPL in order to ensure the effectiveness of the trench. The risk assessment has evaluated all potential pathways and determined all pathways are within applicable standards with inclusion of two restrictions in the Operation and Maintenance Plan. The first restriction being restriction of groundwater from use as a potable or nonpotable source below the property, and the second, the implementation of the Risk Management Plan which includes monitoring and instructions for environmental, construction, and utility workers regarding potential exposure to petroleum contaminants below ten feet from surface.

Therefore the property achieves the VAP standards for protection of public health and safety, and the environment and an NFA is issued by the Certified Professional for the property.

**SECTION B
ATTACHMENT A
DECLARATION OF USE RESTRICTION WITH
DESCRIPTION OF THE PROPERTY
LIBERTY PLACE, LLC**

DECLARATION OF USE RESTRICTION

Liberty Place Apartment Project
100 Liberty Street, Columbus, Ohio

Instr: 200205230128871 05/23/2002
Pages: 6 F: \$30.00 3:22PM
Robert G. Montgomery T20020060445
Franklin County Recorder BXPORTR W

WHEREAS, LIBERTY PLACE LLC., an Ohio limited liability company ("Declarant"), is the owner of certain real property (the "Property") situated in the State of Ohio, County of Franklin and City of Columbus; and

WHEREAS, Declarant has voluntarily entered into the Ohio Environmental Protection Agency ("OEPA") Voluntary Action Program ("VAP") for the remediation of "Brownfield" sites; and

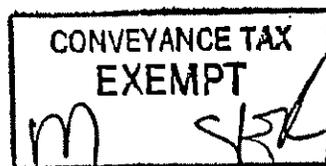
WHEREAS, Declarant, as a precondition of being issued a Covenant Not To Sue ("CNS"), desires to encumber the Property with a Declaration of Restriction ("Declaration") as set forth herein, said Property being particularly described on Exhibit A attached hereto; and

WHEREAS, Christopher W. Krumm (CP 177), a Certified Professional, delivered to Declarant a No Further Action Letter ("NFA"), dated May 22, 2002, with respect to the Property; and

WHEREAS, Mr. Krumm concluded in the NFA that the Property met applicable standards pursuant to Ohio Revised Code ("ORC") Chapter 3746 and the VAP subject to the recordation of a declaration of use restriction.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to a Declaration as set forth herein (the "Easement"). The Easement shall constitute a servitude upon the Property, which servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Property, and, to that end and for the purpose of accomplishing the intent of the parties hereto, Declarant covenants on behalf of itself, its heirs, successors and assigns to do and refrain from doing, severally and collectively, upon the Property, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, is and will be for the benefit of the owners and in compliance with the terms of the Covenant.

1. **Prohibition Against Extraction of Ground Water.** As a portion of the remedy under the OEPA VAP to protect against exposure to hazardous substances and/or petroleum in ground water located at or underlying the Property, no person shall extract the ground water located at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation of the ground water.
2. **Declaration to be Binding and Run with the Land.** This Declaration shall run with the land and shall be binding upon all current owners of the Property, and all successors and



TRANSFERRED
NOT NECESSARY
MAY 23 2002
JOSEPH W. TESTA

assigns of the Property, or any portion of the Property, including any leasehold interests on the Property or any portion of the Property.

3. **Enforcement.** Compliance with this Declaration may be enforced by a legal or equitable action brought in a court of competent jurisdiction by one or more of the following parties: (a) any party referenced in Paragraph Two of this Declaration; (b) OEPA or its representative; or (c) any party with legal standing under applicable law. Any delay or failure on the part of any party to take action to enforce compliance with this Declaration shall not bar any subsequent enforcement with respect to the noncompliance in question and shall not be deemed a waiver of the right of any party to take action to enforce any noncompliance.
4. **Noncomplying Use.** Pursuant to ORC 3746.05, if the Property or any portion of the Property is put to a use that does not comply with this Declaration, the CNS issued for the Property by OEPA under ORC 3746.12 is void on and after the date of the commencement of the noncomplying use.
5. **Record in Deed Records.** This Declaration shall be recorded in the same manner as a deed in the Office of the Recorder of Franklin County, pursuant to ORC 3746.10(C) and 317.03(A), and shall be deemed incorporated by reference in any instrument hereafter conveying any interest in the Property or any portion of the Property.
6. **Severability.** If any one or more provisions of this Declaration is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
7. **Governing Law.** This Declaration shall be governed by and interpreted in accordance with the laws of the State of Ohio, including ORC Chapter 3746 and OAC Chapter 3745-300.
8. **Headings.** All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration.
9. **Notice of Declaration upon Conveyance.** Each instrument hereafter conveying any interest in the Property, or any portion of the Property, shall contain a recital acknowledging this Declaration and providing the recording location of this Declaration upon such conveyance, substantially in the following form: "The real property described herein is subject to the Declaration of Use Restriction made by Liberty Place LLC and recorded with the Office of the Recorder of Franklin County, Ohio on the 22nd day of May, 2002 in the Franklin County, Ohio Deed Records, Instrument Number _____, as if the same were fully set forth herein."

IN WITNESS WHEREOF, Declarant has caused the execution of this instrument as of the date first above written.

Signed and Acknowledged
in the Presence of:

LIBERTY PLACE LLC
an Ohio limited liability company

Cathy Barazi
Name: CATHY BARAZI

By: Frederic Gautier
Frederic Gautier, President

Bryan Johnson
Name: BRVAN JOHNSON

STATE OF TEXAS)
)SS:
COUNTY OF HARRIS)

The foregoing instrument was executed before me this 17th day of May, 2002 by Frederic Gautier, President of Liberty Place LLC, an Ohio limited liability company, on behalf of said limited liability company.

Stephanie A. Allemore
Notary Public

This Instrument Prepared By:

J. Jeffrey McNealey, Esq.
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215



EXHIBIT A

Description of the Property

**DESCRIPTION OF 6.729 ACRES OF LAND
SOUTH OF FULTON STREET
WEST OF FRONT STREET**

Situated in the State of Ohio, County of Franklin, City of Columbus, in Half Section 27, Township 5, Range 22, Refugee Lands, being a 6.729 acre tract of land comprised of all of Parcel 1, all of Parcel 2, all of Parcel 3, all of Parcel 4, and part of Parcel 5 as described in a deed to the Harsco Corporation, of record in Deed Book 2152, Page 97, (Parcel 4 being the same as Lot Number Six (6) of the L. Hoster Brewing Company's Sub., of record in Plat Book 5, Page 362), all of Parcel 1, all of Parcel 2, and all of Parcel 3 as described in a deed to the Harsco Corporation, of record in Deed Book 2171, Page 381, and being a part of that Robert Armstrong's Point Pleasant Addition to the City of Columbus, of record in Deed Book 33, Page 122, all of the First Parcel and part of the Second Parcel as described in a deed to the Harsco Corporation of record in Deed Book 3070, Page 116, all references to records being on file in the Recorder's Office, Franklin County, Ohio, said 6.729 acre tract being more particularly described as follows:

Beginning at an iron pin set in the northerly right-of-way line of Liberty Street, at the southeasterly corner of said Parcel 2 as described in Deed Book 2171, Page 381, at the southwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03, and being referenced North 87°53'56" West, a distance of 300.00 feet from a drill hole found at the intersection of the northerly right-of-way line of said Liberty Street and the westerly right-of-way line of Front Street;

Thence North 87°53'56" West, along the northerly right-of-way line of said Liberty Street, along the southerly line of said Parcel 2, Parcel 3 and Parcel 1 as described in said Deed Book 2171, Page 381, a distance of 209.48 feet to an iron pin found (1 foot deep) at the southwesterly corner of said Parcel 1, in the easterly line of said Parcel 5, as described in said Deed Book 2152, Page 97;

Thence North 11°53'46" East, continuing along a right-of-way line of said Liberty Street, along the westerly line of said Parcel 1, along the easterly line of said Parcel 5, a distance of 5.07 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc.;

Thence North 87°53'56" West, continuing along the northerly right-of-way line of said Liberty Street, as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Page 18, crossing through said Parcel 5, a distance of 12.66 feet to an iron pin set at a point of curvature;

Thence continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, along the arc of a curve to the left, having a radius of 276.56 feet, a central angle of

10°50'44", an arc distance of 52.35 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc., at a point of tangency, said arc being subtended by a chord bearing South 86°40'42" West, a chord distance of 52.27 feet;

Thence South 81°15'20" West, continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, a distance of 245.68 feet to an iron pin set in the westerly line of said Parcel 5, in the easterly line of the Columbus Feeder to the Ohio and Erie Canal (abandoned) as described in a Lease of Canal Lands to the Columbus & Southern Ohio Electric Company, of record in Lease Record 83, Page 346, witness an iron pin found with a plastic cap stamped Hockaden and Assoc., in the northerly right-of-way line of said Liberty Street at a point of curvature, bearing South 81°15'20" West, a distance of 22.76 feet.

