

ENTERED DIRECTOR'S JOURNAL

NOV 19 1998

OHIO EPA

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BEFORE THE

OHIO EPA/CDO

OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:

Dynacraft Golf Products, Inc.,
Pal Joey Custom Golf, Inc., and
Dynacraft Real Estate Holding, Inc.
71 Maholm Street
Newark, Ohio 43058

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Covenant Not to Sue

Director's Final Findings
and Orders

Regarding the approx. 8 acre property known as :
DYNACRAFT GOLF PRODUCTS, INC., :
Licking County, Ohio :

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

Findings

1. An original No Further Action Letter (NFA Letter No. 98NFA033) was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of the Dynacraft Golf Products, Inc., Pal Joey Custom Golf, Inc., and Dynacraft Real Estate Holding, Inc. (wholly owned subsidiaries of Dynacraft Golf Products, Inc.) on August 14, 1998, by Joseph R. Kolmer, a Certified Professional (Certified Professional No. CP190) as defined in ORC Section 3746.01(E) and OAC rule 3745-300-01(A)(8) (the Certified Professional).
2. NFA Letter No. 98NFA033 (NFA) describes investigational and/or remedial activities undertaken at the property located at 71 Maholm Street, Newark, Licking County, Ohio (the Property). An exact legal description of the Property is contained in the warranty deed recorded at Licking County Official Record Volume 666; Page 426 and attached hereto as Attachment 1.
3. The Certified Professional has verified by affidavit that the investigation and/or remedial activities undertaken at the Property comply with the standards established in ORC

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

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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.

4. DLZ Laboratories (Certified Laboratory No. CL 00014) is a certified laboratory as defined in ORC Section 3746.01(D) and OAC rule 3745-300-01(A)(7), whose services were used in support of the NFA for the Property.
5. According to information provided in the NFA, DLZ Laboratories performed analyses for which it is certified and qualified, pursuant to ORC Chapter 3746 and OAC Chapter 3745-300, that formed the basis for the issuance of the NFA as determined by the Certified Professional.
6. No land use restriction has been placed on the Property described in the NFA and, based on the information contained in the NFA, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for residential land use.
7. On November 19, 1998, Dynacraft Golf Products, Inc. and Ohio EPA entered into an Operation and Maintenance Agreement ("O&M Agreement"), which includes an approved Operation and Maintenance Plan ("O&M Plan"), and which are incorporated by reference as if fully written into these Findings and Orders. The O&M Agreement, including the approved O&M Plan, are contained in Attachment 2 to these Findings and Orders.
8. Based upon the information contained in the NFA and the O&M Agreement, the following investigational and/or remedial activities were undertaken at the Property:
 - a) Completion of a Phase I Property Assessment, in accordance with OAC rule 3745-300-06;
 - b) Completion of a Phase II Property Assessment, in accordance with OAC rule 3745-300-07, including but not limited to investigations of ground water to assess environmental conditions related to releases of hazardous substances and petroleum from an inactive District 5 Ohio Department of Transportation site, which have emanated onto the Property;
 - c) The use of institutional controls on the Property, including a prohibition on the use of ground water at the Property as set forth in the O&M Agreement; and
 - d) An agreement to comply with all monitoring, reporting, record keeping, financial assurance and other requirements set forth in the O&M Agreement.

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9. Based on the information contained in the NFA, and on continued compliance with the terms and conditions herein and in the O&M Agreement, the Director has determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.

Orders

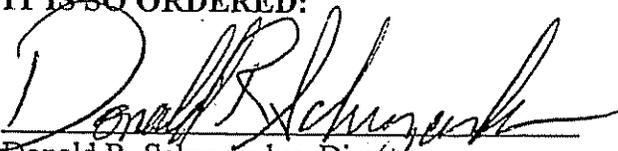
1. Upon the effective date of these Orders, and subject to the conditions outlined below, the Ohio EPA hereby releases and covenants not to sue Dynacraft Golf Products, Inc., and its agents, employees, shareholders, officers, directors, successors or assigns, from all civil liability to the State to perform additional investigation and/or remedial activities to address the releases of hazardous substances or petroleum addressed through the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.
2. The NFA and the Covenant provided in these Findings and Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. A summary of the NFA and a copy of these Findings and Orders, including Attachments 1 and 2 hereto, shall be filed in the Office of the County Recorder of Licking County, Ohio, in the same manner as a deed to the Property.

Conditions of and Limitations on the Covenant

1. This Covenant shall only apply to the approximately eight (8) acre Property described in the NFA, upon which the investigation and/or remedial activities specified in the NFA were conducted.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this Covenant is based, as outlined in Finding Nos. 1 through 9 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) that occur after the submittal of the NFA to Ohio EPA, or
 - (b) on or emanating from the Property, which are not described in the NFA, or
 - (c) for which investigational and/or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.

4. This Covenant shall not apply to:
- (a) 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. Sections 9607 and 9613, as amended; or
 - (b) claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 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.
5. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC Sections 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 a property where a voluntary action is being or has been conducted under ORC Chapter 3746 and the rules adopted thereunder, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
6. Nothing in this Covenant shall be construed to limit and/or waive the Director's authority to revoke this Covenant pursuant to any of the circumstances for revocation of a Covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

IT IS SO ORDERED:


Donald R. Schregardus, Director
Ohio Environmental Protection Agency

NOV 19 1998
Date

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NOV 19 98
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Attachment 1

GENERAL WARRANTY DEED

J&J ENTERPRISES, an Ohio general partnership (the "Grantor"), of Licking County, Ohio, for valuable consideration paid, grants, with general warranty covenants, to DYNACRAFT REAL ESTATE HOLDINGS CORPORATION, an Ohio corporation whose tax-mailing address is 71 Maholm Street, Newark, Ohio 43055 the following real property:

Being the premises described in Exhibit "A" attached hereto and incorporated herein by reference.

(Auditor's Parcel Numbers 54-222318-00.000; 54-216774-00.000; 54-216750-00.000; 54-217962-00.000; 54-186742-00.000; 54-271956-00.000; 54-216762-00.000; 54-216756-00.000; 54-226560-00.000; 54-229584-00.000; 54-217932-00.000 and 54-227982-00.000 -- Street Addresses: 77, 99 and 107 S. Pine St., 71 Maholm St., and 84, 85, 88, 92, 99 and 100 James St.)

