

Parcel 2 is attached hereto as Exhibit 3.

3. Attached to the December 29, 1999 Director's Final Findings and Orders and Covenant Not to Sue, and incorporated by reference therein, are an Operation and Maintenance Agreement, executed by the Volunteer on December 17, 1999 and by the Director on December 29, 1999 (the "Agreement"), and an Operation and Maintenance Plan, dated December 1999 (the "Plan").
4. By letters dated May 1, 2000, the Volunteer requested that the Agreement and the Plan be modified to authorize the removal of the fence engineering control for the Property and the establishment of a surveillance access restriction engineering control for the Property.
5. On May 8, 2000, Amended Director's Final Findings and Orders and an Amended Covenant Not to Sue were issued to the Volunteer approving the modification of the Agreement and the Plan and authorizing the removal of the fence engineering control for the Property and the establishment of a surveillance access restriction engineering control for the Property.
6. By letters dated August 4, 2000 and August 10, 2000, the Volunteer requests that the Agreement and the Plan be modified a second time to authorize:
 - (A) the establishment of an interim engineering control for Parcel 2 of the Property consisting of:
 - (1) a fence surrounding Parcel 2 until the 2.5-foot soil cover point of compliance engineering control is ready to be established at Parcel 2; and
 - (2) a surveillance access restriction for Parcel 2 upon commencement of the removal of the fence surrounding Parcel 2 and continuing until completion of the establishment of the soil cover point of compliance on Parcel 2 and completion of the construction of the tennis court; and
 - (B) in the event that the establishment of adequate erosion control, as specified in Section 3.1.3 of the Plan, is not completed prior to the commencement of residency, the opportunity to submit a schedule to Ohio EPA in accordance with certain requirements for the completion of the establishment of adequate erosion control and a proposal to establish interim control

measures until the establishment of adequate erosion control is completed.

A copy of the August 4, 2000 and August 10, 2000 modification requests are attached hereto as Exhibit 4.

7. The establishment of the interim engineering controls for Parcel 2 consisting of a fence and surveillance access restriction, and the opportunity to propose an alternative schedule for the completion of the establishment of adequate erosion control and establish interim control measures, as set forth in the Second Modified Agreement and Second Modified Plan, are protective of public health and safety and the environment.

ORDERS

1. The Director's Final Findings and Orders and Covenant Not to Sue issued to the Volunteer on December 29, 1999, and amended on May 8, 2000, are hereby amended a second time to authorize the establishment of the interim engineering controls for Parcel 2 consisting of a fence and surveillance access restriction and the opportunity to propose an alternative schedule for the completion of the establishment of adequate erosion control and establish interim control measures, as set forth in the Second Modified Agreement and the Second Modified Plan, which are hereby approved. The Second Modified Agreement and Second Modified Plan are attached hereto as Exhibit 5 and incorporated by reference herein.
2. A copy of these Second Amended Findings and Orders, including Exhibits 1 through 5 hereto, shall be recorded in the Franklin County Recorder's Office in the same manner as a deed to the Property, within sixty (60) days after the issuance of these Second Amended Findings and Orders.
3. With the exception of this second amendment to the Findings and Orders and Covenant Not to Sue and the approved second modifications to the Agreement and the Plan, as set forth in Order Number 1 of these Second Amended Findings and Orders, the Director's Final Findings and Orders and Covenant Not to Sue issued to the Volunteer on December 29, 1999, and amended on May 8, 2000, remain unchanged and in full force and effect.

IT IS SO ORDERED:


Christopher Jones, Director
Ohio Environmental Protection Agency

8/22/00
Date

Second Amended Director's Final Findings & Orders
Second Amended Covenant Not to Sue
Pizzuti Properties/Miranova Limited (Residential Portion)

OHIO E.P.A.
AUG 22 2000
ENTERED DIRECTOR'S JOURNAL

EXHIBIT 1

LEGAL DESCRIPTION – PARCEL 1

APPROVAL

PLAN SUBMITTED
DEED FORM FOR FINAL DE

FRANKLIN COUNTY
ENGINEERING DEPT.