Thence North 08°32'59" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 5, the westerly line of said Parcel 4, as described in Deed Book 2152, Page 97, a distance of 190.21 feet to a concrete canal marker with ¾" steel rod;

Thence North 02°41'46" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 4, the westerly line of said Parcel 1 and Parcel 3, as described in Deed Book 2152, Page 97, a distance of 641.63 feet to an iron pin set in the southerly right-of-way line of Fulton Street;

Thence South 78°00'27" East, along the southerly right-of-way line of said Fulton Street, along the northerly line of said Parcel 3, the northerly line of said Parcel 2, as described in Deed Book 2152, Page 97, the northerly line of said First Parcel as described in said Deed Book 3070, Page 116, a distance of 426.03 feet to a drill hole found at the intersection of the southerly right-of-way line of said Fulton Street and the westerly right-of-way line of Second Street;

Thence South 00°01'21" West, along the westerly right-of-way line of said Second Street, the easterly line of said First Parcel, along the easterly line of said Second Parcel as described in said Deed Book 3070, Page 116, a distance of 365.46 feet to an iron pin found (1 foot deep), at a northeasterly corner of that Parcel #1 as described in a deed to Front & Fulton Real Estate Trust, of record in Deed Book 2852, Page 519;

Thence South 89°34'54" West, into said original Second Parcel, along a northerly line of said Parcel #1, a distance of 154.50 feet to an iron pin set;

Thence South 04°24'37" West, continuing through said original Second Parcel, along the westerly line of said Parcel #1, a distance of 158.80 feet to an iron pin set at a southwesterly corner of said Parcel #1, in the southerly line of said original Second Parcel, in the northerly line of said Parcel 4 as described in said Deed Book 2152, Page 97;

Thence South 78°33'20" East, along a southerly line of said Parcel #1, the northerly line of said Parcel 4, a distance of 149.95 feet to a railroad spike found at the northeasterly corner of said Parcel 4;

Thence South $11^{\circ}53'46''$ West, along a westerly line of said Parcel #1, along the easterly line of said Parcel 4, a distance of 17.19 feet to an iron pin set at a southwesterly corner of said Parcel #1, at the northwesterly corner of said Parcel 1, as described in said Deed Book 2171, Page 381;

Thence South $87^{\circ}53'56''$ East, along the southerly line of said Parcel #1, along the northerly line of said Parcel 1, the northerly line of said Parcel 3 and Parcel 2 as described in said Deed Book 2171, Page 381, a distance of 186.18 feet to an iron pin set at the northeasterly corner of said Parcel 2, at the northwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03;

Thence South $02^{\circ}06'04''$ West, along the easterly line of said Parcel 2, the westerly line of said 1.093 acre tract, a distance of 135.00 feet to the True Place of Beginning and containing an area of 6.729 acres of land.

For the purpose of this description a bearing of North $87^{\circ}53'56''$ West was used on the northerly right-of-way line of Liberty Street (50') as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Pages 18,19 & 20, and all other bearing relate to this basis of bearing.

This description was prepared from an actual field survey of the premises in September, 2000 by ms consultants, inc., under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159. All iron pins set are $5/8''$ x $30''$ rebar with a yellow plastic cap stamped "ms cons, colum".

Liberty Place, LLC Property
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 4
Declaration of Use Restriction

DECLARATION OF USE RESTRICTION

Liberty Place Apartment Project
100 Liberty Street, Columbus, Ohio

Instr: 200205230128871 05/23/2002
Pages: 6 F: \$30.00 3:22PM
Robert G. Montgomery T20020060445
Franklin County Recorder EXPORTER W

WHEREAS, LIBERTY PLACE LLC., an Ohio limited liability company ("Declarant"), is the owner of certain real property (the "Property") situated in the State of Ohio, County of Franklin and City of Columbus; and

WHEREAS, Declarant has voluntarily entered into the Ohio Environmental Protection Agency ("OEPA") Voluntary Action Program ("VAP") for the remediation of "Brownfield" sites; and

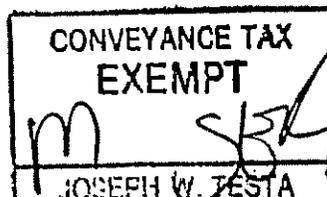
WHEREAS, Declarant, as a precondition of being issued a Covenant Not To Sue ("CNS"), desires to encumber the Property with a Declaration of Restriction ("Declaration") as set forth herein, said Property being particularly described on Exhibit A attached hereto; and

WHEREAS, Christopher W. Krumm (CP 177), a Certified Professional, delivered to Declarant a No Further Action Letter ("NFA"), dated May 22, 2002, with respect to the Property; and

WHEREAS, -Mr. Krumm concluded, in the NFA that the Property met applicable standards pursuant to Ohio Revised Code ("ORC") Chapter 3746 and the VAP subject to the recordation of a declaration of use restriction.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to a Declaration as set forth herein (the "Easement"). The Easement shall constitute a servitude upon the Property, which servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Property, and, to that end and for the purpose of accomplishing the intent of the parties hereto, Declarant covenants on behalf of itself, its heirs, successors and assigns to do and refrain from doing, severally and collectively, upon the Property, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, is and will be for the benefit of the owners and in compliance with the terms of the Covenant.

1. **Prohibition Against Extraction of Ground Water.** As a portion of the remedy under the OEPA VAP to protect against exposure to hazardous substances and/or petroleum in ground water located at or underlying the Property, no person shall extract the ground water located at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation of the ground water.
2. **Declaration to be Binding and Run with the Land.** This Declaration shall run with the land and shall be binding upon all current owners of the Property, and all successors and



TRANSFERRED
NOT NECESSARY
MAY 23 2002
JOSEPH W. TESTA
AUDITOR

assigns of the Property, or any portion of the Property, including any leasehold interests on the Property or any portion of the Property.

3. **Enforcement.** Compliance with this Declaration may be enforced by a legal or equitable action brought in a court of competent jurisdiction by one or more of the following parties: (a) any party referenced in Paragraph Two of this Declaration; (b) OEPA or its representative; or (c) any party with legal standing under applicable law. Any delay or failure on the part of any party to take action to enforce compliance with this Declaration shall not bar any subsequent enforcement with respect to the noncompliance in question and shall not be deemed a waiver of the right of any party to take action to enforce any noncompliance.
4. **Noncomplying Use.** Pursuant to ORC 3746.05, if the Property or any portion of the Property is put to a use that does not comply with this Declaration, the CNS issued for the Property by OEPA under ORC 3746.12 is void on and after the date of the commencement of the noncomplying use.
5. **Record in Deed Records.** This Declaration shall be recorded in the same manner as a deed in the Office of the Recorder of Franklin County, pursuant to ORC 3746.10(C) and 317.08(A), and shall be deemed incorporated by reference in any instrument hereafter conveying any interest in the Property or any portion of the Property.
6. **Severability.** If any one or more provisions of this Declaration is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
7. **Governing Law.** This Declaration shall be governed by and interpreted in accordance with the laws of the State of Ohio, including ORC Chapter 3746 and OAC Chapter 3745-300.
8. **Headings.** All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration.
9. **Notice of Declaration upon Conveyance.** Each instrument hereafter conveying any interest in the Property, or any portion of the Property, shall contain a recital acknowledging this Declaration and providing the recording location of this Declaration upon such conveyance, substantially in the following form: "The real property described herein is subject to the Declaration of Use Restriction made by Liberty Place LLC and recorded with the Office of the Recorder of Franklin County, Ohio on the 22nd day of May, 2002 in the Franklin County, Ohio Deed Records, Instrument Number _____, as if the same were fully set forth herein."

IN WITNESS WHEREOF, Declarant has caused the execution of this instrument as of the date first above written.

Signed and Acknowledged
in the Presence of:

LIBERTY PLACE LLC
an Ohio limited liability company

Cathy Barazi
Name: CATHY BARAZI

By: Frederic Gautier
Frederic Gautier, President

Bryan Johnson
Name: BRYAN JOHNSON

STATE OF TEXAS)
)SS:
COUNTY OF HARRIS)

The foregoing instrument was executed before me this 17th day of May, 2002 by Frederic Gautier, President of Liberty Place LLC, an Ohio limited liability company, on behalf of said limited liability company.