Subject to easements, conditions, covenants, encumbrances and restrictions, if any, of record and further subject to taxes and assessments, if any, now a lien, but which are not yet due or payable.

Prior Instrument References: Official Records 235, Page 886; 206, Page 346; 122, Page 155; 186, Page 551; 56, Page 67; 59, Page 71; 86, Page 916; 76, Page 825 and 56, Page 418 of the Deed Records of Licking County, Ohio.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by Joseph A. Altomonte, Sr. and Joseph A. Altomonte, Jr., being all of its Partners, this 19 day of October, 1994.

Signed and acknowledged in the presence of:

J&J ENTERPRISES, an Ohio general partnership
By: Joseph A. Altomonte, Sr., Partner

Alan S. Ackel
Printed Name: ALAN S ACKEL

Russell P. Austin
Printed Name: RUSSELL P. AUSTIN

By: Joseph A. Altomonte, Jr., Partner

Alan S. Ackel
Printed Name: ALAN S ACKEL

Russell P. Austin
Printed Name: RUSSELL P. AUSTIN

STATE OF OHIO
COUNTY OF LICKING, ss:

BE IT REMEMBERED, that on this 19th day of October, 1994, before me the subscriber, a Notary Public in and for said state, personally came J&J ENTERPRISES, an Ohio general partnership, by Joseph A. Altomonte, Sr. and Joseph A. Altomonte, Jr., being all of the Partners of the Grantor in the foregoing Deed, and acknowledged the signing thereof to be their voluntary act and deed and the voluntary act and deed of the Partnership.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

Glenda J. Harrison
Notary Public

This instrument prepared by:
Record and Return To:
Steven G. Gentry, Esq.
Schwartz, Kelm, Warren & Ramirez
Huntington Center
41 South High Street
Columbus, Ohio 43215
(614) 222-3000

GLEND A. HARRISON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12-10-94

TRANSFERRED
Date: OCTOBER 19 1994
Glenda D. Bushman
Licking County Auditor

Certificate of Partnership Filed
Partnership Record Vol. 2 Pg. 307

ENTERED DIRECTOR'S JOURNAL

NOV 19 98

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EXHIBIT A

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NOV 19 98

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TRACT 1

Being a part of Outlot marked "D" in William C. Maholm's Addition to the town of Lockport (now City of Newark), according to a plat thereof, recorded in Volume of Plats No. 1, pages 130 and 131, in the Recorder's Office of said County of Licking and being more particularly described as follows:

Commencing at the northeast corner of said Outlot; thence West on Maholm Street 50 feet; thence South parallel with the east line of said Outlot 150 feet; thence East parallel with Maholm Street 50 feet; thence North 150 feet to the place of beginning.

Being the same premises conveyed to Joseph A. Altomonte and Ruth E. Altomonte by deed recorded in Volume B12 at page 691 of the Deed Records of Licking County, Ohio.

71 Maholm Street, Newark, Ohio

TRACT 2

Situated in the City of Newark, County of Licking and State of Ohio:

Being a part of Outlot "O" in William C. Maholm's Addition to the Town of Lockport, now City of Newark, said part being more particularly bounded and described as follows:

Beginning at an iron pin on the East line of James Street, said point being South 3°55' West, 400 feet from the intersection of the South line of Maholm Street with the East line of said James Street; thence South 86°06' East, 147 feet to an iron pin in the West line of an alley; thence along the West line of said alley, South 3°57' West, 56.21 feet to an iron pin in the North line of the B.O. and P.C.C. and St. Louis Railway right of way; thence along the North line of said railway right of way, South 67°45' West, 163.57 feet to an iron pin in the East line of James Street; thence along the East line of said James Street, North James Street; thence along the East line of said James Street, North 3°55' East, 128.18 feet to the iron pin at the place of beginning.

The bearings used in the foregoing description are referenced to true North from Polaris observation.

Being the same premises conveyed to Andrew Lumber Company by deed dated December 14, 1962, and recorded in Volume 569, page 282, of the Deed Records of Licking County, Ohio.

Subject to all valid and existing zoning laws, ordinances and regulations, to all valid and existing building and other restrictions and conditions of record and to all valid and existing easements of record and to all legal highways and rights of way.

Excepting taxes and assessments, if any, prorated to the date hereof, which taxes and assessments, if any, after the date hereof, the Grantee(s) herein assume and agree to pay as part of the consideration hereof.

88 James Street, Newark, Ohio

TRACT 3:

Beginning on the West line of said Outlot "D" at a point 280 feet South of Maholm Street; thence South, along the West line of said Outlot "D", 40 feet; thence East, parallel with Maholm Street, 147 feet to an alley; thence North, along said alley, 40 feet; thence West 147 feet to the place of beginning, said lot lying on the East line of the extension of James Street.

84 James Street, Newark, Ohio

ENTERED DIRECTOR'S JOURNAL
NOV 19 98

TRACT 4:

Being a part of Out-Lot "D" in the William C. Maholm Addition to the Town of Lockport, now the City of Newark, said part being more particularly described as follows:

Beginning at an iron pin on the eastern boundary line of James Street, said point being South 3 degrees 55 minutes West and 400.00 feet from the intersection of the south line of Maholm Street, with the eastern boundary line of James Street; thence South 86 degrees 06 minutes East 147.00 feet to an iron pin in the western boundary line of a public alley; thence north along the western boundary line of said public alley 40.00 feet; thence west and parallel with the southern boundary line for this parcel, and being along the southern boundary line of what is described as Parcel 1 in a certain deed recorded in Volume 122, Page 155, of the Official Records of Licking County, Ohio, for a distance of 147.00 feet to a point on the eastern boundary line of James Street; thence south 3 degrees 55 minutes west along the eastern boundary line of James Street to the place of beginning, and containing 0.0135 of an acre, more or less.

Being the same real estate as was conveyed to Otto L. Parrish and Marie E. Parrish by a warranty deed dated September 16, 1939, and recorded in Deed Book Volume 335, Page 54, of the Licking County Deed Records.