3-15-99 BY: D.R.P.

1.918 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, Half Section 26, Township 5, Range 22, Refugee Lands and being 1.096 acres out of that tract as conveyed to Pizzuti Properties/Miranova Limited of record in Instrument Number 199806220153940, and 0.870 acre of those tracts of land as conveyed to Pizzuti Development Inc. of record in Instrument Number 199711250304330, (all references refer to the records of the Recorder's Office, Franklin County, Ohio and described as follows:

Beginning at an iron pin set at the intersection of the southerly right-of-way line of West Main Street with the westerly right-of-way line of Civic Center Drive;

thence South $00^{\circ} 03' 09''$ East, with said westerly right-of-way line, a distance of 6.98 feet to an iron pin set at the northeasterly corner of that tract as conveyed to American Electric Power, in the southerly right-of-way line of Vacated Levee Street (City of Columbus Ordinance No. 2894-94);

thence North $89^{\circ} 25' 01''$ West, with the northerly line of said American Electric Power tract and said southerly right-of-way line, a distance of 122.06 feet to an iron pin set at the intersection of said southerly right-of-way line with the easterly right-of-way line of said Vacated Short Street (City of Columbus Ordinance No. 2894-94);

thence South $00^{\circ} 38' 16''$ West, with the easterly right-of-way line of said Vacated Short Street, a distance of 392.62 feet to an iron pin set

thence across said Pizzuti Properties/Miranova Limited tract, and said Pizzuti Development Inc. tract, the following courses:

With a curve to the left, having a central angle of $56^{\circ} 23' 42''$ and a radius of 205.00 feet, a chord bearing and distance of North $47^{\circ} 29' 30''$ West, 193.73 feet to a P.K. Nail set at a point of tangency;

North $75^{\circ} 41' 20''$ West, a distance of 55.48 feet to a P.K. Nail set;

North $24^{\circ} 33' 21''$ West, a distance of 38.25 feet to a P.K. Nail set;

North $63^{\circ} 16' 26''$ West, a distance of 128.91 feet to a P.K. Nail set;

North $26^{\circ} 46' 34''$ East, a distance of 60.44 feet to a P.K. Nail set;

North $22^{\circ} 21' 12''$ West, a distance of 42.10 feet to an iron pin set in the northerly right-of-way line of said Vacated Levee Street;

thence North $67^{\circ} 38' 48''$ East, with said northerly right-of-way line, a distance of 290.75 feet to an iron pin found;

1.918 ACRES

-2-

thence North $78^{\circ} 07' 59''$ East, continuing with said northerly right-of-way line, a distance of 10.00 feet to an iron pin found on a curve in said northerly right-of-way line of West Main Street;

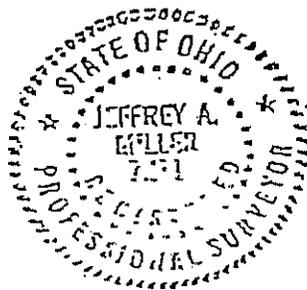
thence with said northerly right-of-way line and said curve to the left, having a central angle of $12^{\circ} 26' 28''$ and a radius of 785.00 feet, a chord bearing and distance of South $74^{\circ} 46' 33''$ East, 170.12 feet to the point of beginning and containing 1.918 acres of land, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Bearings herein are based on South $89^{\circ} 53' 00''$ East for a portion of the northerly right-of-way line of West Mound Street, as shown of record in Instrument Number 199806220153940.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Jeffrey A. Miller 3-11-99
Jeffrey A. Miller
Registered Survey No. 7211



JAMES

Second Amended Director's Final Findings & Orders
Second Amended Covenant Not to Sue
Pizzuti Properties/Miranova Limited (Residential Portion)

EXHIBIT 2

LEGAL DESCRIPTION – PARCEL 2

0.355 ACRE

Situated in the State of Ohio, County of Franklin, City of Columbus and being 0.355 acre of land described as follows:

Beginning at the intersection of the westerly right-of-way line of Short Street with the southerly right-of-way line of West Mound Street;

thence South $00^{\circ} 06' 34''$ East with said westerly right-of-way line, a distance of 117.00 feet to a point in the northerly limited access right-of-way line of Interstate 70;

thence North $79^{\circ} 32' 25''$ West with said northerly limited access right-of-way line, a distance of 152.55 feet to a point;

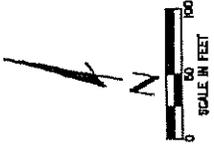
thence North $00^{\circ} 06' 32''$ West, a distance of 89.00 feet to a point in the southerly right-of-way line of said West Mound Street;

thence North $89^{\circ} 53' 00''$ East with said southerly right-of-way line, a distance of 149.96 feet to the point of beginning and containing 0.355 acre of land, more or less.

Second Amended Director's Final Findings & Orders
Second Amended Covenant Not to Sue
Pizzuti Properties/Miranova Limited (Residential Portion)

EXHIBIT 3

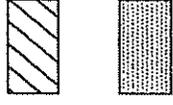
FIGURE A-1 – PLANNED ENGINEERING CONTROL LAYOUT



LEGEND

- VAP PROPERTY LINE
- PARCEL PROPERTY LINE
- ORIGINAL TRACT LINES
- - - VACATED ALLEYS

ENGINEERING CONTROLS



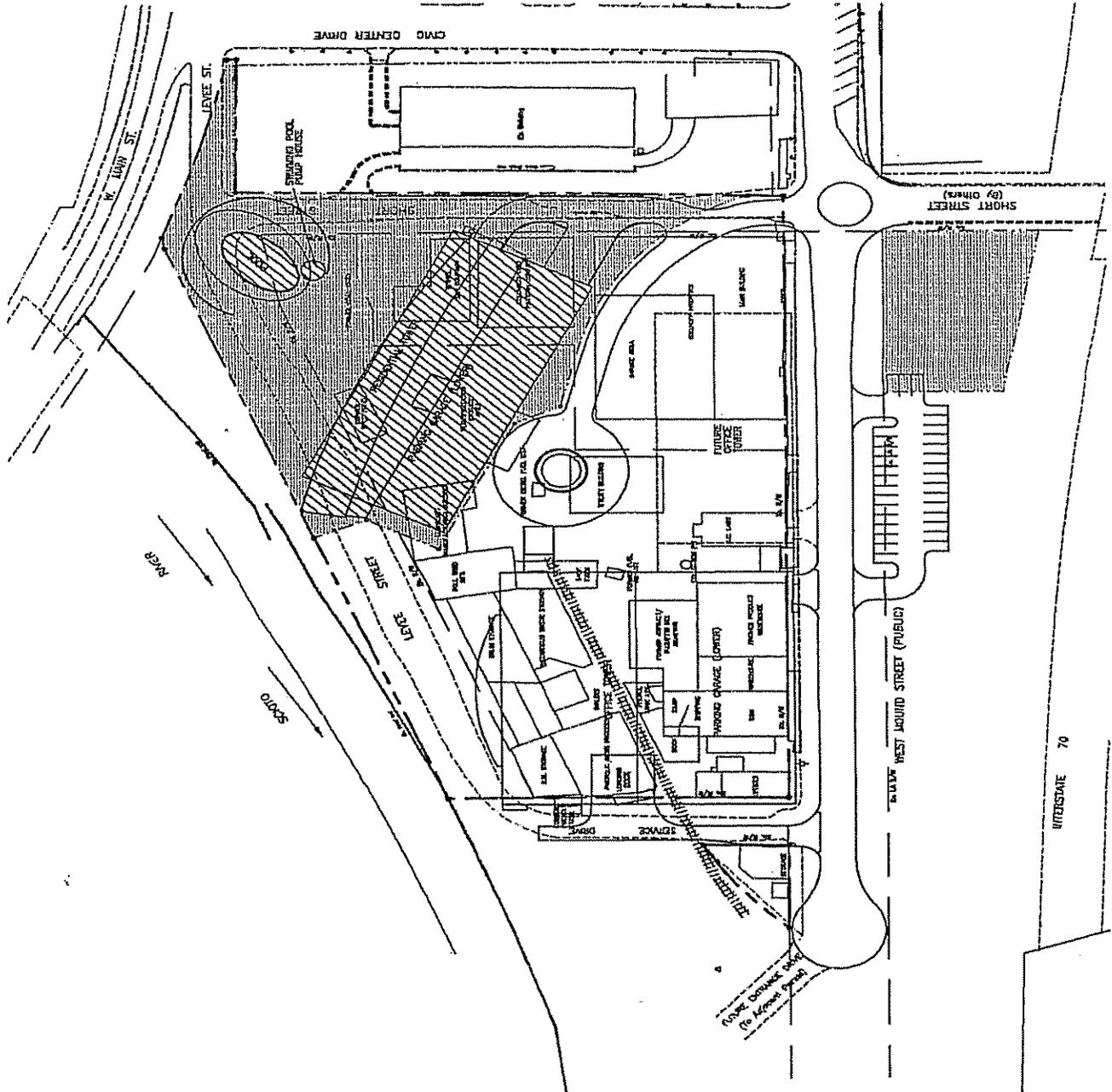
NOTE: VAP PROPERTY LINE HAS BEEN ADJUSTED FOR ILLUSTRATION PURPOSES.