Stephanie A. Allemore
Notary Public

This Instrument Prepared By:

J. Jeffrey McNealey, Esq.
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215



EXHIBIT A

Description of the Property

**DESCRIPTION OF 6.729 ACRES OF LAND
SOUTH OF FULTON STREET
WEST OF FRONT STREET**

Situated in the State of Ohio, County of Franklin, City of Columbus, in Half Section 27, Township 5, Range 22, Refugee Lands, being a 6.729 acre tract of land comprised of all of Parcel 1, all of Parcel 2, all of Parcel 3, all of Parcel 4, and part of Parcel 5 as described in a deed to the Harsco Corporation, of record in Deed Book 2152, Page 97, (Parcel 4 being the same as Lot Number Six (6) of the L. Hoster Brewing Company's Sub., of record in Plat Book 5, Page 362), all of Parcel 1, all of Parcel 2, and all of Parcel 3 as described in a deed to the Harsco Corporation, of record in Deed Book 2171, Page 381, and being a part of that Robert Armstrong's Point Pleasant Addition to the City of Columbus, of record in Deed Book 33, Page 122, all of the First Parcel and part of the Second Parcel as described in a deed to the Harsco Corporation of record in Deed Book 3070, Page 116, all references to records being on file in the Recorder's Office, Franklin County, Ohio, said 6.729 acre tract being more particularly described as follows:

Beginning at an iron pin set in the northerly right-of-way line of Liberty Street, at the southeasterly corner of said Parcel 2 as described in Deed Book 2171, Page 381, at the southwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03, and being referenced North 87°53'56" West, a distance of 300.00 feet from a drill hole found at the intersection of the northerly right-of-way line of said Liberty Street and the westerly right-of-way line of Front Street;

Thence North 87°53'56" West, along the northerly right-of-way line of said Liberty Street, along the southerly line of said Parcel 2, Parcel 3 and Parcel 1 as described in said Deed Book 2171, Page 381, a distance of 209.48 feet to an iron pin found (1 foot deep) at the southwesterly corner of said Parcel 1, in the easterly line of said Parcel 5, as described in said Deed Book 2152, Page 97;

Thence North 11°53'46" East, continuing along a right-of-way line of said Liberty Street, along the westerly line of said Parcel 1, along the easterly line of said Parcel 5, a distance of 5.07 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc.;

Thence North 87°53'56" West, continuing along the northerly right-of-way line of said Liberty Street, as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Page 18, crossing through said Parcel 5, a distance of 12.66 feet to an iron pin set at a point of curvature;

Thence continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, along the arc of a curve to the left, having a radius of 276.56 feet, a central angle of

10°50'44", an arc distance of 52.35 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc., at a point of tangency, said arc being subtended by a chord bearing South 86°40'42" West, a chord distance of 52.27 feet;

Thence South 81°15'20" West, continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, a distance of 245.68 feet to an iron pin set in the westerly line of said Parcel 5, in the easterly line of the Columbus Feeder to the Ohio and Erie Canal (abandoned) as described in a Lease of Canal Lands to the Columbus & Southern Ohio Electric Company, of record in Lease Record 83, Page 346, witness an iron pin found with a plastic cap stamped Hockaden and Assoc., in the northerly right-of-way line of said Liberty Street at a point of curvature, bearing South 81°15'20" West, a distance of 22.76 feet.

Thence North 08°32'59" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 5, the westerly line of said Parcel 4, as described in Deed Book 2152, Page 97, a distance of 190.21 feet to a concrete canal marker with ¾" steel rod;

Thence North 02°41'46" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 4, the westerly line of said Parcel 1 and Parcel 3, as described in Deed Book 2152, Page 97, a distance of 641.63 feet to an iron pin set in the southerly right-of-way line of Fulton Street;

Thence South 78°00'27" East, along the southerly right-of-way line of said Fulton Street, along the northerly line of said Parcel 3, the northerly line of said Parcel 2, as described in Deed Book 2152, Page 97, the northerly line of said First Parcel as described in said Deed Book 3070, Page 116, a distance of 426.03 feet to a drill hole found at the intersection of the southerly right-of-way line of said Fulton Street and the westerly right-of-way line of Second Street;

Thence South 00°01'21" West, along the westerly right-of-way line of said Second Street, the easterly line of said First Parcel, along the easterly line of said Second Parcel as described in said Deed Book 3070, Page 116, a distance of 365.46 feet to an iron pin found (1 foot deep), at a northeasterly corner of that Parcel #1 as described in a deed to Front & Fulton Real Estate Trust, of record in Deed Book 2852, Page 519;

Thence South 89°34'54" West, into said original Second Parcel, along a northerly line of said Parcel #1, a distance of 154.50 feet to an iron pin set;

Thence South 04°24'37" West, continuing through said original Second Parcel, along the westerly line of said Parcel #1, a distance of 158.80 feet to an iron pin set at a southwesterly corner of said Parcel #1, in the southerly line of said original Second Parcel, in the northerly line of said Parcel 4 as described in said Deed Book 2152, Page 97;

Thence South 78°33'20" East, along a southerly line of said Parcel #1, the northerly line of said Parcel 4, a distance of 149.95 feet to a railroad spike found at the northeasterly corner of said Parcel 4;

Thence South $11^{\circ}53'46''$ West, along a westerly line of said Parcel #1, along the easterly line of said Parcel 4, a distance of 17.19 feet to an iron pin set at a southwesterly corner of said Parcel #1, at the northwesterly corner of said Parcel 1, as described in said Deed Book 2171, Page 381;

Thence South $87^{\circ}53'56''$ East, along the southerly line of said Parcel #1, along the northerly line of said Parcel 1, the northerly line of said Parcel 3 and Parcel 2 as described in said Deed Book 2171, Page 381, a distance of 186.18 feet to an iron pin set at the northeasterly corner of said Parcel 2, at the northwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03;

Thence South $02^{\circ}06'04''$ West, along the easterly line of said Parcel 2, the westerly line of said 1.093 acre tract, a distance of 135.00 feet to the True Place of Beginning and containing an area of 6.729 acres of land.

For the purpose of this description a bearing of North $87^{\circ}53'56''$ West was used on the northerly right-of-way line of Liberty Street (50') as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Pages 18,19 & 20, and all other bearing relate to this basis of bearing.

This description was prepared from an actual field survey of the premises in September, 2000 by ms consultants, inc., under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159. All iron pins set are $5/8''$ x 30" rebar with a yellow plastic cap stamped "ms cons, colum".

Liberty Place, LLC Property
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 5
Operation and Maintenance Agreement
and
Operation and Maintenance Plan

OPERATION AND MAINTENANCE AGREEMENT
Between Ohio EPA and Liberty Place, LLC
Regarding the Liberty Place Property,
Franklin County, Ohio

This Operation and Maintenance Agreement ("Agreement") is entered into by the Director of the Ohio Environmental Protection Agency ("Director") and Liberty Place, LLC, pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300. In consideration of the mutual covenants and subject to the terms and conditions of this Agreement, the parties agree as follows:

1. **The NFA Letter.** A no further action letter (NFA Letter No. 02NFA135) under the Voluntary Action Program ("VAP") was submitted to the Director on behalf of Liberty Place, LLC on 5/30/02, by Christopher W. Krumm, a certified professional (Certified Professional No. 177), for approximately 6.729 acres of real property owned by Liberty Place, LLC and located at 100 Liberty Street, Columbus, Franklin County, Ohio (the "Property"). The legal description of the Property is attached hereto as Exhibit 1, and is incorporated by reference herein. The NFA Letter includes an Operation and Maintenance Plan ("O&M Plan") for the Property.
2. **Amendment of the NFA Letter.** On 10/18/02 and 01/10/03 addenda to the NFA Letter were submitted to the Director by Christopher W. Krumm in response to comments from Ohio EPA. The 10/18/02 addendum included a revised O&M Plan containing a Risk Management Plan (RMP) dated 10/18/02, that wholly replaced the O&M Plan submitted on 5/30/02. The 01/10/03 addendum includes a revised Executive Summary that wholly replaces the Executive Summary submitted on 5/30/02 and a revised O&M Plan containing a revised RMP that wholly replaced the O&M Plan submitted on 10/18/02. For the purposes of this Agreement, the term "NFA Letter" means the NFA Letter submitted on 5/30/02 and the addenda submitted on 10/18/02 and 01/10/03. The term "O&M Plan" refers to the O&M Plan dated 01/10/03. The O&M Plan is attached hereto as Exhibit 2 and is incorporated by reference herein.
3. **Requirement for an Operation and Maintenance Agreement.** This Agreement is required for the Property pursuant to ORC 3746.12(A)(2) and OAC 3745-300-15(A)(2) and 3745-300-15(F)(4).
4. **Remedy for the Property.** The remedy for the Property includes the following:

- a. **Interim Measures/Engineering Controls for the property.** Implementation of the RMP, attached to the O&M Plan, until the permanent remedy and engineering controls listed in 4b were completed, as provided in the O&M Plan.
 - b. **Permanent Remedy/Engineering Controls.** Permanent remedy and engineering controls for the Property, as provided in the O&M Plan, include:
 - i. Removal of soil containing arsenic above VAP residential direct contact standard and Petroleum Contaminated Soil and replacement with 10 feet of soil from certified greenfield sources to fulfill VAP residential direct contact with soil point of compliance depths.
 - ii. An interception trench excavated and installed with PVC pipe to intercept any LNAPL (light nonaqueous phase liquid) which may move off the Property.
 - c. **LNAPL Monitoring.** Periodic monitoring of wells and the interception trench for LNAPL, in accordance with the O&M Plan, to determine the effectiveness of the interception trench by monitoring of wells downgradient of the interception trench for the presence of LNAPL.
 - d. **Construction Worker Limitations.** All construction workers and other contractors that could come in contact with LNAPL or LNAPL containing soil will be provided a copy of the RMP before their work commences. The RMP is included in Appendix E of the O&M Plan.
 - e. **Prohibition Against Extraction of Ground Water.** An institutional control on the Property prohibiting the extraction of ground water located at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation of the ground water, as provided in the Declaration of Use Restriction recorded on May 23, 2002 with the Franklin County Recorder's Office, as Instrument # 200205230128871 in the Franklin County Deed Records (Declaration of Use Restriction).
5. **Engineering Controls and LNAPL Monitoring, Subject to Operation and Maintenance.** The interim measures, engineering controls, risk mitigation measures and LNAPL monitoring (summarized in paragraph 4 a through d - Remedy for the Property of this Agreement) are part of the voluntary action remedy

and will be established and maintained in accordance with this Agreement and the O&M Plan to maintain compliance with the applicable standards set forth in ORC Chapter 3746 and OAC Chapter 3745-300 and in the Covenant Not to Sue issued pursuant to ORC 3746.12 for the Property (the "Covenant").

6. **Implementation of O&M Plan.** Liberty Place, LLC agrees to establish and maintain all engineering controls in accordance with the O&M Plan, and perform all inspections, repairs, LNAPL monitoring, reporting, record keeping, and all other requirements in accordance with the O&M Plan.
7. **Recordation of Agreement.** Liberty Place, LLC agrees to record this Agreement as set forth in the Covenant and as required by ORC 3746.14.
8. **Effect of Violation of This Agreement.** Failure to comply with this Agreement or the O&M Plan, may constitute the failure to maintain an applicable standard in accordance with ORC 3746.12(B) and OAC Chapter 3745-300, and may be subject to the process outlined in paragraph 15 - Compliance Schedule Agreement of this Agreement. Noncompliance with an institutional control for the Property voids the Covenant, as provided in ORC 3746.05.
9. **Financial Assurance.** Liberty Place, LLC will ensure that reasonable and adequate funds in the amount of at least forty two thousand dollars (\$42,000.00) are available to comply with this Agreement and the O&M Plan by securing and providing to OEPA a satisfactory Letter of Credit issued by a national bank authorized to do business in Ohio as approved by OEPA. For its financial assurance, Liberty Place, LLC has furnished a Letter of Credit issued by JPMorgan Chase Bank for \$42,000.00, as attached hereto as Exhibit 3. Liberty Place, LLC will maintain the Letter of Credit or, subject to written approval by Ohio EPA, execute and fund another comparable, acceptable financial assurance, and submit to Ohio EPA a copy of each financial assurance. In the event the amount or form of financial assurance provided herein is inadequate to comply with this Agreement, the Director may propose a modification of this paragraph pursuant to paragraph 14 - Modification of this Agreement.
10. **Notice to Prospective Property Transferees.** At least 30 days prior to the execution of any sales contract or other document transferring ownership of the Property or any portion of the Property, Liberty Place, LLC agrees to provide written notice to the prospective Property transferee that the Property, or the portion of the Property, is subject to the Covenant, this Agreement, and the O&M Plan.

- 11. Notice to the Director of Transfer of Property.** Within 14 days after a sale or other transfer of the Property, or any portion of the Property, Liberty Place, LLC agrees to provide written notice to the Director that the Property, or the portion of the Property, has been sold or otherwise transferred. This notice submitted to the Director must include:
- a. the name, address, and telephone number of the new Property owner and the name, address, and telephone number of the contact person for the new Property owner;
 - b. a legal description of the portion of the Property being transferred, if the transfer was limited to a portion of the Property; and
 - c. the closing date of the transfer of ownership of the Property or the portion of the Property.
- 12. Option to Transfer this Agreement / Notice to Director.** Pursuant to ORC 3746.14(C), Liberty Place, LLC may transfer this Agreement to any other person (the "Transferee") by assignment or in conjunction with the acquisition of title to the Property. Within 14 days after such transfer, Liberty Place, LLC agrees to provide written notice to the Director of the terms and conditions of the transfer of obligations of this Agreement and the O&M Plan ("Transfer Terms and Conditions"), by submitting:
- a. the name, address, and telephone number of the Transferee and the name, address, and telephone number of the contact person for the Transferee;
 - b. a statement of the extent to which the Transferee has assumed the obligations of this Agreement and the O&M Plan;
 - c. a copy of the legal instrument(s) that provide the Transfer Terms and Conditions; and
 - d. a copy of the Transferee's proposed financial assurance, that complies with paragraph 9 - Financial Assurance of this Agreement, where the Transferee has assumed obligations of this Agreement and the O&M Plan. The Transferor's financial assurance must remain effective until Ohio EPA

approves in writing the Transferee's financial assurance and the Transferee's financial assurance is fully executed.

In accordance with the Transfer Terms and Conditions, the Transferee will become a party to this Agreement and will assume obligations of this Agreement and the O&M Plan.

13. Subparceling. With written notice submitted by Liberty Place, LLC to the Director, that one or more parcels of the Property have been divided or subparceled, this Agreement will apply separately to each subdivided parcel upon the date of subdivision or the date of the submission of written notice, whichever occurs later. Liberty Place, LLC agrees to provide such written notice by submitting:

- a. The legal description of the subdivided parcels;
- b. A survey map or maps of the subdivided parcels;
- c. The date of the subdivision;
- d. A copy of the legal instrument(s) providing for the subdivision; and
- e. The new owner, if any, of the subdivided parcels.

With the written notice submitted pursuant to this paragraph, this Agreement shall be deemed to be amended, without modification of this Agreement, to identify the subdivided parcels of the Property. The Covenant shall remain in effect for any subdivided portion of the Property that continues to comply with the requirements of this Agreement and the applicable standards that form the basis of the Covenant. Any revocation of the Covenant for any parcel shall not be based solely on a finding that any other subdivided parcel of the Property no longer complies with the applicable standards or the requirements of this Agreement.

14. Document Submittals / Notifications to Parties. All documents, including but not limited to notices and reports, required to be submitted by Liberty Place, LLC pursuant to this Agreement shall be addressed to:

Director, Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049

Columbus, OH 43216-1049
Attn: Manager, Voluntary Action Program

and

Ohio Environmental Protection Agency
Central District Office
Division of Emergency and Remedial Response
3232 Alum Creek Drive
Columbus, OH 43207
Attn: VAP Project Coordinator

All documents, including any notice required to be submitted by Ohio EPA pursuant to this Agreement, shall be delivered to Liberty Place, LLC. Notice to Liberty Place, LLC shall be addressed to:

Liberty Place, LLC
100 Liberty Street
Columbus, Ohio 43215
Attn: Mr. Frederic Gautier
President

With a copy to Winther Investments, 1919 Post Oak Park Drive, Suite 3101,
Houston, Texas 77027, Attn: Mr. Frederic Gautier.