See also a certificate for transfer of real estate from the estate of Marie E. Parrish, deceased, to Otto L. Parrish, recorded in Deed Book Volume 799, Page 761, of the Licking County Deed Records.

92 James Street, Newark, Ohio

TRACT 5:

Being the South one-half of Lot Number 27 in the William C. Maholm's Addition to the City of Newark, as shown on the Plat of said Addition recorded in Vol. 1, Pages 130 and 131 of the Plat Records of Licking County, Ohio.

85 South Pine Street, Newark, Ohio

TRACT 6:

FIRST PARCEL: Being a part of the east parts of Lots 27 and 28 in W. C. Maholm's Addition to the Town of Lockport (now City of Newark), and further described as follows:

Beginning on the west line of Pine Street at a point fifty (50) feet south of its intersection with the south line of Maholm Street; thence west, parallel with the south line of Maholm Street, one hundred (100) feet; thence southerly, parallel with the west line of Pine Street, twenty-nine (29) feet; thence easterly, parallel with the south line of Maholm Street, one hundred (100) feet to Pine Street; thence northerly, on the west line of Pine Street, twenty-nine (29) feet to the place of beginning.

Also a right of way ten (10) feet in width over property immediately south of the above described premises.

SECOND PARCEL: Being a part of Lot Number 28 in W. C. Maholm's Addition to the Town of Lockport (now City of Newark), and more particularly described as follows:

Beginning at a point on the west line of Pine Street forty-seven (47) feet south of the intersection of the south line of Maholm Street with the west line of Pine Street; thence south along the west line of Pine Street three (3) feet; thence westerly, on a line parallel with the south line of Maholm Street one hundred (100) feet; thence northerly on a line parallel with the west line of Pine Street, three (3) feet; thence easterly, on a line parallel with the south line of Maholm Street, one hundred (100) feet to the place of beginning.

Being the same premises conveyed to Bernice L. Chambers, unmarried, to Terry Lynn Bobo, by deed dated September 22, 1983, recorded in Volume 838, Page 987, of the Deed Records of Licking County, Ohio.

SUBJECT TO all valid and existing leases, if any, easements, conditions, building, and other restrictions of record, and zoning.

77 South Pine, Newark, Ohio

TRACT 7:

Said First Parcel and Second Parcel being the same premises conveyed by Charles E. Thompson and Ruth A. Thompson, husband and wife, to Andrew Lumber Company by deed dated December 14, 1962, and recorded in Vol. 569, at page 282, of the Licking County, Ohio, Deed Records.

THIRD PARCEL:

Being all that part of Lot Number 26 in William C. Maholm's Addition to the Village of Lockport, now the City of Newark, recorded in Vol. 2, at page 101, of the Plat Records of Licking County, Ohio, not heretofore conveyed away, and being the part sold to Rachel A. Bailey by William Connell and wife and further described as follows:

Being a strip of land about 50 feet wide taken off the North side of said Lot, extending the full length thereof, and being a part of said Lot on which a frame dwelling house is situated.

Being the same premises conveyed by Everett Patton, unmarried, to Andrew Lumber Company by deed dated August 21, 1964, and recorded in Vol. 584, at page 14, of the Licking County, Ohio, Deed Records.

FOURTH PARCEL:

Being 33 feet off the South side of Lot Number 26 and 8 feet off the North side of Lot Number 25 in William C. Maholm's Addition to the Village of Lockport, now the City of Newark, and being the same property conveyed to the said John Kirkendall by Edward Boggs and wife by deed dated August 7, 1900, and recorded in Vol. 178, at page 228, of the Deed Records of Licking County, Ohio, and in part conveyed to Matilda Kirkendall from John Kirkendall by warranty deed dated April 30, 1914, and recorded in Vol. 225, at page 548, of said Deed Records.

Being the same premises conveyed by Kenneth Kraider, Executor of the Estate of Edward G. Kirkendall, to Andrew Lumber Company by Executor's Deed dated February 25, 1963, and recorded in Vol. 563, at page 294, of the Licking County, Ohio, Deed Records.

The Thompson Lumber Company is one and the same corporation as Andrew Lumber Company by virtue of a change of name filed with the Secretary of State, State of Ohio, on January 3, 1977.

99 South Pine, Newark, Ohio

TRACT 8:

Situated in the City of Newark, County of Licking and State of Ohio:

Being a part of Outlot "O" in William C. Maholm's Addition to the Town of Lockport, now City of Newark, and beginning on the West line of said Outlot "D", 320 feet South of Maholm Street, being the Southwest corner of the premises conveyed to the said grantor, Annie Rusler, and her sister, Mary to Mary A. Wilson by deed dated June 17, 1902, see Volume 184, page 434, of the Deed Records; thence East on the South line of said Wilson property 147 feet to an alley; thence South 40 feet; thence West parallel with said Wilson lot, 147 feet to the West line of said Outlot "D"; thence North 40 feet to the place of beginning.

Being the same premises conveyed to Andrew Lumber Company by deed dated July 3, 1967, and recorded in Volume 620, page 678, of the Deed Records of Licking County, Ohio.

100 James Street, Newark, Ohio

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NOV 19 98

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NOV 19 98

TRACT 9:

Beginning forty (40) feet West of the West line of Outlot D in William C. Maholm's Addition to the Town of Lockport, on the West line of James Street, and at the South east corner of the premises conveyed by Mary and Annie Rusler to Henry C. and Ella A. Hull by Deed dated February 5, 1901, recorded in Volume 179 at Page 432 of the Deed Records of Licking County, Ohio; thence West on the South line of said Hull real estate and parallel with Maholm Street one hundred sixty-five and one-half (165 1/2) feet to the Southwest corner of said Hull premises, being on the West line of Outlot C in said Addition; thence South on said West line to the Southwest corner of said Outlot C and the right-of-way of the Baltimore and Ohio Railroad Company; thence Easterly on the South line of said Outlot C to the West line of James Street; thence North to the place of beginning.

