



State of Ohio Environmental Protection Agency

STREET ADDRESS:

MAILING ADDRESS:

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50 W. Town St., Suite 700  
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TELE: (614) 644-3020 FAX: (614) 644-3184  
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P.O. Box 1049  
Columbus, OH 43216-1049

April 24, 2008

RECEIVED

CERTIFIED MAIL

APR 29 2008

Lee Cherney  
Kin Properties  
185 NW Spanish River Blvd., Suite 100  
Boca Raton, FL 33431

OHIO EPA/CDO

**RE: Issuance of Covenant Not To Sue for the Harrisburg Pike Shopping Center Property (07NFA269)**

Dear Mr. Cherney:

I am happy to inform you that on April 24, 2008, the Director of the Ohio Environmental Protection Agency ("Director") issued a covenant not to sue ("Covenant") to Kin Properties for the Harrisburg Pike Shopping Center property located at 610 – 690 Harrisburg Pike Shopping Center, Columbus, Franklin County, Ohio ("Property"). 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.

Based on the no further action ("NFA") letter and subject to the conditions set forth in the Covenant, Ohio EPA hereby covenants not to sue and releases Kin Properties, Timbercreek Center Partners and Davis Center Land Partners, and their respective agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the Property, 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 and addressed in the Phase I property assessment and Phase II property assessment conducted in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

You will find the certified copy of the Covenant enclosed. When filing the Covenant and its exhibits at the Franklin County Recorder's Office, please use the enclosed affidavit from Ohio EPA to guide the recording of the documents in the county's deed records.

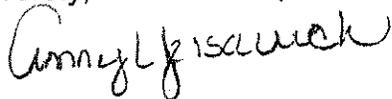
As stated under the "Conditions and Limitations" of the Covenant, the environmental covenant for the Property - attached as Exhibit 4 of the Covenant - must be recorded with the Franklin County Recorder's Office within 30 days of the covenant issuance date, as a separate document from the required recording of the Covenant and its remaining exhibits. The Covenant becomes effective on the recording date of the environmental covenant. The Covenant also requires the volunteer to submit to Ohio EPA a copy of the environmental covenant showing the filing date stamp of the Franklin County Recorder's Office.

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, 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") pursuant to ORC 3745.04. 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 30 days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 309 South Fourth Street, Room 222, Columbus, OH 43215.

Many persons within the agency, Kin Properties, Timebercreek Center Partners, Davis Center Land Partners and Geotechnical Consultants Inc., among others, 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 or [amy.yersavich@epa.state.oh.us](mailto:amy.yersavich@epa.state.oh.us).

Sincerely,



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

Enclosure

cc: Bruce Savage, Certified Professional, Geotechnical Consultants Inc., 720 Greencrest Drive, Westerville, Ohio 43081-2837  
Stuart Schneider, Timbercreek Center Partners & Davis Center Land Partners, 250 N. Westlake Blvd., #240, Thousand Oaks, CA 91362  
Deborah Strayton, CDO/DERR  
Ann Fischbein, Legal Office  
CO/DERR-VAP Files  
CDO/DERR Files (125-002304-003)



OHIO E.P.A.

APR 24 2008

DIRECTOR'S JOURNAL

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the matter of:**

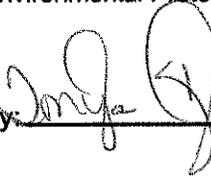
Kin Properties  
185 NW Spanish River Blvd.  
Suite 100  
Boca Raton, Florida 33431

:  
:  
:  
: Covenant Not to Sue  
: Director's Final Findings and Orders  
:  
:

**Regarding property known as:**

Harrisburg Pike Shopping Center  
610 – 660 Harrisburg Pike  
Columbus, Ohio 43223

:  
:  
:  
: I certify this to be a true and accurate copy of the  
: official documents as filed in the records of the Ohio  
: Environmental Protection Agency.  
:  
:

By:  Date: 4-24-08

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency (the "Director") hereby makes the following Findings and issues the following Orders ("Findings and Orders").

**FINDINGS**

1. A No Further Action Letter, No. 07NFA269 (the "NFA Letter"), was submitted on September 11, 2007 to the Director under the Voluntary Action Program on behalf of Kin Properties, 185 NW Spanish River Blvd., Suite 100, Boca Raton, Florida 33431 (the "Volunteer"), by Bruce Savage, C.P.G., a certified professional, No. CP265, as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8) (the "Certified Professional").
2. The Certified Professional submitted to the Director addenda to the NFA Letter, received November 1, 2007, December 6, 2007, December 21, 2007, and February 26, 2008. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addenda.
3. The NFA Letter describes the investigations undertaken at the approximately 6.083-acre property, currently known as Harrisburg Pike Shopping Center,

located at 610 – 660 Harrisburg Pike, Columbus, Franklin County, Ohio (the "Property"). An exact legal description of the Property is attached hereto as Exhibit 1. A Property location map is attached hereto as Exhibit 2. Based on information in the NFA Letter, the current owners of the Property are Timbercreek Center Partners and Davis Center Land Partners.

4. The Certified Professional prepared, pursuant to OAC 3745-300-13(I), an Executive Summary of the NFA Letter, which is attached hereto as Exhibit 3.
5. Based upon the information contained in the NFA Letter, the Volunteer undertook or completed the following investigations and remedial activities 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 and affected media, to assess environmental conditions related to releases of hazardous substances and petroleum;
  - c. identification, in the Phase II Property Assessment, of one or more releases of hazardous substances or petroleum with chemicals of concern ("COCs") that include but are not limited to VOCs, for which the Volunteer determined the applicable standards;
  - d. activity and use limitations contained in a proposed Environmental Covenant prepared pursuant to ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders; and
  - e. a demonstration that the Property complies with applicable standards for the identified chemicals of concern in the identified areas and affected media at the Property through the use of generic numerical standards, in accordance with OAC 3745-300-08 and the use of a Property-specific risk assessment, in accordance with OAC 3745-300-09.
6. 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.

7. At the time that analyses were performed, Test America (Dayton, Ohio Division), Test America (Nashville, TN Division), and Advanced Analytics Laboratories, Inc. were certified laboratories, [No(s). CL0018, CL0033, and CL100, respectively], as defined in ORC 3746.01(D) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter (the "Certified Laboratories").
8. The Certified Laboratories have declared in affidavits contained in the NFA Letter that they each performed analyses for which they were certified and qualified, pursuant to ORC Chapter 3746 and OAC 3745-300-04, that formed the basis for the issuance of the NFA Letter by the Certified Professional.
9. The Certified Professional verified the Urban Setting Designation ("USD") for the Harrisburg Pike Shopping Center in accordance with OAC 3745-300-10(D). The USD verification demonstrates that potable use of the ground water from the *shallow "Class A" ground water zone* underlying the Property and *off-Property* is not reasonably anticipated. Further, the Columbus public water supply serves the Property area.
10. The Environmental Covenant will be recorded in the Franklin County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. A copy of the executed Environmental Covenant is attached hereto as Exhibit 4. The Environmental Covenant upon recording will:
  - a. restrict the use of the Property to commercial or industrial land uses only; and
  - b. prohibit 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.

#### Applicable Standards

11. Based on the information contained in the NFA Letter and all conditions set forth in these Findings and Orders, the Property meets the applicable standards

contained in ORC Chapter 3746 and OAC Chapter 3745-300 for commercial and industrial land use. The applicable standards, the methods of achieving compliance with the standards, and the associated points of compliance for the standards for each complete exposure pathway, are identified in the NFA Letter, which contains a summary table / summary tables entitled "Applicable Standards and Remedial Activities for Each Exposure Pathway" in the NFA Letter at Section D, Table 10 in the document titled "No Further Action Letter Form for Harrisburg Pike Shopping Center Property". The applicable standards include but are not limited to:

- a. commercial and industrial land use standards for direct contact to chemicals of concern related to hazardous substances in soil. The standards consist of generic numerical standards from Table III of OAC 3745-300-08 and apply at a point of compliance from the ground surface to a depth of 2 feet;
- b. commercial and industrial land use standards for direct contact to chemicals of concern related to petroleum in soil. The standards consist of generic numerical standards in accordance with OAC 3745-300-08(B)(3)(a)(i) - (ii) at a point of compliance from the ground surface to a depth of 2 feet;
- c. soil standards for direct contact by construction or excavation workers to chemicals of concern in soil. The standards consist of generic numerical standards from Table IV of OAC 3745-300-08 and apply at a point of compliance from the ground surface to a depth of 8 feet;
- d. ground water standards based on potable use for chemicals of concern in the "Class A" ground water zone emanating from the Property. This pathway has been addressed through the establishment of an urban setting designation in accordance with OAC 3745-300-10(F)(5).
- e. ground water standards, based on any non-potable use pathway, for chemicals of concern within the shallow "Class A" ground water zone underlying and emanating from the Property. The standards apply at all points underlying the Property within the "Class A" ground water zone at the Property beginning at approximately 16 feet below ground surface. The standards apply to non-potable exposure (e.g. human exposure to the chemicals of concern through an indoor air pathway) and were derived through Property-specific risk assessment procedures in accordance with

OAC 3745-300-09(D).

12. 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 the voluntary action for the Property is protective of public health and safety and the environment.