15. **Modification to this Agreement or the O&M Plan.** Liberty Place, LLC agrees to submit to the Director for review and approval each proposed modification to this Agreement or the O&M Plan, except for a minor modification, as defined below, or a modification proposed by the Director. For purposes of this Agreement, "modification" means any substantive or material change to a term or condition of this Agreement or the O&M Plan, such as a proposal to revise, replace, or terminate an engineering control, or revise the financial assurance provisions of paragraph 9 - Financial Assurance. Approval of a modification is subject to the sole discretion of the Director and must be approved by the Director, in writing, prior to implementation. A modification proposed by the Director is subject to approval by Liberty Place, LLC. Ohio EPA reserves the right to require the submittal of a new NFA Letter for a proposed modification that will result in the application of an applicable standard, land use, or a remedy different than that contained in the NFA Letter approved by the Covenant.

A "minor modification" means a non-substantive or non-material, administrative change to a term or condition of this Agreement or the O&M Plan, such as the transfer of this Agreement and the O&M Plan in accordance with paragraph 12 - Option to Transfer of this Agreement, a change of a named contact person, or an address contained in this Agreement or the O&M Plan. Within 14 days after implementation of a minor modification to this Agreement or the O&M Plan, Liberty Place, LLC agrees to provide Ohio EPA written notice of the minor modification.

16. **Compliance Schedule Agreement.** Within 30 days after the mailing of notice from the Director of the finding that the Property or a portion of the Property no longer complies with the applicable standards upon which the issuance of the Covenant was based, Liberty Place, LLC agrees to notify the Director of its intention to return the Property or the portion of the Property to compliance with the applicable standards upon which the Covenant was based ("cure") and enter into a compliance schedule agreement with the Director for such cure, in accordance with ORC 3746.12(B).
17. **Compliance with Other Laws.** Liberty Place, LLC agrees to conduct all activities pursuant to this Agreement and the O&M Plan in compliance with all local, state, and federal laws and regulations, including but not limited to obtaining all required permits or authorizations. Liberty Place, LLC acknowledges that Ohio EPA's review and approval of the risk mitigation plan contained in the O&M Plan is limited to ensuring compliance with the requirements of ORC Chapter 3746 and OAC Chapter 3745-300 and does not extend to determining compliance with the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, the regulations adopted under that act, or any obligation imposed by the Occupational Safety and Health Administration.
18. **Program Fees for Monitoring Compliance with this Agreement.** Liberty Place, LLC agrees to reimburse Ohio EPA for the actual direct and indirect costs incurred by the agency in monitoring compliance with this Agreement pursuant to ORC 3746.04(B)(8) and OAC 3745-300-03(E). Ohio EPA will periodically submit to Liberty Place, LLC an itemized statement of its monitoring costs for the previous year(s). Monitoring costs include, but are not limited to, costs for reviewing submissions or reports required by the agreement, conducting property inspections, and corresponding with the volunteer or its representative. Within thirty (30) days of receipt of such itemized statement, Liberty Place, LLC shall remit payment for all of Ohio EPA's monitoring costs for the previous year(s). If Liberty Place, LLC

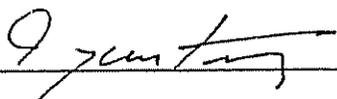
disputes the accuracy of items on the itemized statement, it may request review of the statement within thirty (30) days of receipt of the statement. After review, Ohio EPA will resubmit the itemized statement to Liberty Place, LLC. Liberty Place, LLC shall remit payment within fourteen (14) days of receipt of the resubmitted statement.

19. Liberty Place, LLC shall remit payments to Ohio EPA pursuant to paragraph 18 as follows:
 - a. Payment shall be made by an official (or certified?) check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049,
 - b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell, or her successor.
 - c. A copy of the transmittal letter and check shall be sent to the Manager of the Voluntary Action Program, DERR, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049, ATTN: Amy Yersavich, or her successor.
20. **Inspections by Ohio EPA.** Liberty Place, LLC agrees to allow the Director or his authorized representative to perform inspections to determine compliance with this Agreement. Such inspections shall be consistent with ORC Chapter 3746 and OAC Chapter 3745-300, including but not limited to the reasonableness of inspection timing and frequency in accordance with ORC 3746.21.
21. **Termination.** This Agreement shall terminate upon (a) revocation or voidance of the Covenant, (b) if it is demonstrated, in accordance with OAC 3745-300-15(E) and Section 6.0 of the O&M Plan, that implementation of this Agreement and the O&M Plan is no longer necessary for the Property to comply with applicable standards, upon written acknowledgment by the Manager of the Voluntary Action Program of the demonstration, or (c) otherwise upon the written approval of the Manager of the Voluntary Action Program, and (d) all reimbursable costs have been satisfied and paid in full pursuant to paragraphs 18 and 19.

22. **Waiver.** Liberty Place, LLC agrees that the terms and conditions of this Agreement are lawful and reasonable and agrees to comply with this Agreement. Liberty Place, LLC hereby waives its right to appeal the issuance of this Agreement and the terms and conditions of this Agreement, and hereby waives any and all rights it might have to seek judicial or administrative review of this Agreement either in law or equity. Liberty Place, LLC reserves its right to participate in any appeal by a third party to the Environmental Review Appeals Commission or to any court.
23. **Entire Agreement.** The terms and conditions of this Agreement, including the O&M Plan, constitute the entire agreement of the parties. No oral or written representation shall be binding unless approved as a modification of this Agreement pursuant to paragraph 15 - Modification of this Agreement. The terms and conditions of this Agreement shall be interpreted consistent with ORC Chapter 3746 and OAC Chapter 3745-300.
24. **Authorized Signatories.** Each undersigned representative of a signatory to this Agreement represents that he or she is fully authorized to execute this Agreement and to legally bind such signatory to this Agreement.
25. **Effective Date.** Upon execution of this Agreement by both parties, this Agreement shall be a valid and binding obligation enforceable in accordance with its terms and conditions and effective upon the date of the Director's signature.

In witness whereof, the parties hereto have executed this Agreement.

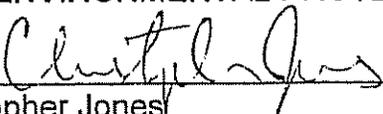
Liberty Place, LLC:

By:  Date: Jan. 10, 2003

Printed Name: Frederic Gauthier-Winther

Title: President

OHIO ENVIRONMENTAL PROTECTION AGENCY:

By:  Date: FEB - 6 2003
Christopher Jones
Director of Ohio EPA

Operation and Maintenance Agreement
Liberty Place, LLC Property
Page 10 of 12

rev. 05/02

H:\VAP\Templates\O&M Agreements\F I N A L\OMA 5.17.02 -new final...wpd

Operation and Maintenance Agreement
Liberty Place, LLC

EXHIBIT 1
Property Legal Description
(within Limited Warranty Deed and Declaration of Use Restriction)

Instr: 200111060257193 11/06/2001
Pages: 9 F: \$42.00 3:23PM
Robert G Montgomery T20010150240
Franklin County Recorder BXCHICAGO

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That HARSCO CORPORATION, a Delaware corporation having principal offices at 350 Poplar Church Road, P.O. Box 8888, Camp Hill, Pennsylvania 17001-8888 ("Grantor"), for valuable consideration paid, grants, with limited warranty covenants, to LIBERTY PLACE, LLC, an Ohio limited liability company whose tax mailing address is P.O. Box 27058, Houston, Texas 77227-7058, the real property described in Exhibit A attached hereto as a part hereof (the "Property").

The Property is conveyed subject to, and there are hereby excepted from the limited warranty covenants, the matters set forth on Exhibits B and C attached hereto as part hereof.

- Prior Instrument References:
- (1) Deed dated January 2, 1959 and recorded January 6, 1959 in Deed Book 2152, Page 97, Recorder's Office, Franklin County, Ohio. (part of)
 - (2) Deed dated April 7, 1959 and recorded April 10, 1959 in Deed Book 2171, Page 381, Recorder's Office, Franklin County, Ohio.
 - (3) Deed dated June 8, 1970 and recorded July 8, 1970 in Deed Book 3070, Page 116, Recorder's Office, Franklin County, Ohio.

Mailing Address of Property: 153 West Fulton Street and 120 West Liberty Street
Columbus, Ohio 43215

Tax Parcel Nos. for Property: 010-002760, 010-013902, 010-016695, 010-022718, 010-029902, and 010-031917 (Request for combination of tax parcels submitted to Auditor by Grantor November 2, 2001.).

WITNESS the execution hereof this 5th day of November, 2001.