Except therefrom a strip fifty (50) feet wide off the North end heretofore conveyed to Arthur Taylor, and except also therefrom, that portion of said premises lying West and South of a line running from a point in the South line of said Outlot C, twenty (20) feet from the Southwest corner thereof, in a Northerly direction one hundred (100) feet to the West line of said Outlot C.

Being the same premises conveyed by Chester Gutridge and Rita Gutridge, husband and wife, to Charles E. Thompson and Ruth A. Thompson by deed dated November 14, 1962 and recorded in Volume 560, Page 300 of the Licking County, Ohio Deed Records.

Said premises are further described as a result of a survey made in 1962 by Horace L. Brown as follows:

Beginning on the West line of James Street at an iron pin set South 3° 55' West, 363 feet from the South line of Maholm Street, said point being 40 feet Westerly from the line between Lots "O" and "C" in Maholm's Addition; thence along the West line of said James Street, and parallel to the line between said Lots as aforesaid, South 3° 55' West, 184.5 feet to an iron pin set in the Northerly line of the B & O and P.C.C. and St. R.R. right-of-way; thence along the Northerly right-of-way lines of said Railroads, South 67° 45' West, 164.4 feet to an iron pin; thence North 6° 15' 30" West, 100 feet to an iron pin set in the West line of said Outlot "C"; thence along the West line of said Outlot "C", North 3° 55' East, 157.1 feet to an iron pin; thence South 86° 35' East, 165.5 feet to the place of beginning.

Reference is made for said description to Quit-Claim Deed from Chester Gutridge and Rita Gutridge, husband and wife, to Charles E. Thompson and Ruth A. Thompson, dated November 14, 1962, and recorded in Volume 560, Page 303 of the Licking County, Ohio Deed Records.

Subject to all conditions, easements, rights-of-way, reservations and restrictions of record and subject to the zoning ordinances of the City of Newark.

Being the same premises conveyed by Charles E. Thompson and Ruth A. Thompson to Andrew Lumber Company by deed dated December 14, 1962 and recorded in Volume 569, Page 282 of the Deed Records of Licking County, Ohio. Reference is also made to a Certificate of Amendment, changing the Corporate Title from Andrew Lumber Company to Thompson Lumber Company, filed with the Secretary of State of Ohio, January 3, 1977, recorded in Roll E299, Frame 935, Records of Incorporation and recorded December 23, 1977 in Volume 771 at Page 217 of the Deed Records of Licking County, Ohio.

99 James Street, Newark, Ohio

TRACT 10:

Beginning on the West line of James Street at the southeast corner of the real estate conveyed by Mary Rusler and Annie Rusler to Henry C. Hull and Ella A. Hull by deed dated February 5, 1901, and recorded in Volume 179, at page 432, of the Deed Records of Licking County, Ohio; thence West, along the south line of the real estate conveyed to said Hulls as aforesaid, on a line parallel with the north line of Maholm Street, 165 1/2 feet to the southwest corner of the real estate conveyed to said Hulls as aforesaid on the West line of Outlot "C" in Wm. C. Maholm's Addition to the said City of Newark as shown on the Plat of said Addition recorded in Volume 179 at page

along the west line of said Outlot "C", 50 feet; thence east, on a line parallel with the north line of the real estate described herein and hereby conveyed, 165 1/2 feet to the west line of James Street; thence north 50 feet to the point of beginning.

65 James Street, Newark, Ohio

TRACT 11:

A piece of land lying north of and adjacent to an alley north of the right of way of the Baltimore and Ohio Railroad; and west of and adjoining the west line of Pine Street, the said piece of land being a part of lot No. 25 of William C. Maholm's Addition to the town of Lockport, now a part of the City of Newark, plat of said addition being recorded on page 131, Vol. 1 of plats, Licking County Recorder's Office; said real estate is bounded as follows: Commencing at the southeast corner of said lot No. 25; thence north along the west line of Pine Street Forty-two (42) feet; thence west to the west line of said lot one hundred eighty-one and one-half (181 1/2) feet; thence south along the west line of said lot one hundred thirty-one and one-half (131 1/2) feet to the southwest corner of said lot; thence northeasterly along the south' line of said lot two hundred two and 95/100 (202.95) feet to the place of beginning, being the same premises which Oren L. Ingman by two deeds, one thereof dated March 17, 1901, and recorded in Deed Book No. 183, page 461, and the other thereof dated May 24, 1909, and recorded in Deed Book No. 210, page 134, in the records of Licking County, granted and conveyed to the Columbus, Buckeye Lake and Newark Traction Company, and which Searls Morton, Special Master, The Columbus, Buckeye Lake and Newark Traction Company, et al., by deed dated May 29, 1925, and recorded in Deed Book No. 274, page 492 in the records of Licking County aforesaid, granted and conveyed with other property to Southern Ohio Public Service Company.

There is also conveyed all of the right, title and interest of the Grantor in and to an alley running along the south side of lot 25 in William C. Maholm's addition to the Town of Lockport, now City of Newark, said addition being recorded in Vol. 1, page 131, of the Licking County, Ohio Plat Records, said alley having been vacated February, 1934 by Ordinance No. 4787 of the City of Newark, Ohio.

LOCAL ESTATE RECORDS DIVISION

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NOV 19 98
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TRACT 12

Situated in the City of Newark, County of Licking, and State of Ohio and bounded and described as follows:

Parcel 1: Being a part of outlet "D" in Wm. C. Maholm's Addition in the said City of Newark, the real estate hereby conveyed being more particularly bounded and described as follows, to wit: Beginning on the West line of said outlet "D" according to the Plat of said Addition recorded in Vol. 1, at pages 130 and 131 of the Plat Records in the Office of the Recorder of Licking County, Ohio, to which reference is here had and made for greater certainty of description, said point of beginning being 150 feet South of the South line of Maholm Street; thence South, a distance of 50 feet to the Northwest corner of the real estate heretofore conveyed by Annie Rusler and Mary Rusler, both unmarried, to John F. Baker; thence East, along the North line of the real estate conveyed to John F. Baker, as aforesaid, a distance of 147 feet to the West line of an alley, thence north, along the West line of said alley, a distance of 50 feet; thence West, a distance of 147 feet to the place of beginning.