### **ORDERS**

#### **Covenant**

1. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, Ohio EPA hereby covenants not to sue and releases Kin Properties, Timbercreek Center Partners and Davis Center Land Partners, and their respective 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 and addressed in the Phase I Property Assessment or Phase II Property Assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

#### **Conditions and Limitations**

##### **Effectiveness of the Covenant Not to Sue – Recording of the Environmental Covenant**

2. The Covenant provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within thirty (30) days after the issuance of these Findings and Orders, Kin Properties, Timbercreek Center Partners and Davis Center Land Partners shall:
  - a. file with the Franklin County Recorder's Office for recording, in the same manner as a deed to the Property pursuant to ORC 3746.14 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA; and

- b. submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Environmental Covenant for NFA Letter No. 07NFA269*". The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, Suite 700, PO Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA Central District Office, 50 West Town Street, Suite 700, PO Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Harrisburg Pike Shopping Center property.

Requirement to Record These Findings and Orders / Covenant Not to Sue

3. Within thirty (30) days after the issuance of these Findings and Orders, Kin Properties, Timbercreek Center Partners and Davis Center Land Partners shall:
  - a. file with the Franklin County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), and 3 (Executive Summary); and
  - b. submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Covenant Not to Sue for NFA Letter No. 07NFA269*". The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, Suite 700, PO Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA Central District Office, 50 West Town Street, Suite 700, PO Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Harrisburg Pike Shopping Center property.

Requirement to Include Notice of Activity and Use Limitations upon Property  
Conveyance

4. Each instrument Timbercreek Center Partners and Davis Center Land Partners

uses to convey the Property or any portion of the Property shall include a notice of the activity and use limitations for the Property in accordance with paragraph 9 of the Environmental Covenant attached hereto as Exhibit 4. The submission to Ohio EPA required by the Environmental Covenant shall include a cover letter that identifies "*Conveyance of Property Subject to Activity and Use Limitations - NFA Letter No. 07NFA269*". The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, Suite 700, PO Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA, Central District Office, 50 West Town Street, Suite 700, PO Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Harrisburg Pike Shopping Center property.

#### Scope of Covenant

5. The Covenant provided in Order No. 1 shall only apply to the approximately 6.083 - acre Property described in the NFA Letter, these Findings and Orders, and the Exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA Letter were conducted.
6. 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.
7. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the noncomplying use.
8. 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, including but not limited to, releases of asbestos that may occur from asbestos-containing materials remaining at the Property that were not abated or required to be abated pursuant to OAC Chapter 3745-20;
  - b. on or emanating from the Property, that are not identified and addressed in the Phase I Property Assessment or 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.

9. 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, including but not limited to obligations arising under other applicable laws.
10. 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.
11. 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.

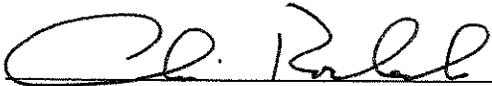
#### Ohio EPA Access to Property

12. Pursuant to ORC 3746.21 or 3746.171 or the Environmental Covenant, 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 activity and use limitations contained in the Environmental Covenant.

#### **Transfer**

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

**IT IS SO ORDERED:**



Chris Korleski, Director  
Ohio Environmental Protection Agency

4/23/08  
Date

**Exhibit 1**  
**Legal Description**

Situated in the State of Ohio, County of Franklin, City of Columbus, in Virginia Military Survey No. 422, being part of Parcel I conveyed to Timbercreek Center Partners and Davis Center Land Partners as shown of record in Instrument Number 200411220266747, Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Commencing at a monument (FCGS 1739) at the centerline intersection of Harrisburg Pike (State Route #62, U.S. Route #3) and Brown Road, being the southwest corner of a 0.711 acre tract conveyed to the City of Columbus (Parcel No. 12-WD), said monument bearing North 02° 31' 15" East, 1,747.00 feet from a found monument (FCGS 1738);

Thence, along said centerline of Harrisburg Pike, *North 29° 50' 00" East, 644.93 feet* to the northwest corner of said Parcel I;

Thence, across said Harrisburg Pike, along the north line of said Parcel I and the south line of the 0.329 acre tract conveyed to Columbus Check Cashiers, Inc. (Instrument Number 200306270196226), *South 89° 16' 57" East, 57.80 feet* to a set MAG nail in the existing southerly right-of-way of Harrisburg Pike at the northeast corner of said 0.711 acre tract, and the TRUE POINT OF BEGINNING of the herein described tract;

Thence, continuing along the north line of said Parcel I and the south line of said 0.329 acre tract, *South 89° 16' 57" East, 166.69 feet* to a set MAG nail at an angle point in said line;

Thence, continuing along said line, *North 69° 54' 18" East, 20.13 feet* to a set MAG nail at the southeast corner of said 0.329 acre tract;

Thence, along a west line of said Parcel I and the east line of said 0.329 acre tract, *North 20° 08' 42" West, 117.00 feet* to a set MAG nail at the southwest corner of a 0.015 acre tract conveyed to the City of Columbus (Parcel No. 12-WD-1);

Thence, along the south line of said 0.015 acre tract, *North 69° 54' 18" East, 50.00 feet* to a set MAG nail at the southeast corner of said 0.015 acre tract and in the west line of the 2.216 acre tract conveyed to Aldi Inc., (Ohio) (Instrument Number 200005110092554);

continued...

Thence, along an east line of said Parcel I and the west line of said 2.216 acre tract, *South 20° 04' 44" East, 332.71 feet* to a found pony spike at the southwest corner of said 2.216 acre tract and the northwest corner of the 1.402 acre tract conveyed to Robert L. Haner (Instrument Number 20000901077038);

Thence, along an east line of said Parcel I and the west line of said 1.402 acre tract, *South 20° 08' 42" East, 139.08 feet* to a found pony spike at a southwest corner of said 1.402 acre tract;

Thence, along a north line of said Parcel I and a south line of said 1.402 acre tract, *North 69° 54' 18" East, 15.00 feet* to a found rebar (THOMAS);

Thence, along an east line of said Parcel I and a west line of said 1.402 acre tract, *South 20° 08' 42" East, 75.44 feet* to a found  $\frac{3}{4}$ " iron pipe at a southeast corner of said Parcel I, southwest corner of said 1.402 acre tract and in the north line of the 3.0 acre tract conveyed to Buckeye Terminals, Ltd. (Official Record Volume 30823 F-18);

Thence, along a south line of said Parcel I and the north line of said 3.0 acre tract, *South 69° 54' 18" West, 64.62 feet* to a set iron pipe at the northwest corner of said 3.0 acre tract;

Thence, along an east line of said Parcel I and the west line of said 3.0 acre tract, *South 20° 08' 42" East, 344.98 feet* to a found 1" iron pipe at a southeast corner of said Parcel I, southwest corner of said 3.0 acre tract and in the north line of the Green Lawn Cemetery tract (Deed Book 47, Page 255, said Recorder's Office);

Thence, along the south line of said Parcel I and the north line of said cemetery tract, *South 81° 21' 28" West, 30.19 feet* to a set iron pipe;

Thence, across said Parcel I the following six (6) courses:

1. *North 70° 03' 00" West, 299.00 feet* to a point;
2. *North 19° 43' 00" East, 16.10 feet* to a point;
3. *North 18° 04' 00" West, 106.90 feet* to a set MAG nail (passing a reference MAG nail set at 6.90 feet);
4. *North 70° 00' 00" West, 290.00 feet* to a set MAG nail;
5. *North 07° 40' 00" West, 40.00 feet* to a set MAG nail;
6. *North 70° 00' 00" West, 47.00 feet* to a set MAG nail in the easterly line of said 0.711 acre tract (existing southerly right-of-way of Harrisburg Pike);

continued...

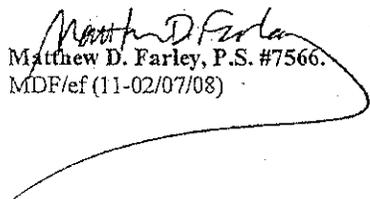
Thence, along the southerly line of said 0.711 acre tract and said existing right-of-way, *North 32° 07' 26" East, 112.63 feet* to a set MAG nail at an angle point in said line;

Thence, continuing along said line, *North 29° 50' 00" East, 297.88 feet* to the place of beginning CONTAINING 6.083 ACRES (264,999 square feet), subject however, to all legal highways, easements, leases and restrictions of record, and of records in the respective utility offices.

The foregoing description was prepared from an actual field survey made by Myers Surveying Company, Inc. in January 2008. Iron pipe set are 30" X 1" (O.D.) with an orange plastic plug inscribed "P.S. 6579". Basis of bearings is the centerline of Harrisburg Pike held as North 29°50' 00" East, as per Ohio Department of Transportation right-of-way plans; "FRA. MOUND ST. AT CENTRAL AVE.", sheets 4 and 6 of 6.

Being all of Auditor's Parcel Number 010-126630, 010-126632, and 5.375 acres out of 010-126626.

MYERS SURVEYING COMPANY, INC.