Signed and Acknowledged
in the presence of:

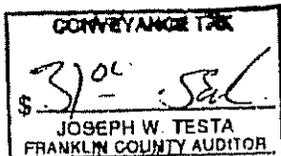
Cathy A. Ferraro
Name: Cathy A. Ferraro

HARSCO CORPORATION,
a Delaware Corporation

BY: Derek C. Hathaway
Name: Derek C. Hathaway

Title: Chairman, President, and
Chief Executive Officer

Penny J. McLaughlin
Name: Penny J. McLaughlin



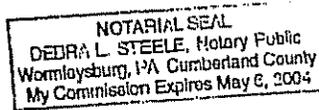
25384
TRANSFERRED

NOV 5 2001

Commonwealth of Pennsylvania :
: ss.
County of Cumberland :

The foregoing instrument was acknowledged before me this 5th day of November, 2001, by Derek C. Hathaway, Chairman, President and Chief Executive Officer of Harsco Corporation, a Delaware corporation, on behalf of the corporation.

Debra L. Steele
Notary Public



This instrument prepared by:
James F. Spade, Attorney at Law
108-112 Walnut Street
Harrisburg, PA 17101

Exhibit A - Property
Exhibit B - Exceptions to Title
Exhibit C - Restrictive Covenant

EXHIBIT A - PROPERTY

DEED FROM HARSCO CORPORATION TO
LIBERTY PLACE, LLC DATED NOVEMBER 5, 2001

(THREE (3) PAGES)

DESCRIPTION OF 6.729 ACRES OF LAND
SOUTH OF FULTON STREET
WEST OF FRONT STREET

Situated in the State of Ohio, County of Franklin, City of Columbus, in Half Section 27, Township 5, Range 22, Refugee Lands, being a 6.729 acre tract of land comprised of all of Parcel 1, all of Parcel 2, all of Parcel 3, all of Parcel 4, and part of Parcel 5 as described in a deed to Harsco Corporation, of record in Deed Book 2152, Page 97, (Parcel 4 being the same as Lot Number Six (6) of the L. Hoster Brewing Company's Sub., of record in Plat Book 5, Page 362), all of Parcel 1, all of Parcel 2, and all of Parcel 3 as described in a deed to Harsco Corporation, of record in Deed Book 2171, Page 381, and being a part of that Robert Armstrong's Point Pleasant Addition to the City of Columbus, of record in Deed Book 33, Page 122, all of the First Parcel and part of the Second Parcel as described in a deed to Harsco Corporation of record in Deed Book 3070, Page 116, all references to records being on file in the Recorder's Office, Franklin County, Ohio, said 6.729 acre tract being more particularly described as follows:

Beginning at an iron pin set in the northerly right-of-way line of Liberty Street, at the southeasterly corner of said Parcel 2 as described in Deed Book 2171, Page 381, at the southwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03, and being referenced North 87°53'56" West, a distance of 300.00 feet from a drill hole found at the intersection of the northerly right-of-way line of said Liberty Street and the westerly right-of-way line of Front Street;

Thence North 87°53'56" West, along the northerly right-of-way line of said Liberty Street, along the southerly line of said Parcel 2, Parcel 3 and Parcel 1 as described in said Deed Book 2171, Page 381, a distance of 209.48 feet to an iron pin found (1 foot deep) at the southwesterly corner of said Parcel 1, in the easterly line of said Parcel 5, as described in said Deed Book 2152, Page 97;

Thence North 11°53'46" East, continuing along a right-of-way line of said Liberty Street, along the westerly line of said Parcel 1, along the easterly line of said Parcel 5, a distance of 5.07 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc.;

Thence North 87°53'56" West, continuing along the northerly right-of-way line of said Liberty Street, as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Page 18, crossing through said Parcel 5, a distance of 12.66 feet to an iron pin set at a point of curvature;

Thence continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, along the arc of a curve to the left, having a radius of 276.56 feet, a central angle of 10°50'44", an arc distance of 52.35 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc., at a point of tangency, said arc being subtended by a chord bearing South 86°40'42" West, a chord distance of 52.27 feet;

Page two
6.729 acre tract

Thence South 81°15'20" West, continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, a distance of 245.68 feet to an iron pin set in the westerly line of said Parcel 5, in the easterly line of the Columbus Feeder to the Ohio and Erie Canal (abandoned) as described in a Lease of Canal Lands to the Columbus & Southern Ohio Electric Company, of record in Lease Record 83, Page 346, witness an iron pin found with a plastic cap stamped Hockaden and Assoc., in the northerly right-of-way line of said Liberty Street at a point of curvature, bearing South 81°15'20" West, a distance of 22.76 feet.

Thence North 08°32'59" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 5, the westerly line of said Parcel 4, as described in Deed Book 2152, Page 97, a distance of 190.21 feet to a concrete canal marker with ¾" steel rod;

Thence North 02°41'46" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 4, the westerly line of said Parcel 1 and Parcel 3, as described in Deed Book 2152, Page 97, a distance of 641.63 feet to an iron pin set in the southerly right-of-way line of Fulton Street;

Thence South 78°00'27" East, along the southerly right-of-way line of said Fulton Street, along the northerly line of said Parcel 3, the northerly line of said Parcel 2, as described in Deed Book 2152, Page 97, the northerly line of said First Parcel as described in said Deed Book 3070, Page 116, a distance of 426.03 feet to a drill hole found at the intersection of the southerly right-of-way line of said Fulton Street and the westerly right-of-way line of Second Street;

Thence South 00°01'21" West, along the westerly right-of-way line of said Second Street, the easterly line of said First Parcel, along the easterly line of said Second Parcel as described in said Deed Book 3070, Page 116, a distance of 365.46 feet to an iron pin found (1 foot deep), at a northeasterly corner of that Parcel #1 as described in a deed to Front & Fulton Real Estate Trust, of record in Deed Book 2852, Page 519;

Thence South 89°34'54" West, into said original Second Parcel, along a northerly line of said Parcel #1, a distance of 154.50 feet to an iron pin set;

Thence South 04°24'37" West, continuing through said original Second Parcel, along the westerly line of said Parcel #1, a distance of 158.80 feet to an iron pin set at a southwesterly corner of said Parcel #1, in the southerly line of said original Second Parcel, in the northerly line of said Parcel 4 as described in said Deed Book 2152, Page 97;

Page three
6.729 acre tract

Thence South 78°33'20" East, along a southerly line of said Parcel #1, the northerly line of said Parcel 4, a distance of 149.95 feet to a railroad spike found at the northeasterly corner of said Parcel 4;

Thence South 11°53'46" West, along a westerly line of said Parcel #1, along the easterly line of said Parcel 4, a distance of 17.19 feet to an iron pin set at a southwesterly corner of said Parcel #1, at the northwesterly corner of said Parcel 1, as described in said Deed Book 2171, Page 381;

Thence South 87°53'56" East, along the southerly line of said Parcel #1, along the northerly line of said Parcel 1, the northerly line of said Parcel 3 and Parcel 2 as described in said Deed Book 2171, Page 381, a distance of 186.18 feet to an iron pin set at the northeasterly corner of said Parcel 2, in the westerly line of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03;

Thence South 02°06'04" West, along the easterly line of said Parcel 2, the westerly line of said 1.093 acre tract, a distance of 135.00 feet to the True Place of Beginning and containing an area of 6.729 acres of land.

For the purpose of this description a bearing of North 87°53'56" West was used on the northerly right-of-way line of Liberty Street (50') as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Pages 18,19 & 20, and all other bearing relate to this basis of bearing.

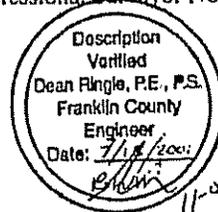
This description was prepared from an actual field survey of the premises in September, 2000 by ms consultants, inc., under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159. All iron pins set are 5/8" x 30" rebar with a yellow plastic cap stamped "ms cons. colum".



jlp
07/15/01

ms consultants, inc.