Parcel 2: Being part of outlet "O" in William C. Maholm's Addition to the Town of Lockport, and bounded and described as follows: Beginning on the West side of outlet "D", two hundred (200) feet south of Maholm Street; thence south forty (40) feet; thence east parallel with Maholm Street, one hundred and forty-seven (147) feet to an alley; thence north forty (40) feet; thence west one hundred and forty-seven (147) feet to the place of beginning.

Parcel 3: Being a part of outlet "D" in Wm. C. Maholm's Addition to the said City of Newark, as shown on the plat of said Addition recorded in Volume 1, at pages 130 and 131, of the Plat Records in the Office of the Recorder of Licking County, Ohio, the real estate conveyed being more particularly bounded and described as follows: beginning on the east line of James Street at a point 240 feet south of the south line of Maholm Street, said point of beginning being the southwest corner of the real estate conveyed by Annie Rusler and Mary Rusler to John F. Baker; thence east, parallel with Maholm Street, 147 feet to an alley; thence south 40 feet; thence, west, parallel with Maholm Street, 147 feet to the east line of James Street; thence north 40 feet to the place of beginning.

Being the same premises conveyed to Pal Joey Custom Golf, Inc. by deed recorded in Volume 834 at Page 191 of the Deed Records of Licking County, Ohio.

Reference is hereby made to a Quit Claim Deed from Pal Joey Custom Golf, Inc. to Joseph A. Altomonte and Ruth E. Altomonte recorded of even date herewith.

TRACT 13

FIRST PARCEL:

Being a part of Lot Number 25 in William C. Maholm's Addition to the City of Newark, as the same is shown of record in Vol. 1, at pages 130 and 131, of the Plat Records of Licking County, Ohio, said part being more particularly described as follows:

Beginning on the East line of Lot Number 25 on the West line of South Pine Street at a point 8 feet South of the Northeast corner of said Lot Number 25; thence South, along the East line of said Lot on the West line of South Pine Street, 42 feet; thence West, on a line at right angles to the West line of South Pine Street, to an alley extending along the West side of said Lot; thence North, along the East line of said alley, 42 feet; thence East to the point of beginning.

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NOV 19 98

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In Official Record
Vol. 834, Page
Licking County,
Recorder's Office

DESCRIPTION APPROVED
TIM LOLLO
LICKING COUNTY ENGINEER

28

**OPERATION AND MAINTENANCE AGREEMENT
BETWEEN THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND
DYNACRAFT GOLF PRODUCTS, INC., REGARDING PROPERTY LOCATED IN
LICKING COUNTY, OHIO**

In consideration of the mutual covenants and provisions contained herein, this Operation and Maintenance Agreement ("Agreement") is entered into as of this ^{can} 16th day of November, 1998 by the Director of the Ohio Environmental Protection Agency ("Director") and Dynacraft Golf Products, Inc., ("Dynacraft") pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300, under the following circumstances and subject to the terms and conditions herein stated:

TERMS AND CONDITIONS

1. **The Original NFA.** An original No Further Action Letter (NFA Letter No. 98NFA033, or the "NFA") under the Voluntary Action Program was submitted to the Ohio Environmental Protection Agency ("Ohio EPA") Division of Emergency and Remedial Response on behalf of Dynacraft and its wholly owned subsidiaries Pal Joey Custom Golf, Inc., and Dynacraft Real Estate Holding, Inc., on August 14, 1998, by Mr. Joseph R. Kolmer, Certified Professional No. 190. The NFA concerns real property located at 71 Maholm Street, Newark, Licking County, Ohio, as described in Attachment I of the Covenant Not to Sue for the Property dated November 19, 1998. (the "Property").
2. **Requirement for an Operation and Maintenance Agreement.** An Operation and Maintenance Agreement is required for the Property, pursuant to ORC Section 3746.12 and OAC rules 3745-300-15 (A)(2) and (F)(4).
3. **Remedy Subject to Operation and Maintenance.** The remedy to be operated and maintained for the Property consists of an institutional control, contained in an Operation and Maintenance Plan (Plan), which prohibits the extraction or use of ground water at the Property, except for specified purposes as set forth in the Plan. The Plan, dated October 15, 1998, is hereby approved by Ohio EPA, is attached hereto as Appendix 1, and is incorporated by reference, as if fully written herein. The institutional control for the Property, including the requirements of the Plan, shall apply to Tract numbers two (2), four (4), nine (9), and eleven (11) of the Property, as delineated on the map contained in the Plan.

4. **Agreement Runs With the Property.** The terms and conditions of this Agreement shall run with the Property and are binding on the parties hereto and all subsequent owners, heirs, successors, and assigns of the Property, or any portion thereof.
5. **Protectiveness of the Remedy.** Based upon the information provided in the NFA, the remedy for the Property is considered protective of public health, safety and the environment, so long as Dynacraft and all heirs, successors and assigns of the Property, or portion thereof, continue to comply with the terms and conditions herein, and all other obligations of the Covenant Not to Sue ("Covenant") for the Property.
6. **Recordation / Effectiveness of Agreement.** This Agreement, including the approved Plan, as part of the Covenant for the Property, must be recorded as set forth in the Covenant. This Agreement shall be effective upon the Director's issuance of a Covenant for the Property.
7. **Non-compliance with Institutional Controls.** Non-compliance with the institutional control set forth in paragraph three (3) herein and in the approved Plan immediately voids the Covenant issued for the Property.
8. **Reliance Upon the Covenant.** In order to rely upon the Covenant for the Property, Dynacraft, and all heirs, successors, and assigns of the Property, must perform all maintenance, repair, monitoring, reporting, record keeping, and other requirements, in accordance with the approved Plan.
9. **Modifications.** Any proposed modifications to this Agreement, including the approved Plan, must be submitted to the Director for approval, unless proposed by the Director. Modifications include any change to the terms and conditions of this Agreement, including but not limited to institutional controls, financial assurance and the approved Plan. Approval of modifications is subject to the sole discretion of the Director and must be agreed to by the Director, in writing, prior to implementation. Ohio EPA reserves the right to require the submittal of a new No Further Action Letter for proposed modifications which will result in the application of different applicable standards, land uses, or a substantially different remedy than originally approved by this Agreement and

the Covenant issued for the Property.