  
Matthew D. Farley, P.S. #7566.  
MDF/ef (11-02/07/08)



**Exhibit 2**  
**Property Location Map**



**Exhibit 3**  
**Executive Summary**

**REVISED**  
**Executive Summary of No Further Action Letter**

**Property:**  
**Harrisburg Pike Shopping Center Property**  
**610-660 Harrisburg Pike**  
**Columbus, OH 43223**  
**Franklin County**

**Volunteer:**  
**Kin Properties**  
**185 NW Spanish River Blvd.**  
**Suite 100**  
**Boca Raton, FL 33431**

**Certified Professional:**  
**Bruce A. Savage, CPG**  
**Ohio Voluntary Action Program Certified Professional No. 265**  
**Geotechnical Consultants, Inc.**  
**720 Greencrest Dr.**  
**Westerville, OH 43081**  
**Telephone No. 614-895-1400**

**REVISED February 25, 2008**

## REVISED EXECUTIVE SUMMARY

### 1.0 Introduction

The Volunteer (Kin Properties) retained Geotechnical Consultants, Inc. (GCI) to perform a Phase I Property Assessment (PA), and a Phase II PA including a Property Specific Risk Assessment (PSRA), consistent with Ohio's Voluntary Action Program (VAP) rules established under Ohio Administrative Code (OAC) 3745-300-01 through 15. As part of the voluntary action, the Volunteer also received an approved Urban Setting Designation (USD) for the Property. A copy of Ohio EPA's approval of the USD is provided as an attachment to this Executive Summary.

This revised Executive Summary provides information necessary to describe the property to remain subject to the NFA letter dated September 7, 2007 (the "revised NFA Property" or "Property"), which is that 6.083 acres portion of the original NFA area of 10.6± acres described in the NFA letter dated September 7, 2007. A lot split of 4.534 acres (the "carve out" area) has been carved out of the southwest part of the original NFA area, resulting in 6.083 acres remaining in the revised NFA Property. The land use of the revised NFA Property will remain commercial or industrial under the VAP, as was the original NFA area. The carve out has been made due to the proposed charter school use of the carve out area, which is a residential land use under the VAP. The dividing line between the revised NFA Property and the proposed charter school carve out area runs southeasterly from Harrisburg Pike roadway at the western boundary common to both the revised NFA Property and the carve out area, to the southeastern corner of the revised NFA Property. The attached boundary survey and legal description show and describe the revised NFA Property. The carve out area currently is the south and southwestern portion of the Harrisburg Pike Shopping Center between 670-690 Harrisburg Pike, containing a vacant former Big Bear grocery store.

The Certified Professional (Bruce A. Savage, CPG) has determined that the carve out area meets residential land use criteria and standards under the VAP, based on the absence of any releases of hazardous substances or petroleum on the carved out area. The absence of any releases of hazardous substances or petroleum on the carve out area is demonstrated by the Phase I Property Assessment (Phase I PA) report dated August 31, 2007, and by laboratory chemical analysis of two soil samples collected and analyzed from soil boring GB-103 on the carve out area, as follows. The Phase I PA identified neighboring gas stations along the western property boundary of the original NFA area as Identified Area #IA-4. IA-4 included the western portion of the carve out area. The Phase I PA did not identify additional known or suspected sources of other releases of any COCs within the carve out area. During the Phase II PA, soil borings GB-103, GB-105, and GB-106 were installed to assess IA-4. Boring GB-103 was installed at the southwestern corner of IA-4, and two samples collected from different depths from GB-103 were analyzed by a VAP certified laboratory for petroleum COCs. The concentrations of the COCs in the two samples were below the VAP residential single-chemical generic direct contact soil standards.

The Property of the voluntary action and for which the No Further Action (NFA) letter applies is that 6.083±-acre Property described as the Harrisburg Pike Shopping Center at 610-660 Harrisburg Pike, Columbus, OH 43223 in Franklin County. The Property historically contained two separate dry cleaners at 616 and 628 Harrisburg Pike in the 1970's and 1960's,



respectively. The Property also included 610-612 Harrisburg Pike with historical auto repair uses. The Property is shown in Figure 1A provided in the Phase I PA report and described in the legal description in Appendix A. The Property consisted of the following three (3) parcels:

1. all of 010-126630,
2. part of 010-126626, and
3. all of 010-126632.

The purpose of this executive summary is to summarize the findings of the voluntary action conducted at the Property, to meet the requirements of OAC 3745-300-13(H) to use the format provided by the Ohio Environmental Protection Agency (Ohio EPA) for submitting the NFA letter, and OAC 3745-300-13(J), which is for recording a summary of the NFA letter in the county recorder's office.

Kin Properties engaged Bruce A. Savage, CPG, VAP Certified Professional No. 265 to prepare and submit the NFA letter.

The activities conducted in support of the NFA letter included a Phase I PA, a II PA, and a PSRA. These activities included collecting and chemically analyzing soil and ground water below the Property, and preparing reports consistent with VAP rules in OAC 3745-300-06, 07 and 09.

The date of issuance of the NFA letter is September 7, 2007.

A complete copy of the NFA letter can be obtained from the Volunteer, Kin Properties (185 NW Spanish River Blvd., Suite 100, Boca Raton, FL 33431, telephone 561-620-9200); and through the Certified Professional Bruce A. Savage, CPG, CP265, (c/o Geotechnical Consultants, Inc., 720 Greencrest Dr., Westerville, OH 43081, telephone 614-895-1400).

## **2.0 Summary of the No Further Action Letter**

The concise summary of the basis for issuance of the NFA letter, including intended land use follows. Documents used to support the NFA letter and NFA Addendum are:

Phase I PA report dated August 31, 2007; Phase II PA (including a PSRA) report dated September 7, 2007; and an USD approval dated August 29, 2007 from the Ohio EPA Director.

### **2.1 Phase I Property Assessment**

The purpose of the Phase I PA was to identify the history of the Property use, the chemicals of concern (COCs) associated with the Property use, and Identified Areas on the Property where impacts to the Property by the COCs occurred or were likely to be present.

The Phase I PA activities were performed between October 2004 and August 2007. The methods of the Phase I PA inquiry included those methods required by OAC 3745-300-06.



The Property is a one-story retail shopping center. The Property contains approximately 77,700 square feet under roof and approximately 187,267 square feet of pavement outside of the building. The current tenants of the shopping center were:

- Supreme Auto Collision (repair)
- A+A Tires,
- China King quick service restaurant,
- Smoke N' Cellular Point store,
- Sunshine Center Laundromat, and
- CoCo's nightclub.

The Property is proposed to remain commercial retail space. There are no basements or other below grade structures on the Property. The shopping center Property was originally constructed in 1963±. Dry cleaners historically occupied spaces at the Property comprising 616 and 628 Harrisburg Pike. These units were in the northeastern end of the shopping center building. Early 1970s city directories identified Sharon Square Cleaners at 616 Harrisburg Pike. Early 1960s city directories identified Suburban Cleaners & Shirt Laundry at 610 Harrisburg Pike (now the space at 628 Harrisburg Pike). Various retail stores occupied the remaining units at the Property over this period. Auto repair facilities occupied the space north of the former dry cleaners.

The Property is represented on a portion of the 7.5-minute series USGS Southwest Columbus, Ohio topographic quadrangle in Figure 1 of the Phase I PA report. Exterior portions of the Property are paved surrounding the building. A scaled plan showing the Property boundaries, existing structures, underground utilities, adjacent streets, topographic contours, and latitude and longitude of Property corners is presented as Figure 2 of the Phase I PA report. The existing building contains a low-sloped roof supported by steel roof joists and cinder block walls with a partial brick exterior finish. The Property slopes gently to the east toward the Scioto River, which is approximately 1-mile east of the Property. The Property is covered entirely by the existing building, and concrete and asphalt pavements outside the building areas.

The Phase I Property Assessment designated six Identified Areas (IAs) for the Property as follows. The corresponding IA locations are shown in Figure 2 attached to the Phase I PA report.

**IA-1:** Former dry cleaners spaces in 616 and 628 Harrisburg Pike and pavement behind (east of) the building. The chemicals of concern (COCs) for IA-1 consist of VOCs.

**IA-2:** Former automotive service center in the northern part of the building on the Property at 610-612 Harrisburg-Pike. COCs for IA-2 comprise VOCs, PNAs, PCBs, and TPH.

**IA-3:** On-Property former automotive painting booth at 612 Harrisburg Pike (rear portion of building space). COCs associated with automotive painting operations comprise VOCs, and the metals aluminum, cadmium, chromium, and lead.

**IA-4:** Off-Property current and former gasoline filling stations. Two adjoining properties northwest and southwest of the Property were occupied by filling stations. The existing Speedway station southwest of the Property, 715 Harrisburg Pike, was identified on the LUST database for three separate petroleum release incidents. The status of two of the incidents



was release disproved. The other incident was listed as a Tier 1 evaluation for a suspected or known release. The 1429 W. Mound St. property, northwest of the subject Property (currently McDonalds restaurant), was identified as a LUST facility that had NFA status. Also, historical records identified in the Phase I PA identified the north adjoining property, currently occupied by a check cashing business at 1379 W. Mound St., was a filling station prior to 1950 until approximately 1975. No existing BUSTR records were identified for that facility. COCs comprise VOCs, PNAs, and TPH.

**IA-5:** Former on-Property gasoline UST. One 2,000-gallon former gasoline UST was identified during the Phase I PA (GCI, 2007) outside the building, east of the former automotive garage. COCs comprise VOCs, PNAs, TPH, and total lead. The UST was removed October 26, 2004 and received No Further Action (NFA) from BUSTR on March 15, 2005. A copy of the NFA letter is included in Appendix Q in the Phase I PA report.

**IA-6:** Ground water below the Property east of the former dry cleaner area. Ground water impacted by VOCs below the Property was identified during the Phase II PA (GCI, 2007) outside the building. The COCs in this identified area consist of VOCs.

Based on the findings of the Phase I PA, a Phase II PA was required before a No Further Action letter for this Property can be issued by a Certified Professional.