John L. Price 7/15/01
John L. Price
Professional Surveyor No. 7159



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EXHIBIT B - EXCEPTIONS TO TITLE

DEED FROM HARSCO CORPORATION TO
LIBERTY PLACE, LLC DATED NOVEMBER 5, 2001

1. Easements, rights-of-way, restrictions, covenants, conditions, reservations and any other matters or encumbrances of record.
2. Any and all matter which would be disclosed by a current and accurate survey of the Property and a physical inspection of the Property, including but not limited to easements, rights-of-way, encroachments by or against the Property, discrepancies or conflicts in boundary lines, noncontiguity of tracts and shortages in area.
3. Zoning, building improvement, subdivision, land use and other local, state and federal laws, regulations and ordinances applicable to the Property.
4. Ad valorem real property taxes which are not due and payable on the date of this Deed and installments of any assessments payable in installments which are not due and payable on the date of this Deed.
5. Easement of record in Plat Book 86, Pages 18, 19 and 20.
6. Easement of record in Deed Book 1611, Page 20, Recorder's Office, Franklin County, Ohio.
7. Easement of record in Deed Book 1983, Page 521, Recorder's Office, Franklin County, Ohio.
8. Easement of record in Official Records Volume 33838, Page B16, Recorder's Office, Franklin County, Ohio.
9. Easement of record in Deed Book 1986, Page 288, Recorder's Office, Franklin County, Ohio.
10. Deed of Easement from Harsco Corporation to City of Columbus, Ohio dated July 10, 2001 and recorded as Instrument No. 200110110234883.
11. Quitclaim Deed of Encroachment Easement from City of Columbus, Ohio to Harsco Corporation dated June 19, 2001 and recorded as Instrument No. 20011060357190.
12. Agreement for Easement from Harsco Corporation to The Columbus Southern Power Company dated September 24, 2001.

EXHIBIT C - RESTRICTIVE COVENANT

DEED FROM HARSCO CORPORATION TO
LIBERTY PLACE, LLC. DATED NOVEMBER 5, 2001

(TWO (2) PAGES)

Grantee, Liberty Place, LLC, for itself and its successors and assigns, including without limitation any person who at any time on or after the date of this instrument acquires, holds or has held an interest of any type or kind in the real property conveyed in this instrument (the "Property", as described in Exhibit A of this deed), fully and irrevocably releases Grantor, Harsco Corporation, and Grantor's affiliates, and their officers, directors, shareholders, employees, agents and representatives, from any and all claims that Grantee may now have or hereafter acquire against Grantor or Grantor's affiliates, or their agents or representatives for any costs (including without limitation, fees of attorneys and consultants), losses, liabilities, damages, expenses, actions or causes of action, whether foreseen or unforeseen, arising from or related to the presence of Hazardous Substances or Contamination in, on, under, about or in proximity to the Property, without regard or limitation as to the time at which or by whom any such Contamination or Hazardous Substances may have been introduced to the Property or permitted on the Property, or noncompliance with Environmental Laws and from any claim by Grantee for recovery of any losses, costs (including without limitation, fees of attorneys and consultants) or expenses incurred by Grantee in investigation or remediation of any such Hazardous Substances, Contamination or noncompliance with Environmental Laws at the Property. Without limiting the foregoing, such release shall apply to any claim by Grantee for diminution in the value or usefulness of the Property and any loss or damages consequential thereto.

Notwithstanding the foregoing, this release of liability shall not be construed as an assumption by Grantee of any liability of Grantor arising from or related to any defects or other conditions affecting the Property prior to conveyance of the Property to Grantee. This release shall not prohibit Grantee from asserting Grantor's liability, if any, as a defense to any claim or action by any third party against Grantee arising from or related to any defects or other conditions affecting the Property prior to conveyance of the Property to Grantee, unless such third party is a person bound by this release by virtue of ownership or previous ownership of an interest in the Property.

The foregoing release of liability shall run with the land which is part of the Property, shall be binding upon and inure to the benefit of Grantee and its successors in interest, and shall inure to the benefit of Grantor and its successors.

For purposes of the foregoing release of liability:

"Hazardous Substances" include any pollutant, dangerous substance, toxic substance and hazardous chemical, hazardous substance, hazardous pollutant, hazardous waste or any similar term as defined in or pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42. U.S.C. 9601 et seq. ("CERCLA"); the Clean Air Act, 42. U.S.C. 7401 et seq. ("CAA"); the Solid Waste Management Act, 42 U.S.C. 6901 to 6992 ("SWMA"); the Resource Conservation and Recovery Act, 42. U.S.C. 6901 et seq. ("RCRA"); the Clean Water Act, 33 U.S.C. 1251 et seq. ("CWA"); the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. ("TSCA"); Ohio Revised Code Chapters 3704, 3710, 3714, 3734, 3737, 3742, 3745, 3751, 3752, and 6111; any Environmental Laws (as hereinafter defined); and any rules or regulations promulgated thereunder or in any other applicable federal, state or local law, rule or regulation dealing with environmental protection. Without limiting the foregoing, Hazardous Substances shall include asbestos, petroleum products, any fraction or component thereof, and lead based paint.

"Contamination" shall mean the presence of Hazardous Substances requiring response activity under Environmental Laws.

"Environmental Laws" include CERCLA, CAA, SWMA, RCRA, TSCA, CWA, Ohio Revised Code as referenced above and any other applicable federal, state or local law, rule or regulation dealing with environmental protection and any rules or regulations promulgated thereunder or in any applicable federal, state or local law, rule or regulation dealing with environmental protection.

DECLARATION OF USE RESTRICTION

Liberty Place Apartment Project
100 Liberty Street, Columbus, Ohio

Instr: 200205230128871 05/23/2002
Pages: 6 F: \$30.00 3:22PM
Robert G. Montgomery T20020060445
Franklin County Recorder BXPORTR W

WHEREAS, LIBERTY PLACE LLC., an Ohio limited liability company ("Declarant"), is the owner of certain real property (the "Property") situated in the State of Ohio, County of Franklin and City of Columbus; and

WHEREAS, Declarant has voluntarily entered into the Ohio Environmental Protection Agency ("OEPA") Voluntary Action Program ("VAP") for the remediation of "Brownfield" sites; and

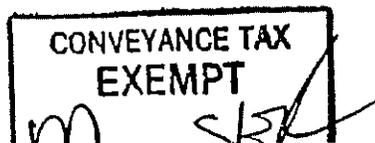
WHEREAS, Declarant, as a precondition of being issued a Covenant Not To Sue ("CNS"), desires to encumber the Property with a Declaration of Restriction ("Declaration") as set forth herein, said Property being particularly described on Exhibit A attached hereto; and

WHEREAS, Christopher W. Krumm (CP 177), a Certified Professional, delivered to Declarant a No Further Action Letter ("NFA"), dated May 22, 2002, with respect to the Property; and

WHEREAS, Mr. Krumm concluded in the NFA that the Property met applicable standards pursuant to Ohio Revised Code ("ORC") Chapter 3746 and the VAP subject to the recordation of a declaration of use restriction.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to a Declaration as set forth herein (the "Easement"). The Easement shall constitute a servitude upon the Property, which servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Property, and, to that end and for the purpose of accomplishing the intent of the parties hereto, Declarant covenants on behalf of itself, its heirs, successors and assigns to do and refrain from doing, severally and collectively, upon the Property, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, is and will be for the benefit of the owners and in compliance with the terms of the Covenant.

1. **Prohibition Against Extraction of Ground Water.** As a portion of the remedy under the OEPA VAP to protect against exposure to hazardous substances and/or petroleum in ground water located at or underlying the Property, no person shall extract the ground water located at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation of the ground water.
2. **Declaration to be Binding and Run with the Land.** This Declaration shall run with the land and shall be binding upon all current owners of the Property, and all successors and



TRANSFERRED
NOT NECESSARY
MAY 23 2002

assigns of the Property, or any portion of the Property, including any leasehold interests on the Property or any portion of the Property.

3. **Enforcement.** Compliance with this Declaration may be enforced by a legal or equitable action brought in a court of competent jurisdiction by one or more of the following parties: (a) any party referenced in Paragraph Two of this Declaration; (b) OEPA or its representative; or (c) any party with legal standing under applicable law. Any delay or failure on the part of any party to take action to enforce compliance with this Declaration shall not bar any subsequent enforcement with respect to the noncompliance in question and shall not be deemed a waiver of the right of any party to take action to enforce any noncompliance.
4. **Noncomplying Use.** Pursuant to ORC 3746.05, if the Property or any portion of the Property is put to a use that does not comply with this Declaration, the CNS issued for the Property by OEPA under ORC 3746.12 is void on and after the date of the commencement of the noncomplying use.
5. **Record in Deed Records.** This Declaration shall be recorded in the same manner as a deed in the Office of the Recorder of Franklin County, pursuant to ORC 3746.10(C) and 317.08(A), and shall be deemed incorporated by reference in any instrument hereafter conveying any interest in the Property or any portion of the Property.
6. **Severability.** If any one or more provisions of this Declaration is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
7. **Governing Law.** This Declaration shall be governed by and interpreted in accordance with the laws of the State of Ohio, including ORC Chapter 3746 and OAC Chapter 3745-300.
8. **Headings.** All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration.
9. **Notice of Declaration upon Conveyance.** Each instrument hereafter conveying any interest in the Property, or any portion of the Property, shall contain a recital acknowledging this Declaration and providing the recording location of this Declaration upon such conveyance, substantially in the following form: "The real property described herein is subject to the Declaration of Use Restriction made by Liberty Place LLC and recorded with the Office of the Recorder of Franklin County, Ohio on the 22nd day of May, 2002 in the Franklin County, Ohio Deed Records, Instrument Number _____, as if the same were fully set forth herein."