FIGURE A-1

Hill & Associates, Inc.
COLUMBUS, OHIO

MIRANOVA OPERATION AND MAINTENANCE PLAN
PIZZUTI PROPERTIES/MIRANOVA LIMITED
**PLANNED ENGINEERING
CONTROL LAYOUT**

CITY OF COLUMBUS, FRANKLIN CO., OHIO
DATE: 11/19/99



INTERSTATE 70

Second Amended Director's Final Findings & Orders
Second Amended Covenant Not to Sue
Pizzuti Properties/Miranova Limited (Residential Portion)

OHIO E.P.A.
AUG 22 2000
ENTERED DIRECTOR'S JOURNAL

EXHIBIT 4

MODIFICATION REQUESTS

PIZZUTI

RECEIVED

00 AUG -4 PM 3: 54

DIV. OF EMERGENCY &
REMEDIAL RESPONSE

THE PIZZUTI COMPANIES

August 4, 2000

COLUMBUS
250 East Broad Street
Columbus, Ohio 43215
Phone: 614 280 4000
Fax: 614 280 5000

Mr. Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

ORLANDO
255 South Orange Avenue
Orlando, Florida 32801
Phone: 407 841 0000
Fax: 407 841 0900

RE: Modifications to Operation and Maintenance Plan and Agreement for the No Further Action Letter, Residential Portion of Miranova Property, Pizzuti Properties/Miranova Limited, Columbus, Ohio; BAH009.300.0188.DOC.

CHICAGO
One Mid-America Plaza
Oakbrook Terrace, Illinois 60181
Phone: 630 472 9595
Fax: 630 472 9590

Dear Mr. Jones:

WEB SITE
www.pizzuti.com

Pizzuti Properties/Miranova Limited (Pizzuti) is requesting that the Operation and Maintenance Plan (O & M Plan), and Operation and Maintenance Agreement (O & M Agreement) under the Covenant Not to Sue dated December 29, 1999, and modified May 8, 2000, be modified a second time pursuant to the attached language for the Miranova property (Property). Because this is the second modification to the O & M Plan, a complete O & M Plan document, Revision 2.0, has been provided for your use. These modifications are being requested in accordance with Section 4.0 of the O & M Plan.

The purpose of these modifications is to allow the tennis court area of the Property, now defined as Parcel 2, to remain under the Interim O & M Plan, while the residential tower portion of the Property, now defined as Parcel 1, to move under the final O & M Plan. Redevelopment of Parcel 2 can not be completed until the Miranova commercial property is completed. Parcel 2 will be either fenced, or monitored by the construction supervisor during business hours, and a security guard during non-business hours.

If you have any questions regarding this proposed modification, please call me at PHONE NUMBER. Thank you for your attention in this matter.