Based on information provided in the VAP Phase I PA, the subject Property was determined to be eligible for the VAP consistent with OAC 3745-300-02. The VAP Phase I PA includes the results of database searches for state, federal, and local regulatory agencies. All property is eligible for the VAP except as provided for in OAC 3745-300-02(C); if the exceptions do not apply to the Property, the Property is eligible for the VAP. Section 10.0 of the Phase I PA report contains the eligibility determination. Based upon the information presented in the Phase I PA, the subject Property is eligible for the VAP.

## 2.2 Phase II Property Assessment

The purpose of the Phase II PA was to determine the concentrations and extent of COCs in soil and ground water beneath the Property. The Phase II PA was conducted between October 2004 and August 2007.

The activities conducted during the Phase II PA included collecting 33 ~~35~~ soil samples between October 7, 2004 and August 11, 2005, and 24 ground water samples between October 12, 2004 and August 12, 2005. A total of eight ground water monitoring wells were installed at the Property. Five ground water monitoring wells MW-1 through MW-5 were initially sampled October 12, 2004. Ground water was re-sampled quarterly three additional times (January 12, 2004, April 12, 2004, and June 29, 2005) at MW-1, MW-2, and MW-5. Additional monitoring wells MW-2A and MW-6 were installed April 27-28, 2005, and ground water samples were collected from these wells May 2, 2005 and June 29, 2005. The eighth monitoring well, MW-7, was installed August 11, 2005 and a ground water sample was collected on August 12, 2005



from MW-7. All laboratory chemical analyses were performed by VAP Certified Laboratories (Test America, Inc. of Dayton, Ohio (CL0018) or Advanced Analytics Laboratory of Columbus, Ohio (CL100)).

### 2.2.1 Soil Investigation and Findings

Soils were investigated by drilled soil borings and direct push soil borings at the Property. A total of 22 borings were installed at the Property, including eight direct push borings inside the building (GB-109, GB-110, GB-113, GB-120, GB-121, GB-122, HS-117, and HS-118), five direct push borings outside the building (EB-119, GB-101, GB-105, GB-106, and HS-115), and eight drilled borings outside the building that were completed as ground water monitoring wells (MW-1, MW-2, MW-2A, MW-3, MW-4, MW-5, MW-6, and MW-7).

COCs for the Property were volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PNAs), total petroleum hydrocarbons (TPH), polychlorinated biphenyls (PCBs), and the metals aluminum, cadmium, chromium, and lead. The primary detected COC detected in soils on the Property consisted of the dry cleaning chemical tetrachloroethene (PCE). The PCE decomposition byproduct cis-1,2-dichloroethylene (DCE) was detected in one soil sample. No PCE decomposition byproducts trichloroethene (TCE), trans-1,2-DCE, or vinyl chloride were detected in soils on the Property.

The concentrations of COCs in soil were below the VAP generic direct contact soil standards (GDCSS) for commercial / industrial (C/I) land uses and construction and excavation (CE) activities. The maximum concentration of PCE on the Property was 0.0996 mg/kg at boring HS-115, which was well below the C/I GDCSS of 370 mg/kg for PCE. The concentration of cis-1,2-dichloroethene (DCE) detected on the Property was 0.105 mg/kg at boring GB-113, which was well below the C/I GDCSS of 1,200 mg/kg for that compound.

Minor concentrations of other COCs, which mainly were petroleum related, were identified in soils on the Property, including borings GB-113, GB-106, and GB-110. These other COCs consisted of:

COC	C/I GDCSS (mg/kg)	Maximum Concentration on Property
Acetone	100,000	0.211 mg/kg at boring GB-113
Benzene	100	0.304 mg/kg at boring GB-113
2-Butanone	71,600	0.0754 mg/kg at boring GB-113
Toluene	5,900	5.02 mg/kg at boring GB-113
sec-Butylbenzene	24,000	0.326 mg/kg at boring GB-106
n-Butylbenzene	21,000	0.889 mg/kg at boring GB-106
Ethylbenzene	17,000	2.36 mg/kg at boring GB-113
n-Hexane	180	0.025 mg/kg at boring GB-106
p-Isopropyltoluene	110	0.0499 mg/kg at boring GB-113
n-Propylbenzene	110	4.21 mg/kg at boring GB-106
Chloroform	32	0.0235 mg/kg at boring GB-106
Xylenes	6,400	14.1 mg/kg at boring GB-113
Benzo(a)anthracene	63	0.482 mg/kg at boring GB-110
Benzo(a)pyrene	6.3	0.493 mg/kg at boring GB-110



COC	C/I GDCSS (mg/kg)	Maximum Concentration on Property (continued)
Benzo(b)fluoranthene	63	0.867 mg/kg at boring GB-110
Benzo(k)fluoranthene	630	0.370 mg/kg at boring GB-110
Chrysene	6,700	0.529 mg/kg at boring GB-110
Fluoranthene	33,000	0.932 mg/kg at boring GB-110
Isopropylbenzene	860	0.0775 mg/kg at boring GB-113
Phenanthrene	870,000	0.377 mg/kg at boring GB-110
Pyrene	25,000	1.14 mg/kg at boring GB-110
2-Methylnaphthalene	94,000	1.31 mg/kg at boring GB-110
Naphthalene	1,090	0.689 mg/kg at boring GB-110
1,2,4 Trimethylbenzene	210	0.38 mg/kg at boring GB-110
1,3,5 Trimethylbenzene	180	0.843 mg/kg at boring GB-110
Aluminum	1,000,000	5,870 mg/kg at boring GB-120
Lead	1,800	47.8 mg/kg at boring EB-119
TPH DRO (C <sub>10</sub> - C <sub>20</sub> )	10,000	47.8 mg/kg at boring GB-113
TPH DRO (C <sub>20</sub> - C <sub>34</sub> )	20,000	117 mg/kg at boring GB-105

These COC concentrations were compared to either the Ohio Bureau of Underground Storage Tank Regulations (BUSTR) action levels for regulated petroleum compounds from OAC 1301:7-9-13(J), or the VAP GDCSS from OAC 3745-300-08. The concentrations of these compounds were below the respective BUSTR action levels or the VAP C/I land use GDCSS. The VAP GDCSS for CE activities for the Property COCs are higher than the GDCSS for C/I land uses. Because the COC concentrations in soil at the Property did not exceed the applicable direct contact standards for C/I land uses, they therefore did not exceed the GDCSS for CE activities.

### 2.2.2 Ground Water Investigation and Findings

Ground water in the uppermost saturated zone at the Property was investigated by installing eight ground water monitoring wells, MW-1, MW-2, MW-2A, MW-3, MW-4, MW-5, MW-6, and MW-7. The monitoring wells were completed at depths ranging from 26.5 ft. to 53 ft. below ground surface (bgs). The uppermost ground water zone below the Property occurs in the limestone bedrock saturated zone. This was investigated at the source area by installing ground water monitoring wells MW-1, MW-2, and MW-2A, which were completed at respective depths of 31 ft. bgs, 26.5 ft. bgs, and 41 ft. bgs.

The source area investigated was in the rear of two separate former dry cleaners, at 616 and 628 Harrisburg Pike, which vacated the Property in the 1970's and 1960's, respectively. Therefore, likely sources for dry cleaning COCs were removed from the Property at least 25-30 years ago.

The COCs in ground water were VOCs.

The uppermost saturated zone occurs in the massive Columbus limestone bedrock. The depth to the uppermost saturated zone encountered during drilling ranged in from a high of 22.5 ft. at MW-2A (east of the building) to a low of 50 ft. bgs at MW-3 (west of the building). The differences in depth to initial ground water presence during drilling is likely due to the fact that



water bearing fracture zones occur at random orientations and depths in the bedrock across the Property. No additional ground water zones were identified during drilling. No lower saturated zone is known to occur in the Columbus limestone bedrock; therefore, the provisions for the protection of ground water meeting unrestricted potable use standards (POGWMUPUS) in a lower saturated zone do not apply at the Property.

Based on the sampling events conducted at the Property, the limestone bedrock ground water zone beneath the Property exceeds GUPUS; therefore, ground water classification was required in accordance with OAC 3745-300-10 (Rule 10). The ground water in the uppermost saturated zone was determined to be Class A, in accordance with OAC 3745-300-10. COCs identified in ground water in the uppermost saturated zone were as listed in Table 6 of the Phase II Property Assessment.

Ground water in the uppermost saturated zone at the source area at MW-1 contained PCE and TCE at concentrations exceeding GUPUS. The range of PCE and TCE concentrations at MW-1 were:

COC	GUPUS	Concentrations measured at MW-1
PCE	5 ug/L	68.6 ug/L (10/12/2004) to 486 ug/L (01/12/2005); and
TCE	5 ug/L	3.4 ug/L (6/29/2005) to 18.8 ug/L (01/12/2005).

Ground water in the uppermost saturated zone at MW-7, down-gradient of the source area, contained PCE at a concentration exceeding the VAP GUPUS. Ground water in this well was sampled August 12, 2005, and the PCE concentration there was 8.54 ug/L.

The concentrations of the COCs in ground water in the uppermost saturated zone on the Property met the GUPUS at the source area measured by MW-2 and MW-2A, the down-gradient monitoring well locations MW-4 and MW-5, the up-gradient monitoring well location MW-3, and cross-gradient monitoring well location MW-6.

The Property received an approved Urban Setting Designation (USD) from the Ohio EPA on August 29, 2007. The approved USD demonstrated no presence of potable use ground water wells within a ½-mile radius of the Property. The approved USD eliminates the potable use pathway for the Property and the need for ground water emanating from the Property to meet the generic unrestricted potable use standards (GUPUS).