10. **Financial Assurance.** Dynacraft, and all heirs, successors and assigns of the Property, must establish and maintain a designated maintenance fund or account on its books and records, in the amount of One Hundred Dollars (\$100.00), to ensure that reasonable and adequate funds are available to maintain the remedy at the Property and to comply with terms of this Agreement, so that the Property will continue to comply with applicable standards. The fund will be replenished annually to a total of One Hundred Dollars (\$100). The Director reserves the right to reasonably modify the amount of the fund if it is determined that the fund is inadequate for the purposes of complying with this Agreement. Such modified amount shall not exceed funds directly necessary for complying with this Agreement.
11. **Annual Inspections.** Dynacraft, and all heirs, successors and assigns of the Property, or any portion thereof, agree to allow Ohio EPA to perform annual inspections to determine compliance with this Agreement. Such inspections, and any additional inspections or audits by Ohio EPA shall be consistent with ORC Chapter 3746, OAC Chapter 3745-300, and due process considerations.
12. **Notice of Transfer.** Prior to a transfer of the Property, or a portion thereof, notification will be provided by Dynacraft, or the current Owner if different, to the Director that the Property, or a portion thereof, is being transferred. This notice to the Director must include the name, address, telephone number and contact person for the transferee, a legal description of the Property, or any portion thereof, and the closing date for the transfer of ownership. Dynacraft, or its heirs, successors, and assigns, agree to provide written notice to the prospective transferee by the date of, or prior to, execution of any sales contract for the purchase of the Property, that the Property is subject to a Covenant issued by the Director and of the obligations imposed by this Agreement, as a term and condition of the Covenant.
13. **Document Submittals.** All documents, including but not limited to, notices and reports, required to be submitted by Dynacraft, or its heirs, successors, and assigns, pursuant to this Agreement, shall be addressed to:

NOV 19 98

OHIO E.P.A.

Ohio Environmental Protection Agency
Division of Emergency and Remedial Response, Voluntary Action Program
1800 WaterMark Drive
Columbus, Ohio 43215-1099
Attn: Section Manager, VAP

All documents, including any notice, required to be submitted by Ohio EPA pursuant to this Agreement shall be delivered to Dynacraft, and any future Owner(s) or transferee of the obligations hereunder. Notice to Dynacraft shall be addressed to:

Dynacraft Golf Products, Inc.
P.O. Box 4550
71 Maholm Street
Newark, Ohio 43058-4550
Attn: Jeffrey M. Jackson, President
Duane Egeland, CFO

14. **Entire Agreement.** The terms and conditions herein, including the approved Plan, constitute the entire Agreement of the parties and no oral or written representation or modification of the Agreement shall be binding, unless agreed to pursuant to paragraph nine (9) herein. The terms and conditions herein shall be interpreted consistent with ORC Chapter 3746, and OAC Chapter 3745-300.
15. **Verification.** If a request for termination of this Agreement is made based upon the completion of ground water remediation activities, the request shall include verification that the ground water underlying and emanating from the Property meets unrestricted potable use standards, as defined in OAC rules 3745-300-10(A)(33)(a), as effective on December 16, 1996, for the chemicals of concern identified in Section 2.0 of the Plan. This demonstration must be based on analysis performed by a laboratory certified under ORC Chapter 3746 and OAC Chapter 3745-300 for those chemicals of concern.
16. **Termination.** This Agreement shall terminate upon revocation or termination of the Covenant for the Property, or otherwise upon the written approval of the Director.

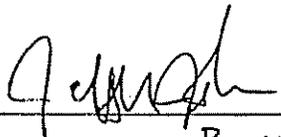
17. **Tax Abatement.** Upon issuance of a Covenant for the Property, pursuant to ORC Section 5709.87 the Director immediately will certify to the State of Ohio Tax Commissioner and to the State of Ohio Director of Development that the Covenant has been issued and that remedial activities at the Property have been conducted.

18. **Waiver.** Dynacraft agrees that the terms and conditions herein are lawful and reasonable, that the schedules provided herein are reasonable, and agrees to comply with the terms and conditions contained in this Agreement. Dynacraft hereby waives its right to appeal the issuance, and terms and conditions of this Agreement, and hereby waives any and all rights it might have to seek judicial or administrative review of this Agreement either in law or equity. Dynacraft reserves its right to participate in any appeal by a third party to the Environmental Review Appeals Commission (ERAC), or to any applicable appellate court.

19. **Authorized Signatories.** Each undersigned representative of a signatory to this Agreement represents that he or she is fully authorized to execute this Agreement and that upon execution the Agreement shall be a valid and binding obligation enforceable in accordance with its terms.

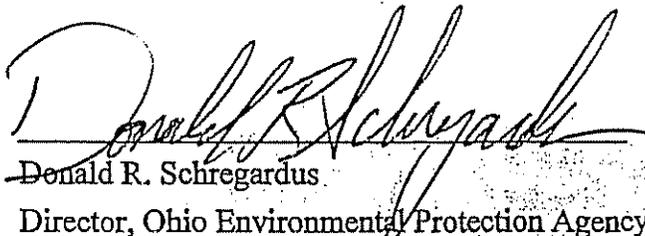
In witness whereof, the parties hereto have executed this Agreement on the date noted herein.

DYNACRAFT GOLF PRODUCTS, INC.:

By: 
Title: President

Date: 11-16-98

OHIO ENVIRONMENTAL PROTECTION AGENCY:


Donald R. Schregardus
Director, Ohio Environmental Protection Agency

Date: NOV 19 1998

Appendix 1

**Operations and Maintenance Plan
Dynacraft Golf Products, Inc.
Newark, Ohio**

Prepared for:

Dynacraft Golf Products, Inc.