Sincerely,



Richard C. Daley
Executive Vice President
and General Counsel

RCD/nsm
Attachments

cc: Mary Kay Connor, Pizzuti
Larry S. Smith, HAI
Craig A. Kasper, HAI

**Affidavit Pursuant to Ohio Administrative Code
3745-300-13(O)**

The undersigned, being duly sworn and possessing sound mind, states as follows:

My name is: Richard C. Daley

The Property where voluntary action(s) is being conducted is as follows: Name of Property: Miranova Property
Address: 270 W. Mound Street
Columbus, Ohio 43215

The purpose for which the information, data, documents, or reports are being submitted is: Second modification to Operation & Maintenance Plan and Operation & Maintenance Agreement

The information, data, documents, or reports submitted with the affidavit is as follows: 1) August 2, 2000 Cover letter
2) Second Modification to Operation & Maintenance Plan
3) Second Modification to Operation & Maintenance Agreement
4) Operation & Maintenance Plan Revision 2.0

IN WITNESS WHEREOF, I attest that all information, data, documents, or reports described above and submitted to Ohio EPA are true, accurate and complete. Further affiant's sayeth nought.

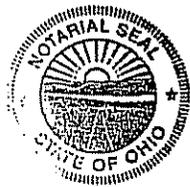
Affiant: [Signature]
Signature

Date: 8-4-00

The foregoing was sworn and signed in my presence on this 4th day of August month of 2000

Mary Kay Connor
Notary Public

8/4/00
Date



[Handwritten initials]

PIZZUTI

THE PIZZUTI COMPANIES

August 10, 2000

COLUMBUS
250 East Broad Street
Columbus, Ohio 43215
Phone: (614) 280-4000
Fax: (614) 280-5000

ORLANDO
255 South Orange Avenue
Orlando, Florida 32801
Phone: (407) 341-0000
Fax: (407) 341-0900

CHICAGO
One Mid-America Plaza
Dallman Tower, Chicago, Illinois 60611
Phone: (630) 472-9595
Fax: (630) 472-9590

WEB SITE
www.pizzuti.com

Mr. Christopher Jones
Director
Ohio Environmental Protection Agency
Lazarus Government Center
P. O. Box 1049
Columbus, Ohio 43216-1049

Re: Modifications to Operation and Maintenance Agreement for the No Further
Action Letter, Residential Portion of Miranova Property, Pizzuti
Properties/Miranova Limited, Columbus, Ohio; BAH009.300.0195.DOC

RECEIVED

09 AUG 14 AM 10:19

DIV. OF EMERGENCY &
REMEDIATION RESPONSE

Dear Mr. Jones:

Please include this second modified operation and maintenance agreement with the documents submitted August 4, 2000 for the above referenced property.

If you have any questions regarding this proposed modification, please call me at (614)280-4006. Thank you for your attention in this matter.

Sincerely,

Richard C. Daley
Executive Vice President
and General Counsel

RCD/nsm

Attachments

cc: Mary Kay Tomlinson, Pizzuti
Larry S. Smith, HAI
Craig A. Kasper, HAI

**Affidavit Pursuant to Ohio Administrative Code
3745-300-13(O)**

The undersigned, being duly sworn and possessing sound mind, states as follows:

My name is: Richard C. Daley

The Property where voluntary action(s) is being conducted is as follows: Name of Property: Miranova Property
Address: 270 W. Mound Street
Columbus, Ohio 43215

The purpose for which the information, data, documents, or reports are being submitted is: Second modification to Operation & Maintenance Plan and Operation & Maintenance Agreement

The information, data, documents, or reports submitted with the affidavit is as follows: 1) August 10, 2000 Cover letter
2) Second Modification to Operation & Maintenance Agreement

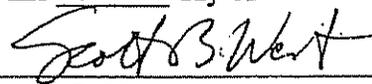
affidavit is as follows:

IN WITNESS WHEREOF, I attest that all information, data, documents, or reports described above and submitted to Ohio EPA are true, accurate and complete. Further affiant's sayeth nought.