**2.2.3 Surface Water and Sediment Investigation and Findings**

The Property contained no surface water or sediments; therefore, these media did not require investigation for the Property.



## 2.2.4 Exposure Pathway Assessment

Pathways evaluated by the Phase II PA were:

### Soils

- Direct contact soils by on-Property commercial workers and visitors within the 0-2 foot commercial/industrial land use point of compliance (POC);
- Direct contact soils by on-Property CE workers within and below the 0-2 foot POC;
- Soil to indoor air - inhalation of vapors released from soils containing volatile COCs that potentially could accumulate in indoor spaces impacting on-Property workers and visitors; and
- Soils leaching COCs to ground water resulting in on-Property human exposures.

### Ground water

- Ground water non-potable use by on- and off-Property human receptors; and
- Ground water to indoor air – potential inhalation of vapors released from ground water containing volatile COCs that accumulate in indoor spaces impacting on-Property workers and visitors and off-Property workers and visitors.

The following pathways were eliminated from the assessment:

- Based on the approved USD, ground water potable use by on- and off-Property human receptors is eliminated;
- Sediment pathways – these pathways do not exist on the Property or the surrounding properties.
- All soil pathways off- Property - no migration to off-Property soils from on-Property sources is anticipated;
- Soil ecological pathway - no significant ecological resources exist on the Property or the adjacent properties;
- Ground water to surface water on-Property and off-Property - the Property contains no surface water; ground water gradient is easterly and there are no surface waters down-gradient within 500 yards of the Property;
- Migration of ground water containing COCs to surface waters impacting off - Property human receptors;
- Potable use of surface water on-Property and off-Property - the Property has no surface water and there are no surface water intakes within 500 yards of the Property; and
- Non-potable use of surface water on-Property and off-Property - the Property has no surface water and there are no surface water intakes within 500 yards of the Property.

Pathway refinements are discussed in the Property Specific Risk Assessment report, provided as Section 8.6 of the Phase II PA report.



## 2.3 Determination of Applicable Standards

### Soils

The applicable standards for direct contact with soils pathway for BUSTR-regulated petroleum COCs are the applicable BUSTR action levels. The applicable standards for direct contact soil for non-petroleum COCs are the Ohio VAP single chemical generic direct contact soil standards (GDCSS) for carcinogenic and non-carcinogenic chemicals of concern – commercial / industrial (C/I) land use category, and GDCSS for CE activities.

Applicable standards are required for other pathways including the indoor air and the soil leaching to ground water pathways. The applicable standards for the indoor air pathway for BUSTR regulated petroleum COCs were the applicable BUSTR action levels for class 2 soils in non-residential land uses. The applicable standards for the indoor air pathway for non-petroleum COCs were determined in the Property Specific Risk Assessment (PSRA) using the Johnson & Ettinger (V.3.1, February 2004) model screening level (SL-SCREEN).

The applicable standards for the soil leaching to ground water pathway for BUSTR regulated petroleum COCs were the BUSTR action levels, for class 2 soils and non-drinking water pathway (based on the approved USD). The applicable standards for the soil to ground water leaching pathway for the non-petroleum COCs were those identified in The Ohio EPA Derived Leach Based Soil Values (February 2002) for Soil Type III. Soil Type III was selected based on measured hydraulic conductivity values in soil samples from the Property, as described in Section 6.3 in the Phase II PA report.

### Ground Water

The applicable standards for potable and non-potable use ground water are the generic unrestricted potable use standards (GUPUS). The applicable standards for petroleum COCs for the ground water to indoor air pathway were the applicable BUSTR action levels. The applicable standards for non-petroleum COCs for the indoor air pathway were determined in the PSRA using the Johnson & Ettinger (V. 3.1, February 2004) screening level model (GW-SCREEN).

Applicable standards refinements are discussed in the PSRA, provided as Section 8.6 of the Phase II PA report.

## 2.4 Determination of Compliance with Applicable Standards

Compliance with applicable standards with respect to all complete exposure pathways was demonstrated by the PSRA, provided as Section 8.6 of the Phase II PA report and summarized in Section 2.4.3 below.

### 2.4.1 Data Analysis

The comparison of COC concentrations to the applicable standards for soil direct contact and ground water GUPUS are presented above in Sections 2.2.1 and 2.2.2 of this NFA Letter Executive Summary document.



For soil to indoor air and ground water to indoor air pathways, BUSTR action levels and the Johnson & Ettinger screening level models SL-SCREEN and GW-SCREEN (version 3.1, February 2004) demonstrated that soil and ground water below the Property meet the applicable standards. The PSRA included the J&E modeling and is discussed below in Section 2.4.3.

For the soil to ground water leaching pathway, comparison to BUSTR action levels and the *Ohio EPA Derived Leach-Based Soil Values Technical Guidance Document* (2<sup>nd</sup> Revision February, 2002) demonstrated that soil meets applicable standards.

For the non-potable use ground water pathway, a weight of evidence approach in the PSRA was used to demonstrate compliance with applicable standards.

#### **2.4.2 Compliance with Generic Numerical Standards (GNS)**

The VAP GNS were used for the direct contact soils and ground water pathways. For the BUSTR petroleum COCs, the BUSTR action levels were used for the direct contact soil, soil and ground water to indoor air, and soil to ground water leaching pathways. Soils below the Property meet the BUSTR action levels and VAP GNS, while ground water at MW-1 exceeded the VAP GNS for PCE and TCE, and ground water at MW-7 exceeded the VAP GNS for PCE.

The cumulative adjustment calculation for soil VOCs was made and no adjustment was necessary based on the calculations. The adjustment was not necessary for ground water because the GNS were exceeded for PCE and TCE, and a proposed Environmental Covenant will be used as an institutional control to eliminate potable and certain non-potable exposures to ground water (Appendix E of the NFA). The Property Specific Risk Assessment, provided Section 8.6 of the Phase II PA report, includes multiple chemical cumulative adjustment calculations.

#### **2.4.3 Property-Specific Risk Assessment Findings**

Based on the findings of the Phase II investigation, the PSRA was included in the Phase II PA report. The PSRA addressed evaluation of risk to commercial receptors due to the potential for vapor intrusion into indoor air, as well as cumulative risk for all receptors from all complete pathways (direct contact soil; soil to indoor air; ground water to indoor air; and construction and excavation worker direct contact soil).

In the PSRA, direct contact exposure pathways to soil were considered to be complete for future commercial receptors (i.e., workers, child and adult visitors) at the Property. Comparison of the concentrations of COCs in soils at the Property with the generic numeric standards for direct contact under the commercial land-use scenario indicate that no chemicals, either individually, or in combination, exceed the applicable standard used for comparison.

Ground water extraction and use at the Property will be restricted through the proposed Environmental Covenant due to confirmed exceedances of the GUPUS beneath the Property that preclude use of ground water for potable-use purposes.



Inhalation of volatile chemicals in soils and ground water potentially migrating to indoor-air were evaluated in the PSRA. This evaluation concluded that there are no unacceptable risks associated with volatile chemicals in soil or ground water to receptors at the Property.

The PSRA demonstrated that no COCs detected in soil or ground water at the Property exceed the applicable standards or values derived in the PSRA, either individually or in combination. Thus, Property-wide risks do not exceed the target risk of  $1.0 \times 10^{-5}$  or the target hazard quotient of 1.0.

Concentrations of COCs detected in on-Property soils at the Property do not exceed the applicable direct contact standards either individually or in combination; thus, no engineering or institutional restrictions on soils are necessary under these scenarios.

Because the ground water at the Property occurs at least 10 feet below the top of the limestone bedrock, and at least 20 ft. below ground surface (bgs), concentrations of COCs detected in ground water at the Property are not reasonably anticipated to be directly contacted (e.g., inhalation of volatile chemicals and dermal contact with ground water) by construction or excavation workers. On this basis, evaluation of risk relative to construction or excavation workers from direct contact with ground water was not necessary, and additional non-potable exposures to ground water are not reasonably anticipated to exist on or off the Property. No ecological receptors were identified on or off the Property; therefore, the PSRA did not require evaluation of ecological risk.

#### **2.4.4 Determination of Whether Remedial Activities are Required**

Based on the lack of COCs in soil exceeding applicable standards at the Property, no remedial activities are required for soil pathways.

Based on the presence of ground water that exceeded the GUPUS at MW-1 and MW-7 on the Property, the proposed Environmental Covenant with a restriction on ground water extraction is necessary to achieve compliance with the applicable standards at the Property.

Based on the presence of Class A ground water exceeding the GUPUS on the Property, and because ground water contamination is attributable entirely to sources or source areas that were or are located on the Property, the Urban Setting Designation (USD) was used to eliminate the need for ground water to meet GUPUS at the Property boundary. Ohio EPA approved the USD on August 29, 2007. Ohio EPA's approval letter for the USD is provided as an appendix to the Executive Summary.

Based on the PSRA discussed in Section 2.4.3 above, no other remedial activities were required.