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NOV 19 98

Prepared by:
JR Kolmer + Associates, Inc.
15 October 1998

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TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	INSTITUTIONAL CONTROL	2
3.0	NORMAL OPERATION AND MAINTENANCE	2
3.1	Prohibition of Water Table Aquifer Production Wells	2
3.2	Facility Monitoring Schedule	3
3.3	Documentation	3
3.4	Exclusions to Groundwater Well Policy	4
4.0	POTENTIAL FOR OPERATING PROBLEMS	4
5.0	NOTIFICATION OF PROPOSED MODIFICATION TO OPERATION AND MAINTENANCE PLAN	5
6.0	PRIOR NOTIFICATION OF PROPERTY TRANSFER	5

Figure
Appendix

OHIO E.P.A.

NOV 19 98

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Operations and Maintenance Plan
Dynacraft Golf Products, Inc.
Newark, Ohio

1.0 INTRODUCTION

This Operation and Maintenance (O&M) Plan was prepared in accord with OAC 3745-300-15 and applies to the various parcels of property at 71 Maholm St., Newark, Licking County, Ohio which are owned by Dynacraft Real Estate Holding, Inc., a wholly owned subsidiary of Pal Joey Custom Golf, Inc., a wholly owned subsidiary of Dynacraft Golf Products, Inc., which are all referred to as Dynacraft. A map of the Dynacraft facility is shown in Figure 1. The purpose of this O&M Plan is to insure that there is no exposure to the shallow groundwater beneath the Dynacraft facility. This O&M Plan addresses inspection requirements, schedules and necessary notifications to the Director of Ohio EPA for an institutional control on groundwater usage. The purpose of this O&M Plan is to effectively eliminate direct contact to human receptors via potable and non-potable uses of groundwater from the water table aquifer.

The Phase I and Phase II Environmental Site Assessments performed on the Dynacraft property determined that the groundwater underlying tracts 2,4, 9 and 11 contained chlorinated solvents which had migrated via groundwater from the adjacent Ohio Department of Transportation (ODOT) site. ODOT is currently under Director's Final Findings and Orders (dated 6 February 1989), and a closure plan (approved 7 June 1990) to address closure and remediation of the ODOT site, as well as the contamination that has migrated onto the Dynacraft property. Therefore, the ultimate remediation of the Dynacraft groundwater will be accomplished by the ODOT remedial system. The purpose of this O&M plan is to insure that there is no exposure to shallow groundwater at Dynacraft prior to completion of the remedial work.

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NOV 19 98

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2.0 INSTITUTIONAL CONTROL

The chlorinated solvents present in the groundwater underneath the Dynacraft property are at a depth of approximately 15 feet below ground surface. These chemicals underlie tracts 2, 4, 9 and 11 of the property, and therefore, this O&M Plan applies only to that portion of the property. The principal chemical of concern is TCE, but carbon tetrachloride, 1,2-Dichloroethane, and cis-1,2-Dichloroethylene are also present in excess of the MCL and the generic unrestricted potable use standards applicable to the Dynacraft property.

The Phase II Assessment concluded that the only potential for exposure to these chemicals at the Dynacraft property was related to their presence in the water table aquifer located above the primary (regional) water bearing zone. The lower confining bed of the water table aquifer is a layer of dark gray glaciolacustrine clay which occurs at a depth of approximately 25 to 30 feet. Thus, an institutional control to prevent installation of groundwater wells into the water table aquifer is necessary to mitigate potential risks from direct contact with the contaminated groundwater. Currently there are no groundwater wells on the Dynacraft property and Dynacraft will prevent the placement of any such wells into the water table aquifer.

3.0 NORMAL OPERATION AND MAINTENANCE

The property will be adequately maintained by assuring that no groundwater production wells are placed into the water table aquifer for any purpose other than those specified in Section 3.4 of this O&M Plan. The following sections describe the procedures and monitoring necessary to ensure that this institutional control is adequately protective.

3.1 Prohibition of Water Table Aquifer Production Wells

Dynacraft management will institute a two tiered program to insure that no water table aquifer production wells are installed at their facility. First, Dynacraft

NOV 19 98

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will implement a company policy that no such wells will be installed. This policy will be in writing and will be prominently posted throughout the facility so all employees are aware of the well prohibition. This policy will apply to property tracts 2, 4, 9 and 11 (see Figure 1). The policy will also request that Dynacraft employees immediately notify management if they see any operations that resembles well drilling at the property. For the purposes of this Plan, the term groundwater production well includes all wells except those specifically described in Section 3.4 of this O&M Plan.

The second portion of the program will involve facility monitoring. A visual inspection of the facility will be made on an annual basis to verify that no groundwater production wells were placed into the water table aquifer at the property.

3.2 Facility Monitoring Schedule

The facility shall be visually inspected to insure that no groundwater production wells have been installed. This inspection will be conducted by Mr. Nolan Gant, Chief of Maintenance, or his successors(s). The inspection will be conducted in October of each year.

3.3 Documentation

Each visual inspection will be documented in memorandum form, within seven days of the inspection and will include, at a minimum, the day and time of the inspection, the area inspected, and the person performing the inspection. Dynacraft shall have an authorized person attest that the information contained in the memorandum is truthful, accurate and complete. A copy of the memorandum will be kept at the Dynacraft facility and a copy will be mailed to the Director of the Ohio EPA. The memorandum will be in a form similar to that contained in the Appendix. This documentation will be mailed within 7 days of completion of the inspection.

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NOV 19 98

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3.4 Exclusions to Groundwater Well Policy

While no water table aquifer production wells can be placed at the Dynacraft facility, other types of wells can be installed. The wells that can be installed are:

- Water table aquifer monitoring wells that would be used to check the effectiveness of the remedial program;
- Water table aquifer pumping wells that would be used as part of a remedial program to clean-up the Dynacraft site; and
- Groundwater pump wells installed into the regional aquifer, which is deeper than 30 feet beneath the Dynacraft facility. If such deep production wells are installed, the top 50 feet of the well (at a minimum) must be sealed with well casing to isolate the water table aquifer from the well. The regional aquifer well will then be completed inside of this sealed well casing. In addition, a groundwater sample will be taken from any wells installed in the regional aquifer and analyzed by a laboratory certified by the Voluntary Action Program for chlorinated solvents in accord with USEPA Method SW846-8260 or equivalent GC-MS analysis for volatile organics. This analysis is to insure that the glaciolacustrine clay confining layer described in the Phase II Report (Section 3.2) is precluding movement of groundwater from the water table aquifer.