Affiant: 
Signature

Date: 8/10/00

The foregoing was sworn and signed in my presence on this 10th day of August month of 19 2000


Notary Public

8/18/00
Date



SCOTT B. WEST
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Second Amended Director's Final Findings & Orders
Second Amended Covenant Not to Sue
Pizzuti Properties/Miranova Limited (Residential Portion)

EXHIBIT 5

SECOND MODIFIED OPERATION AND MAINTENANCE AGREEMENT
SECOND MODIFIED OPERATION AND MAINTENANCE PLAN

OHIO E.P.A.
AUG 22 2000
ENTERED IN THE PUBLIC RECORDS JOURNAL

**SECOND MODIFIED OPERATION AND MAINTENANCE AGREEMENT
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND
PIZZUTI PROPERTIES/MIRANOVA LIMITED
REGARDING THE MIRANOVA (RESIDENTIAL PORTION)
PROPERTY
LOCATED IN FRANKLIN COUNTY, OHIO**

The Operation and Maintenance Agreement ("Agreement") entered into on December 29, 1999 by the Director of the Ohio Environmental Protection Agency ("Director") and Pizzuti Properties/Miranova Limited, an Ohio limited liability company ("Pizzuti"), and modified on May 8, 2000, is hereby modified a second time pursuant to Section 11 of the Agreement, as follows.

The following language is added at the end of **Section 1** of the Agreement:

The Property consists of two parcels. Parcel 1 is approximately 1.918 acres and is located at the northeastern portion of the Property. The residential tower, pump house and swimming pool are located on Parcel 1. An exact legal description of Parcel 1 is attached hereto as Exhibit 1. Parcel 2 is approximately 0.355 acres and is located at the southeastern portion of the Property. The future tennis court will be located on Parcel 2. Currently, the construction trailers are located on Parcel 2. An exact legal description of Parcel 2 is attached hereto as Exhibit 2. A map of the residential portion of the Property delineating Parcel 1 and Parcel 2 is attached hereto as Exhibit 3.

Paragraph (a) of Section 4.1 of the Agreement ("Interim Plan: Construction Phase of Property (Non-residential phase)"), is deleted and replaced with the following:

- (a) **Engineering Control.** An engineering control will restrict access to the Property by persons other than authorized personnel. During the construction phase on Parcel 1 of the Property, persons other than construction contractor employees are assumed to be present at the Property for limited periods of time, and are thus assumed to have exposures at the Property which are encompassed by the exposure of the construction worker. Previously, the engineering control consisted of a fence enclosing the entire Property and restricting access to the Property. Beginning on or about May 4, 2000, the fence will be removed to allow the establishment of the 2.5-foot soil cover point of compliance engineering control on the Property, as set forth in Section 3.1.3 of the OMP. Beginning on the day of commencement of the

fence removal at the Property, a surveillance access restriction engineering control will be established at the Property in accordance with Section 2.1.3 of the OMP. The surveillance access restriction engineering control will consist of monitoring of the Property by a security guard or the construction supervisor on a continuous basis to restrict access to the Property by persons other than authorized personnel and construction workers in accordance with Section 2.1.3 of the OMP. The Current Owner/designee will ensure the surveillance access restriction engineering control will prohibit public access to the Property. The Current Owner/designee will monitor and maintain the surveillance access restriction engineering control in accordance with Sections 2.2.3, 2.3.3, and 2.4.1 of the OMP. The Current Owner/designee will maintain the surveillance access restriction engineering control for the Property until: (1) the establishment of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover point of compliance engineering control on Parcel 1 of the Property, as set forth in Sections 3.1.1., 3.1.2., and 3.1.3. of the OMP; (2) the completion of the installation of the final engineering and institutional controls for Parcel 1 of the Property, as described in Paragraph 4.2 of this Agreement; and (3) the fence engineering control for Parcel 2 has been established in accordance with Section 2.1.4 of the OMP.