## 2.5 Remedial Activities

As determined in accordance with rule 3745-300-10(F)(5) of the Administrative Code, the following minimum ground water response requirements must be implemented or met for Class A ground water with an USD, and the ground water contamination is attributable entirely to sources or source areas that were or are located on the Property:

(i) Implement institutional controls or engineering controls that reliably prevent human exposure on the property to ground water with concentrations of chemical(s) of concern in excess of unrestricted potable use standards or restore the ground water underlying the Property to those unrestricted potable use standards; and

(ii) The remedy or remedial activities must achieve compliance with applicable standards established under rule 3745-300-09 of the Administrative Code to:

(a) Ensure protection of humans on and off the property from exposures to chemical(s) of concern in ground water not related to potable use of the ground water. For the purposes of this rule, exposures to chemical(s) of concern in ground water not related to potable use of the ground water include exposures resulting from non-consumptive uses and exposures resulting from inadvertent contact with contaminated ground water. Examples of such exposures include, but are not limited to: exposures to industrial process water; water used for lawn watering; water used for irrigation; shallow ground water contaminated with volatile organic compounds that volatilize into the breathing space of an inhabited structure; and shallow ground water seeping into sub-surface utility tunnels or sewers; and

(b) Ensure protection of important ecological resources on and off the property.

Such exposures must be evaluated as part of the "Phase II Property Assessment" in accordance with rules 3745-300-07 and 3745-300-09 of the Administrative Code.

Based on the presence of ground water that exceeded the GUPUS at MW-1 and MW-7 on the Property, the proposed Environmental Covenant with a restriction on ground water extraction is necessary to achieve compliance with the applicable standard. The proposed Environmental Covenant ground water extraction/use restriction institutional control will be applied to eliminate potable access to ground water on the Property to meet the applicable standard. Based on the PSRA discussed in Section 2.4.3 above, no other remedial activities were required.

## 2.6 Planned Remedies

No other remedies are needed to meet applicable standards for the Property.



### 3.0 Conclusions

Based on the Phase II PA including the PSRA findings, the voluntary action remedies to be implemented by the ground water use restriction institutional control in the proposed Environmental Covenant, combined with the approved Urban Setting Designation (USD), are protective of human health and the environment. Based on the results of the Phase I and II Property Assessments and the Property Specific Risk Assessment, the ground water use restriction remedy of the proposed Environmental Covenant, and the approved USD, the property meets applicable standards and a No Further Action (NFA) Letter under Ohio VAP may be prepared for the Property.

Attachments: Revised NFA Property Boundary Survey  
Revised NFA Property Legal Description  
Approved Urban Setting Designation



**Exhibit 4**  
**Environmental Covenant**

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

AFFIDAVIT

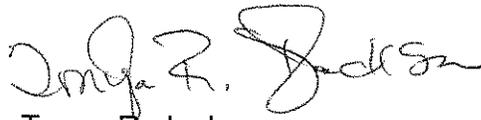
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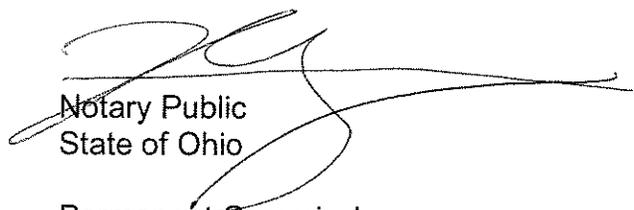
COUNTY OF FRANKLIN

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared 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 April 28, 2008 regarding the property known as Harrisburg Pike Shopping Center, located at 610 – 660 Harrisburg Pike in Columbus, Franklin County, Ohio, and further described in Exhibit 1 of the attached Covenant Not to Sue.



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 28 day of April, 2008.



Notary Public  
State of Ohio

Permanent Commission  
No expiration, R.C. 147.03

This instrument prepared by: Ann Fischbein  
Ohio EPA Legal Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049

MARCUS J. GLASSOW  
NOTARY PUBLIC, STATE OF OHIO  
LIFETIME COMMISSION

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Timbercreek Center Partners, L.P. and Davis Center Land Partners, L.P. (the latter two entities referred to as “Owners”); and the Ohio Environmental Protection Agency (“Ohio EPA”) pursuant to Ohio Revised Code (“ORC”) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas Kin Properties, Inc (hereafter called “Kin”), c/o 185 NW Spanish River Blvd., Suite 100, Boca Raton, FL 33431 has undertaken a voluntary action with respect to the Property described herein under Ohio’s Voluntary Action Program (“VAP”), pursuant to Ohio Revised Code (“ORC”) Chapter 3746 and Ohio Administrative Code (“OAC”) Chapter 3745-300.

Whereas, the property is owned by Timbercreek Center Partners, L.P., and Davis Center Land Partners, L.P. jointly and severally; Kin is not an owner of the Property;

Whereas, the voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant. Certified Professional Bruce A. Savage, CPG, CP No. 265 issued a no further action (NFA) letter for the Property on September 7, 2007 (“NFA Letter”) and on September 11, 2007 submitted the NFA Letter to Ohio EPA, with a request for a covenant not to sue (“NFA Letter No. 07NFA0269”), as amended by NFA Addendum No. 1 through NFA Addendum No. 4.

Whereas, the activity and use limitations support the issuance of the NFA Letter and a covenant not to sue for the Property. The activity and use limitations protect against exposure to the hazardous substances and petroleum in soil and ground water on or underlying the Property.

Whereas, an overview of the voluntary action is contained in the NFA Letter Executive Summary. The Executive Summary may be reviewed as an exhibit to the covenant not to sue issued for the Property, recorded in the deed records for the Property in the Franklin County Recorder’s Office. You may also review the Covenant Not to Sue, Executive Summary, or complete NFA Letter for the Property by contacting the Records Management Officer, Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program, P.O. Box 1049, Columbus, OH 43216-1049, or by telephone at (614) 644-2924, or the Certified Professional at 720 Greencrest Drive, Westerville, Ohio 43081, telephone: 614-895-1400.

Now therefore, Owners Timbercreek Center Partners, L.P. and Davis Center Land Partners, L.P. and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns real property parcels numbered part of 010-126626; all of 010-126630; and all of 010-126632 owned by Timbercreek Center Partners, L.P. and Davis Center Land Partners, L.P., 6.083 acres located at 610-660 Harrisburg Pike, in Columbus, Franklin County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").

3. Owners. Timbercreek Center Partners, L.P. and Davis Center Land Partners, L.P. ("Owners") who are located at c/o 250 N. Westlake Blvd., Suite 240, Thousand Oaks, CA 91362, are the Owners of the Property.

4.  Holders. Owners, whose address is listed above are the holders of this Environmental Covenant.

5. Activity and Use Limitations. As part of the voluntary action described in the NFA Letter, Owners hereby impose and agree to comply with the following activity and use limitations.

**Limitation for Commercial or Industrial Land Uses.** The Property is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(B)(2)(ii) and (B)(2)(iii) (effective October 21, 2002).

OAC 3745-300-08(B)(2)(c)(ii) defines *commercial land use* as "land use with potential exposure of adult workers during a business day and potential exposure of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include, but are not limited to, warehouses; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail warehouses; repair and service establishments for appliances and other goods; professional offices; banks and credit unions; office buildings; retail businesses selling food or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities."

OAC 3745-300-08(B)(2)(c)(iii) defines *industrial land use* as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and

particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastic plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.”

**Limitation Prohibiting Ground Water Extraction and Use.** Ground water underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owners and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party’s right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law. Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC §3746.12 is void on and after the date of the commencement of the noncomplying use.

8. Rights of Access. Owners hereby grant to Ohio EPA, its agents, contractors, and employees, any Holders, the City of Columbus, and Franklin County the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Notice upon conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN DOCUMENT \_\_\_\_\_, or BOOK

\_\_\_\_\_, PAGE \_\_\_\_\_. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

**Limitation for Commercial or Industrial Land Uses.** The Property is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(B)(2)(ii) and (B)(2)(iii) (effective October 21, 2002).

**Limitation Prohibiting Ground Water Extraction and Use.** Ground water underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water.

Owners shall notify Ohio EPA and any Holders other than Owners within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

10. Representations and Warranties. Owners hereby represent and warrant to the other signatories hereto.

- A. that the Owners have the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- B. that the Owners are the sole Owners of the Property and hold fee simple title subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;
- C. that the Owners have identified all persons that own an interest in or hold an encumbrance on the Property and notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owners are a party or by which Owners may be bound or affected.

11. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owners or a Transferee; and other Holders, and the Ohio EPA, pursuant to ORC § 5301.09 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental

Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owners or Transferee and other "Holders," if any of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owners or Transferee shall file such instrument for recording with the Franklin County Recorder's Office, and shall provide a file- and date - stamped copy of the recorded instrument to Ohio EPA.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owners shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Franklin County Recorder's Office.

15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Franklin County Recorder.

16. Distribution of Environmental Covenant. The Owners shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Columbus, County of Franklin, any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA.

17. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Doug Crandall  
Site Coordinator  
Division of Emergency and Remedial Response  
Ohio EPA, Central District Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049

Timbercreek Center Partners, L.P. and  
Davis Center Land Partners, L.P.  
c/o 250 N. Westlake Blvd., Suite 240  
Thousand Oaks, CA 91362  
Attn: Stuart I. Schneider

National Financial Corporation - Mortgagee  
c/o 185 NW Spanish River Blvd  
Suite 100  
Boca Raton, FL 33431  
Attn: Allen Lev, Esq., General Counsel

The undersigned representatives of Owners and other "Holders," if any, represents and certify that they are authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

**TIMBERCREEK CENTER PARTNERS LP**  
**A Texas Limited Partnership**

By: ~~Timbercreek~~ Corporation, a Nevada Corporation

By:  \_\_\_\_\_

Date: 3-12-08

Name: **Stuart I. Schneider**  
Title: **President of General Partner**

SEE ATTACHED CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT  
FOR STUART SCHNEIDER

State of \_\_\_\_\_ )

SS:

County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared Stuart I. Schneider a duly authorized representative of \_\_\_\_\_, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**DAVIS CENTER LAND PARTNERS,  
A Florida Limited Partnership**

By: ~~SSIC, Inc.~~, a Florida Corporation

By: \_\_\_\_\_

Date: 3-12-08

Stuart I. Schneider

President of General Partner

SEE ATTACHED CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT  
FOR STUART SCHNEIDER

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

ss:

Before me, a notary public, in and for said county and state, personally appeared Stuart I. Schneider a duly authorized representative of \_\_\_\_\_, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public





# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On March 11, 2008 before me, Elena Ong Dizon, notary public

Date

Here Insert Name and Title of the Officer

personally appeared Stuart I. Schneider

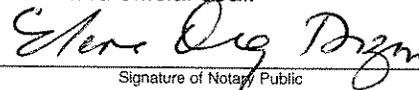
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Environmental Covenant

Document Date: March 11, 2008

Number of Pages: 11

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Stuart I. Schneider

Individual

Corporate Officer — Title(s): President

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Timbercreek Corp.

for Timbercreek

Center Ptnrs., L.P.

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer's Name: \_\_\_\_\_

Individual

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Los Angeles }

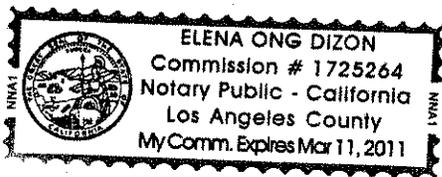
On March 11, 2008 before me, Elena Ong Dizon, notary public  
Date Here Insert Name and Title of the Officer  
personally appeared Stuart I. Schneider  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elena Ong Dizon  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Environmental Covenant

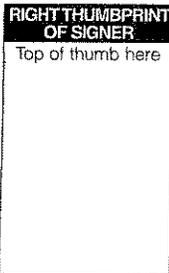
Document Date: March 11, 2008 Number of Pages: 11

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Stuart I. Schneider

- Individual
- Corporate Officer — Title(s): President
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
SSIC, Inc. for  
Davis Center Land  
Partners

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

## 6.083 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, in Virginia Military Survey No. 422, being part of Parcel I conveyed to Timbercreek Center Partners and Davis Center Land Partners as shown of record in Instrument Number 200411220266747, Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Commencing at a monument (FCGS 1739) at the centerline intersection of Harrisburg Pike (State Route #62, U.S. Route #3) and Brown Road, being the southwest corner of a 0.711 acre tract conveyed to the City of Columbus (Parcel No. 12-WD), said monument bearing North  $02^{\circ} 31' 15''$  East, 1,747.00 feet from a found monument (FCGS 1738);

Thence, along said centerline of Harrisburg Pike, *North  $29^{\circ} 50' 00''$  East, 644.93 feet* to the northwest corner of said Parcel I;

Thence, across said Harrisburg Pike, along the north line of said Parcel I and the south line of the 0.329 acre tract conveyed to Columbus Check Cashiers, Inc. (Instrument Number 200306270196226), *South  $89^{\circ} 16' 57''$  East, 57.80 feet* to a set MAG nail in the existing southerly right-of-way of Harrisburg Pike at the northeast corner of said 0.711 acre tract, and the **TRUE POINT OF BEGINNING** of the herein described tract;

Thence, continuing along the north line of said Parcel I and the south line of said 0.329 acre tract, *South  $89^{\circ} 16' 57''$  East, 166.69 feet* to a set MAG nail at an angle point in said line;

Thence, continuing along said line, *North  $69^{\circ} 54' 18''$  East, 20.13 feet* to a set MAG nail at the southeast corner of said 0.329 acre tract;

Thence, along a west line of said Parcel I and the east line of said 0.329 acre tract, *North  $20^{\circ} 08' 42''$  West, 117.00 feet* to a set MAG nail at the southwest corner of a 0.015 acre tract conveyed to the City of Columbus (Parcel No. 12-WD-1);

Thence, along the south line of said 0.015 acre tract, *North  $69^{\circ} 54' 18''$  East, 50.00 feet* to a set MAG nail at the southeast corner of said 0.015 acre tract and in the west line of the 2.216 acre tract conveyed to Aldi Inc., (Ohio) (Instrument Number 200005110092554);

continued...

Page 2 – 6.038 Acres

Thence, along an east line of said Parcel I and the west line of said 2.216 acre tract , *South 20° 04' 44" East, 332.71 feet* to a found pony spike at the southwest corner of said 2.216 acre tract and the northwest corner of the 1.402 acre tract conveyed to Robert L. Haner (Instrument Number 20000901077038);

Thence, along an east line of said Parcel I and the west line of said 1.402 acre tract, *South 20° 08' 42" East, 139.08 feet* to a found pony spike at a southwest corner of said 1.402 acre tract;

Thence, along a north line of said Parcel I and a south line of said 1.402 acre tract. *North 69° 54' 18" East, 15.00 feet* to a found rebar (THOMAS);

Thence, along an east line of said Parcel I and a west line of said 1.402 acre tract, *South 20° 08' 42" East, 75.44 feet* to a found ¾" iron pipe at a southeast corner of said Parcel I, southwest corner of said 1.402 acre tract and in the north line of the 3.0 acre tract conveyed to Buckeye Terminals, Ltd. (Official Record Volume 30823 F-18);

Thence, along a south line of said Parcel I and the north line of said 3.0 acre tract, *South 69° 54' 18" West, 64.62 feet* to a set iron pipe at the northwest corner of said 3.0 acre tract;

Thence, along an east line of said Parcel I and the west line of said 3.0 acre tract, *South 20° 08' 42" East, 344.98 feet* to a found 1" iron pipe at a southeast corner of said Parcel I, southwest corner of said 3.0 acre tract and in the north line of the Green Lawn Cemetery tract (Deed Book 47, Page 255, said Recorder's Office);

Thence, along the south line of said Parcel I and the north line of said cemetery tract, *South 81° 21' 28" West, 30.19 feet* to a set iron pipe;

Thence, across said Parcel I the following six (6) courses:

1. *North 70° 03' 00" West, 299.00 feet* to a point;
2. *North 19° 43' 00" East, 16.10 feet* to a point;
3. *North 18° 04' 00" West, 106.90 feet* to a set MAG nail (passing a reference MAG nail set at 6.90 feet);
4. *North 70° 00' 00" West, 290.00 feet* to a set MAG nail;
5. *North 07° 40' 00" West, 40.00 feet* to a set MAG nail;
6. *North 70° 00' 00" West, 47.00 feet* to a set MAG nail in the easterly line of said 0.711 acre tract (existing southerly right-of-way of Harrisburg Pike);

continued...

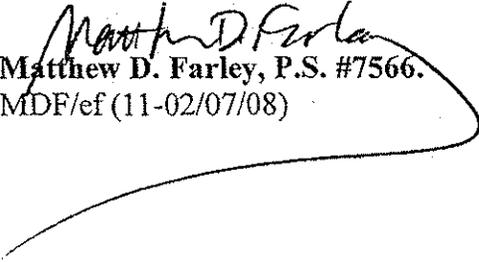
Thence, along the southerly line of said 0.711 acre tract and said existing right-of-way, *North 32° 07' 26" East, 112.63 feet* to a set MAG nail at an angle point in said line;

Thence, continuing along said line, *North 29° 50' 00" East, 297.88 feet* to the place of beginning CONTAINING 6.083 ACRES (264,999 square feet), subject however, to all legal highways, easements, leases and restrictions of record, and of records in the respective utility offices.

The foregoing description was prepared from an actual field survey made by Myers Surveying Company, Inc. in January 2008. Iron pipe set are 30" X 1" (O.D.) with an orange plastic plug inscribed "P.S. 6579". Basis of bearings is the centerline of Harrisburg Pike held as North 29°50' 00" East, as per Ohio Department of Transportation right-of-way plans; "FRA. MOUND ST. AT CENTRAL AVE.", sheets 4 and 6 of 6.

Being all of Auditor's Parcel Number 010-126630, 010-126632, and 5.375 acres out of 010-126626.

MYERS SURVEYING COMPANY, INC.

  
Matthew D. Farley, P.S. #7566.  
MDF/ef (11-02/07/08)



**EXHIBIT B**

**LIST OF EASEMENTS**



2740 East Main Street  
Wexley, Ohio 43209-2577  
(614) 235-8677  
Telefax 235-4559  
Email: info@myerssurveying.com

February 22, 2008

*Easements:*

STEWART TITLE GUARANTY COMPANY

Commitment No. 120073144  
Effective Date: October 26, 2007

SCHEDULE B - PART II

12. Easement granted to the City of Columbus, Ohio of record in Deed Book 1002, Page 130; Does Not Affect Subject Tract.
13. Easement granted to the City of Columbus, Ohio of record in Deed Book 1002, Page 309; Plotted.
14. Easement granted to the City of Columbus, Ohio of record in Deed Book 1002, Page 434; Does Not Affect Subject Tract.
15. Easement granted to the City of Columbus, Ohio of record in Deed Book 1072, Page 494; Plotted.
16. Easement and Right of Way granted to Weaver Trailer & Body Co. of record in Deed Book 1555, Page 80; Does Not Affect Subject Tract.
17. Easement Agreement by and between Big Bear Stores Company and Socony Mobil Oil Company, Inc. of record in Deed Book 2119, Page 399; Plotted.
18. Ingress and Egress Right and Restrictions between Five Points, Inc. and Big Bear Stores Company of record in Deed Book 2159, Page 229; Blanket Easement.
19. Conditions, restrictions and easements contained in Deed Book 2159, Page 391, buy omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code, or (b) related to handicap but does not discriminate against handicapped persons; Plotted.
20. Easement granted to Columbus and Southern Ohio Electric Company of record in Deed Book 2277, Page 343; Plotted.
21. Easement granted to Columbus and Southern Ohio Electric Company of record in Deed Book 2338, Page 113; Plotted.
22. Easement granted to the City of Columbus, Ohio of record in Deed Book 2331, Page 538; Blanket Easement.
23. Easement granted to Columbus and Southern Ohio Electric Company of record in Deed Book 2429, Page 231; Plotted.
24. Easement granted to Columbus and Southern Ohio Electric Company of record in Deed Book 2109, Page 675; Cannot Be Plotted.
25. Right of Way and Easement granted to Columbus Southern Power Company of record in Official Record 13153, Page G14; Cannot Be Plotted, Exhibit Drawing Illegible.