These are the only exceptions to the groundwater well prohibition for the Dynacraft facility.

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NOV 19 98

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4.0 POTENTIAL FOR OPERATING PROBLEMS

The conditions of Dynacraft and this O&M Plan lead to the conclusion that there is no potential for operational problems. Dynacraft is a small closely held corporation with a small management staff. The dissemination of a policy such as the one described in this O&M Plan will be a simple undertaking. Furthermore, the installation of a groundwater production well requires expenditure of company funds and the application for a well permit. Both of these actions would require management approval. Given the size and nature of the company operations, such well installation is not a reasonable possibility. Finally, the surreptitious installations of a groundwater production well by company employees is not a reasonable possibility, especially since there would be no reason to install such a well.

5.0 NOTIFICATION OF PROPOSED MODIFICATION TO OPERATION AND MAINTENANCE PLAN

Any proposed modification to this O&M Plan must comply with the modification requirements contained in the O&M agreement.

6.0 PRIOR NOTIFICATION OF PROPERTY TRANSFER

Prior to a transfer of any of the property subject to the No Further Action Letter, or any portion thereof, Dynacraft shall comply with the notification requirements contained in the Operation and Maintenance Agreement.

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NOV 19 98
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Figures

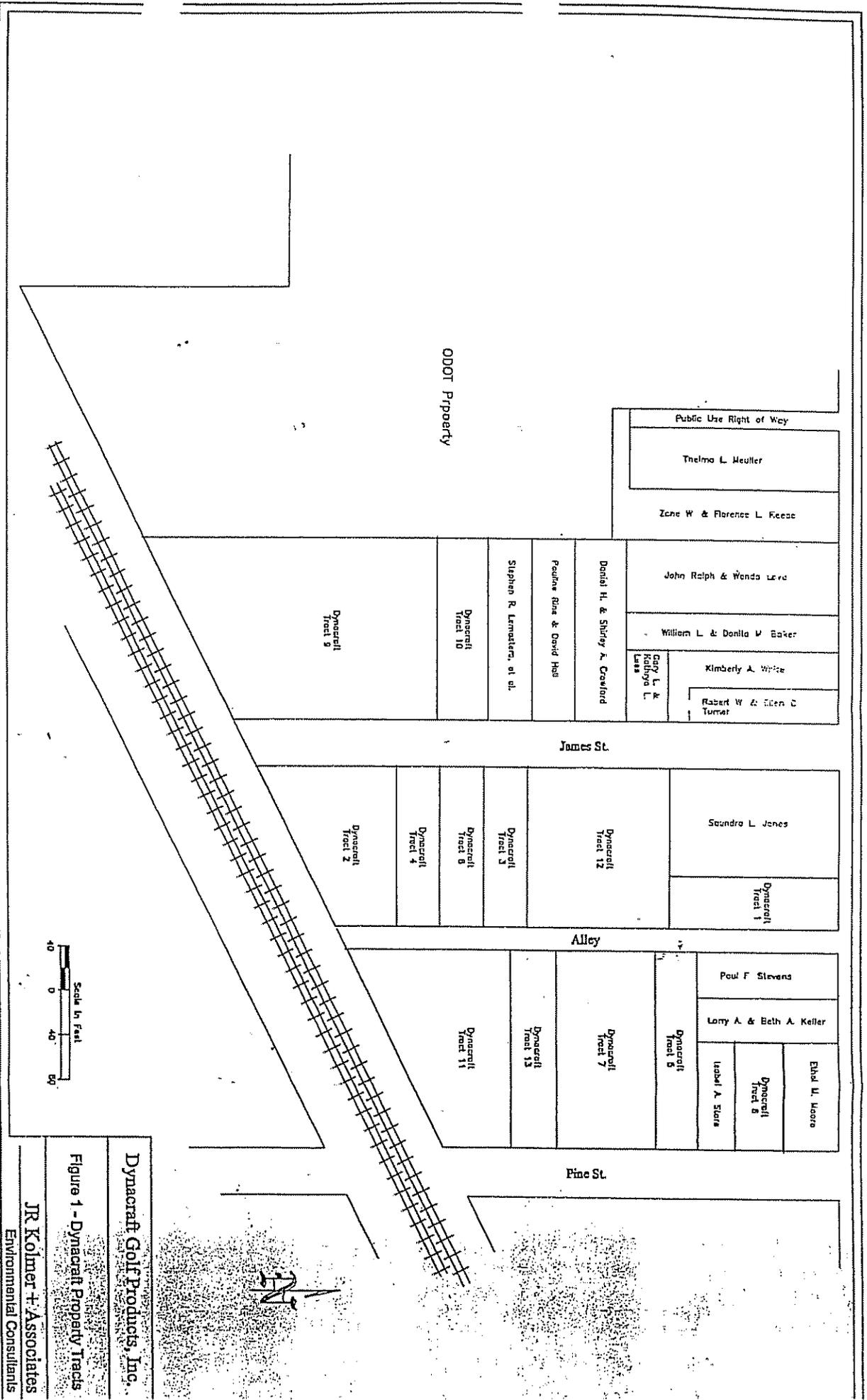
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NOV 19 1998

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NOV 19 98

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Dynacraft Golf Products, Inc.

Figure 1 - Dynacraft Property Tracts

JR Kolmer + Associates
Environmental Consultants

Appendix

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NOV 19 98

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voluntary Action Program
Operation and Maintenance Inspection
Notification for Dynacraft Golf Products, Inc.

To: The Director of the Ohio EPA
From: (Preparer's Name)

Time and Day of Inspection: . .

Name of Inspector:

Areas Inspected:

I have found that no water table aquifer groundwater wells were installed since the last inspection on _____.

Inspector Signature

ATTESTATION:

The material contained in this memorandum is truthful, accurate and complete to the best of my knowledge.

Signature

Title

Date

The foregoing memorandum was acknowledged before me by (name of officer or agent including title) of Dynacraft Golf Products, Inc., an Ohio Corporation, on behalf of the corporation.

Notary _____

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NOV 19 98

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My Commission Expires _____