IN WITNESS WHEREOF, Declarant has caused the execution of this instrument as of the date first above written.

Signed and Acknowledged
in the Presence of:

LIBERTY PLACE LLC
an Ohio limited liability company

Cathy Barazi
Name: CATHY BARAZI

By: Frederic Gautier
Frederic Gautier, President

Bryan Johnson
Name: BRYAN JOHNSON

STATE OF TEXAS)
)SS:
COUNTY OF HARRIS)

The foregoing instrument was executed before me this 17th day of May, 2002 by Frederic Gautier, President of Liberty Place LLC, an Ohio limited liability company, on behalf of said limited liability company.

Stephanie A. Allemore
Notary Public

This Instrument Prepared By:

J. Jeffrey McNealey, Esq.
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215

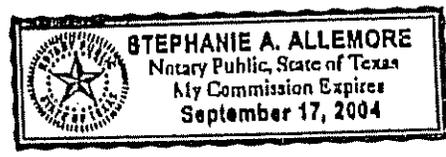


EXHIBIT A

Description of the Property

DESCRIPTION OF 6.729 ACRES OF LAND SOUTH OF FULTON STREET WEST OF FRONT STREET

Situated in the State of Ohio, County of Franklin, City of Columbus, in Half Section 27, Township 5, Range 22, Refugee Lands, being a 6.729 acre tract of land comprised of all of Parcel 1, all of Parcel 2, all of Parcel 3, all of Parcel 4, and part of Parcel 5 as described in a deed to the Harsco Corporation, of record in Deed Book 2152, Page 97, (Parcel 4 being the same as Lot Number Six (6) of the L. Hoster Brewing Company's Sub., of record in Plat Book 5, Page 362), all of Parcel 1, all of Parcel 2, and all of Parcel 3 as described in a deed to the Harsco Corporation, of record in Deed Book 2171, Page 381, and being a part of that Robert Armstrong's Point Pleasant Addition to the City of Columbus, of record in Deed Book 33, Page 122, all of the First Parcel and part of the Second Parcel as described in a deed to the Harsco Corporation of record in Deed Book 3070, Page 116, all references to records being on file in the Recorder's Office, Franklin County, Ohio, said 6.729 acre tract being more particularly described as follows:

Beginning at an iron pin set in the northerly right-of-way line of Liberty Street, at the southeasterly corner of said Parcel 2 as described in Deed Book 2171, Page 381, at the southwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03, and being referenced North 87°53'56" West, a distance of 300.00 feet from a drill hole found at the intersection of the northerly right-of-way line of said Liberty Street and the westerly right-of-way line of Front Street;

Thence North 87°53'56" West, along the northerly right-of-way line of said Liberty Street, along the southerly line of said Parcel 2, Parcel 3 and Parcel 1 as described in said Deed Book 2171, Page 381, a distance of 209.48 feet to an iron pin found (1 foot deep) at the southwesterly corner of said Parcel 1, in the easterly line of said Parcel 5, as described in said Deed Book 2152, Page 97;

Thence North 11°53'46" East, continuing along a right-of-way line of said Liberty Street, along the westerly line of said Parcel 1, along the easterly line of said Parcel 5, a distance of 5.07 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc.;

Thence North 87°53'56" West, continuing along the northerly right-of-way line of said Liberty Street, as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Page 18, crossing through said Parcel 5, a distance of 12.66 feet to an iron pin set at a point of curvature;

Thence continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, along the arc of a curve to the left, having a radius of 276.56 feet, a central angle of

10°50'44", an arc distance of 52.35 feet to an iron pin found with a plastic cap stamped Hockaden and Assoc., at a point of tangency, said arc being subtended by a chord bearing South 86°40'42" West, a chord distance of 52.27 feet;

Thence South 81°15'20" West, continuing along the northerly right-of-way line of said Liberty Street, through said Parcel 5, a distance of 245.68 feet to an iron pin set in the westerly line of said Parcel 5, in the easterly line of the Columbus Feeder to the Ohio and Erie Canal (abandoned) as described in a Lease of Canal Lands to the Columbus & Southern Ohio Electric Company, of record in Lease Record 83, Page 346, witness an iron pin found with a plastic cap stamped Hockaden and Assoc., in the northerly right-of-way line of said Liberty Street at a point of curvature, bearing South 81°15'20" West, a distance of 22.76 feet.

Thence North 08°32'59" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 5, the westerly line of said Parcel 4, as described in Deed Book 2152, Page 97, a distance of 190.21 feet to a concrete canal marker with ¼" steel rod;

Thence North 02°41'46" West, along the easterly line of said Columbus Feeder to the Ohio and Erie Canal (abandoned), along the westerly line of said Parcel 4, the westerly line of said Parcel 1 and Parcel 3, as described in Deed Book 2152, Page 97, a distance of 641.63 feet to an iron pin set in the southerly right-of-way line of Fulton Street;

Thence South 78°00'27" East, along the southerly right-of-way line of said Fulton Street, along the northerly line of said Parcel 3, the northerly line of said Parcel 2, as described in Deed Book 2152, Page 97, the northerly line of said First Parcel as described in said Deed Book 3070, Page 116, a distance of 426.03 feet to a drill hole found at the intersection of the southerly right-of-way line of said Fulton Street and the westerly right-of-way line of Second Street;

Thence South 00°01'21" West, along the westerly right-of-way line of said Second Street, the easterly line of said First Parcel, along the easterly line of said Second Parcel as described in said Deed Book 3070, Page 116, a distance of 365.46 feet to an iron pin found (1 foot deep), at a northeasterly corner of that Parcel #1 as described in a deed to Front & Fulton Real Estate Trust, of record in Deed Book 2852, Page 519;

Thence South 89°34'54" West, into said original Second Parcel, along a northerly line of said Parcel #1, a distance of 154.50 feet to an iron pin set;

Thence South 04°24'37" West, continuing through said original Second Parcel, along the westerly line of said Parcel #1, a distance of 158.80 feet to an iron pin set at a southwesterly corner of said Parcel #1, in the southerly line of said original Second Parcel, in the northerly line of said Parcel 4 as described in said Deed Book 2152, Page 97;

Thence South 78°33'20" East, along a southerly line of said Parcel #1, the northerly line of said Parcel 4, a distance of 149.95 feet to a railroad spike found at the northeasterly corner of said Parcel 4;

Thence South $11^{\circ}53'46''$ West, along a westerly line of said Parcel #1, along the easterly line of said Parcel 4, a distance of 17.19 feet to an iron pin set at a southwesterly corner of said Parcel #1, at the northwesterly corner of said Parcel 1, as described in said Deed Book 2171, Page 381;

Thence South $87^{\circ}53'56''$ East, along the southerly line of said Parcel #1, along the northerly line of said Parcel 1, the northerly line of said Parcel 3 and Parcel 2 as described in said Deed Book 2171, Page 381, a distance of 186.18 feet to an iron pin set at the northeasterly corner of said Parcel 2, at the northwesterly corner of that 1.093 acre tract as described in a deed to 503 South Front Street Limited Partnership, of record in Official Record Volume 27075 G03;

Thence South $02^{\circ}06'04''$ West, along the easterly line of said Parcel 2, the westerly line of said 1.093 acre tract, a distance of 135.00 feet to the True Place of Beginning and containing an area of 6.729 acres of land.

For the purpose of this description a bearing of North $87^{\circ}53'56''$ West was used on the northerly right-of-way line of Liberty Street (50') as delineated on the plat "Liberty Street Dedication and Easements", of record in Plat Book 86, Pages 18,19 & 20, and all other bearing relate to this basis of bearing.

This description was prepared from an actual field survey of the premises in September, 2000 by ms consultants, inc., under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159. All iron pins set are $5/8''$ x 30" rebar with a yellow plastic cap stamped "ms cons, colum".

Operation and Maintenance Agreement
Liberty Place, LLC

EXHIBIT 2
O&M Plan