State of Ohio Environmental Protection Agency

STREET ADDRESS:

MAILING ADDRESS:

Lazarus Government Center  
50 W. Town St., Suite 700  
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184  
www.epa.state.oh.us

P.O. Box 1049  
Columbus, OH 43216-1049

**MEMORANDUM**

**TO:** Shelley Wilson, Executive Administrator, Tax Equalization Division, Dept. of Taxation  
Amy Alduino, Office of Urban Development, Dept. of Development

**FROM:** Chris Korleski, Director, Ohio Environmental Protection Agency

**DATE:** APR 24 2008

**RE:** Covenant Not to Sue Issued to Kin Properties for the Harrisburg Pike Shopping Center Property

As Director of the Ohio Environmental Protection Agency, I certify that Kin Properties, Inc. has performed investigational and remedial activities at the property listed below and has been issued a Covenant Not to Sue under the authority of Ohio Revised Code ("ORC") Chapter 3746. This information is being provided in satisfaction of ORC 5709.87(B).

Property name: Harrisburg Pike Shopping Center Property

Property address: 610-660 Harrisburg Pike, Columbus, Ohio 43223

Property owner: Timbercreek Center Partners & Davis Center Land Partners,

Property owner address: 250 N. Westlake Blvd. #240, Thousand Oaks, CA 91362

Parcel number(s): 010-126630, 010-126626, and 010-126632

County: Franklin

Taxing District: City of Columbus, Franklin County

Date Covenant Not to Sue Issued: APR 24 2008

Attached, for your information, is a copy of the legal description of the property.

If additional information regarding the property or the voluntary action is required, I suggest you first contact Bruce Savage, the Certified Professional for the property, at 614-839-1258. In the alternative, you can contact Doug Crandall with the Ohio Environmental Protection Agency at 614-387-6181.

cc: Lee Cherney, Kin Properties, 185 Spanish River Blvd., Suite 100, Boca Raton, FL 33431  
Steward Schneider, Timbercreek Center Partners & Davis Center Land Partners, 250 N. Westlake Blvd #240, Thousand Oaks, CA 91362  
Bruce Savage, Certified Professional, Geotechnical Consultants Inc., 720 Greencrest Dr., Westerville, OH 43081  
Joseph W. Testa, Franklin County Auditor, 373 South High Street, 21st Floor, Columbus, Ohio 43215-6310  
Amy Yersavich, VAP Manager, Ohio EPA  
DERR-CO, VAP Files 07NFA269  
DERR-CDO Files (125-002304-002)

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

2740 East Main Street  
Bexley, Ohio 43209-2577  
(614) 235-8677

Telefax 235-4559

Email: info@myersurveying.com

February 14, 2008

6.083 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, in Virginia Military Survey No. 422, being part of Parcel I conveyed to Timbercreek Center Partners and Davis Center Land Partners as shown of record in Instrument Number 200411220266747, Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Commencing at a monument (FCGS 1739) at the centerline intersection of Harrisburg Pike (State Route #62, U.S. Route #3) and Brown Road, being the southwest corner of a 0.711 acre tract conveyed to the City of Columbus (Parcel No. 12-WD), said monument bearing North  $02^{\circ} 31' 15''$  East, 1,747.00 feet from a found monument (FCGS 1738);

Thence, along said centerline of Harrisburg Pike, *North  $29^{\circ} 50' 00''$  East, 644.93 feet* to the northwest corner of said Parcel I;

Thence, across said Harrisburg Pike, along the north line of said Parcel I and the south line of the 0.329 acre tract conveyed to Columbus Check Cashiers, Inc. (Instrument Number 200306270196226), *South  $89^{\circ} 16' 57''$  East, 57.80 feet* to a set MAG nail in the existing southerly right-of-way of Harrisburg Pike at the northeast corner of said 0.711 acre tract, and the TRUE POINT OF BEGINNING of the herein described tract;

Thence, continuing along the north line of said Parcel I and the south line of said 0.329 acre tract, *South  $89^{\circ} 16' 57''$  East, 166.69 feet* to a set MAG nail at an angle point in said line;

Thence, continuing along said line, *North  $69^{\circ} 54' 18''$  East, 20.13 feet* to a set MAG nail at the southeast corner of said 0.329 acre tract;

Thence, along a west line of said Parcel I and the east line of said 0.329 acre tract, *North  $20^{\circ} 08' 42''$  West, 117.00 feet* to a set MAG nail at the southwest corner of a 0.015 acre tract conveyed to the City of Columbus (Parcel No. 12-WD-1);

Thence, along the south line of said 0.015 acre tract, *North  $69^{\circ} 54' 18''$  East, 50.00 feet* to a set MAG nail at the southeast corner of said 0.015 acre tract and in the west line of the 2.216 acre tract conveyed to Aldi Inc., (Ohio) (Instrument Number 200005110092554);

continued...

Thence, along an east line of said Parcel I and the west line of said 2.216 acre tract, *South 20° 04' 44" East, 332.71 feet* to a found pony spike at the southwest corner of said 2.216 acre tract and the northwest corner of the 1.402 acre tract conveyed to Robert L. Haner (Instrument Number 20000901077038);

Thence, along an east line of said Parcel I and the west line of said 1.402 acre tract, *South 20° 08' 42" East, 139.08 feet* to a found pony spike at a southwest corner of said 1.402 acre tract;

Thence, along a north line of said Parcel I and a south line of said 1.402 acre tract, *North 69° 54' 18" East, 15.00 feet* to a found rebar (THOMAS);

Thence, along an east line of said Parcel I and a west line of said 1.402 acre tract, *South 20° 08' 42" East, 75.44 feet* to a found ¾" iron pipe at a southeast corner of said Parcel I, southwest corner of said 1.402 acre tract and in the north line of the 3.0 acre tract conveyed to Buckeye Terminals, Ltd. (Official Record Volume 30823 F-18);

Thence, along a south line of said Parcel I and the north line of said 3.0 acre tract, *South 69° 54' 18" West, 64.62 feet* to a set iron pipe at the northwest corner of said 3.0 acre tract;

Thence, along an east line of said Parcel I and the west line of said 3.0 acre tract, *South 20° 08' 42" East, 344.98 feet* to a found 1" iron pipe at a southeast corner of said Parcel I, southwest corner of said 3.0 acre tract and in the north line of the Green Lawn Cemetery tract (Deed Book 47, Page 255, said Recorder's Office);

Thence, along the south line of said Parcel I and the north line of said cemetery tract, *South 81° 21' 28" West, 30.19 feet* to a set iron pipe;

Thence, across said Parcel I the following six (6) courses:

1. *North 70° 03' 00" West, 299.00 feet* to a point;
2. *North 19° 43' 00" East, 16.10 feet* to a point;
3. *North 18° 04' 00" West, 106.90 feet* to a set MAG nail (passing a reference MAG nail set at 6.90 feet);
4. *North 70° 00' 00" West, 290.00 feet* to a set MAG nail;
5. *North 07° 40' 00" West, 40.00 feet* to a set MAG nail;
6. *North 70° 00' 00" West, 47.00 feet* to a set MAG nail in the easterly line of said 0.711 acre tract (existing southerly right-of-way of Harrisburg Pike);

continued...

Thence, along the southerly line of said 0.711 acre tract and said existing right-of-way, *North 32° 07' 26" East, 112.63 feet* to a set MAG nail at an angle point in said line;

Thence, continuing along said line, *North 29° 50' 00" East, 297.88 feet* to the place of beginning CONTAINING 6.083 ACRES (264,999 square feet), subject however, to all legal highways, easements, leases and restrictions of record, and of records in the respective utility offices.

The foregoing description was prepared from an actual field survey made by Myers Surveying Company, Inc. in January 2008. Iron pipe set are 30" X 1" (O.D.) with an orange plastic plug inscribed "P.S. 6579". Basis of bearings is the centerline of Harrisburg Pike held as *North 29° 50' 00" East*, as per Ohio Department of Transportation right-of-way plans; "FRA. MOUND ST. AT CENTRAL AVE.", sheets 4 and 6 of 6.

Being all of Auditor's Parcel Number 010-126630, 010-126632, and 5.375 acres out of 010-126626.

MYERS SURVEYING COMPANY, INC.

  
Matthew D. Farley, P.S. #7566.  
MDF/ef (11-02/07/08)