Upon the establishment of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover point of compliance engineering control on Parcel 1 of the Property, the Current Owner/designee will maintain a fence engineering control surrounding Parcel 2 in accordance with Sections 2.1.1 and 2.1.4 of the OMP. The Current Owner/designee will ensure the fence engineering control will prohibit public and residential access to Parcel 2. Access to Parcel 2 will be limited to authorized personnel and construction workers access only. The fence engineering control surrounding Parcel 2 will be monitored and maintained in accordance with Sections 2.1.1, 2.2.1, 2.3.1, and 2.4 of the OMP. The Current Owner/designee will maintain the fence engineering control surrounding Parcel 2 until a date not more than fourteen (14) days prior to the commencement of the establishment of the 2.5-foot soil cover point of compliance engineering control at Parcel 2. At that time, the fence engineering control will be dismantled and removed to allow the establishment of the soil cover point of compliance engineering control on Parcel 2.

Upon commencement of the dismantling and removal of the fence engineering control at Parcel 2, a surveillance access restriction engineering control will be established at Parcel 2 in accordance with Section 2.1.4 of the OMP. The surveillance access restriction engineering control will consist of monitoring of Parcel 2 by a security guard or the construction supervisor on a continuous basis to restrict access to Parcel 2 by persons other than authorized personnel and construction workers in accordance with Section 2.1.4 of the OMP. The Current Owner/designee will ensure the surveillance access restriction engineering control will prohibit public and residential access to Parcel 2. The Current Owner/designee will monitor and maintain the surveillance access restriction engineering control for Parcel 2 in accordance with Section 2.2.3, 2.3.3, and 2.4.1 of the OMP. The Current Owner/designee will maintain the surveillance access restriction engineering control for Parcel 2 until completion of the establishment of the soil cover point of compliance engineering control for Parcel 2 and completion of the construction of the tennis court on Parcel 2.

The following language is added at the end of **Paragraph 5** of the Agreement:

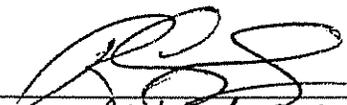
Any subsequent modification made to the OMP in accordance with the requirements contained in Section 4.0 of the OMP is incorporated by reference into this Agreement as if fully written herein.

With the exception of the foregoing modifications to the Agreement and corresponding modifications to the Operation and Maintenance Plan, the Agreement and Operation and Maintenance Plan remain unchanged and the Agreement continues to constitute a valid and binding obligation enforceable in accordance with its terms.

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

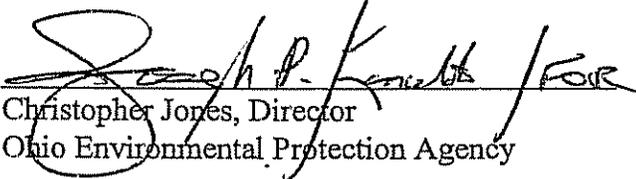
In witness whereof, the parties hereto have executed this Second Modified Operation and Maintenance Agreement on the date noted herein.

PIZZUTI PROPERTIES/MIRANOVA LIMITED:

By: 
Printed Name: Richard C. Daley
Title: Executive Vice President

Date: 8/10/00

OHIO ENVIRONMENTAL PROTECTION AGENCY:


Christopher Jones, Director
Ohio Environmental Protection Agency

Date: AUG 22 2000

EXHIBIT 1

LEGAL DESCRIPTION - PARCEL 1

APPROVAL

PLAN SUBMITTED
DEED FORM FOR FINAL OK

FRANKLIN COUNTY
ENGINEERING DEPT.

3-15-99 BY: DRP

1.918 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, Half Section 26, Township 5, Range 22, Refugee Lands and being 1.096 acres out of that tract as conveyed to Pizzuti Properties/Miranova Limited of record in Instrument Number 199806220153940, and 0.870 acre of those tracts of land as conveyed to Pizzuti Development Inc. of record in Instrument Number 199711250304330, (all references refer to the records of the Recorder's Office, Franklin County, Ohio and described as follows:

Beginning at an iron pin set at the intersection of the southerly right-of-way line of West Main Street with the westerly right-of-way line of Civic Center Drive;

thence South $00^{\circ} 03' 09''$ East, with said westerly right-of-way line, a distance of 6.98 feet to an iron pin set at the northeasterly corner of that tract as conveyed to American Electric Power, in the southerly right-of-way line of Vacated Levee Street (City of Columbus Ordinance No. 2894-94);

thence North $89^{\circ} 25' 01''$ West, with the northerly line of said American Electric Power tract and said southerly right-of-way line, a distance of 122.06 feet to an iron pin set at the intersection of said southerly right-of-way line with the easterly right-of-way line of said Vacated Short Street (City of Columbus Ordinance No. 2894-94);

thence South $00^{\circ} 38' 16''$ West, with the easterly right-of-way line of said Vacated Short Street, a distance of 392.62 feet to an iron pin set

thence across said Pizzuti Properties/Miranova Limited tract, and said Pizzuti Development Inc. tract, the following courses:

With a curve to the left, having a central angle of $56^{\circ} 23' 42''$ and a radius of 205.00 feet, a chord bearing and distance of North $47^{\circ} 29' 30''$ West, 193.73 feet to a P.K. Nail set at a point of tangency;

North $75^{\circ} 41' 20''$ West, a distance of 55.48 feet to a P.K. Nail set;

North $24^{\circ} 33' 21''$ West, a distance of 38.25 feet to a P.K. Nail set;

North $63^{\circ} 16' 26''$ West, a distance of 128.91 feet to a P.K. Nail set;

North $26^{\circ} 46' 34''$ East, a distance of 60.44 feet to a P.K. Nail set;

North $22^{\circ} 21' 12''$ West, a distance of 42.10 feet to an iron pin set in the northerly right-of-way line of said Vacated Levee Street;

thence North $67^{\circ} 38' 48''$ East, with said northerly right-of-way line, a distance of 290.75 feet to an iron pin found;

1.918 ACRES

-2-

thence North $78^{\circ} 07' 59''$ East, continuing with said northerly right-of-way line, a distance of 10.00 feet to an iron pin found on a curve in said northerly right-of-way line of West Main Street;

thence with said northerly right-of-way line and said curve to the left, having a central angle of $12^{\circ} 26' 28''$ and a radius of 785.00 feet, a chord bearing and distance of South $74^{\circ} 46' 33''$ East, 170.12 feet to the point of beginning and containing 1.918 acres of land, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Bearings herein are based on South $89^{\circ} 53' 00''$ East for a portion of the northerly right-of-way line of West Mound Street, as shown of record in Instrument Number 199806220153940.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Jeffrey A. Miller 3-11-99
Jeffrey A. Miller
Registered Survey No. 7211



JAN 11 1999

EXHIBIT 2

LEGAL DESCRIPTION - PARCEL 2

0.355 ACRE

Situated in the State of Ohio, County of Franklin, City of Columbus and being 0.355 acre of land described as follows:

Beginning at the intersection of the westerly right-of-way line of Short Street with the southerly right-of-way line of West Mound Street;

thence South $00^{\circ} 06' 34''$ East with said westerly right-of-way line, a distance of 117.00 feet to a point in the northerly limited access right-of-way line of Interstate 70;

thence North $79^{\circ} 32' 25''$ West with said northerly limited access right-of-way line, a distance of 152.55 feet to a point;

thence North $00^{\circ} 06' 32''$ West, a distance of 89.00 feet to a point in the southerly right-of-way line of said West Mound Street;

thence North $89^{\circ} 53' 00''$ East with said southerly right-of-way line, a distance of 149.96 feet to the point of beginning and containing 0.355 acre of land, more or less.

EXHIBIT 3

FIGURE A-1 -- PLANNED ENGINEERING CONTROL LAYOUT

OHIO E.P.A.
AUG 22 2000
DIRECTOR'S JOURNAL

**SECOND MODIFIED OPERATION AND MAINTENANCE PLAN
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND
PIZZUTI PROPERTIES/MIRANOVA LIMITED
REGARDING THE MIRANOVA (RESIDENTIAL PORTION) PROPERTY
LOCATED IN FRANKLIN COUNTY, OHIO
August 2, 2000**

The Operation and Maintenance ("O&M Plan") entered into on December 29, 1999 by the Director of the Ohio Environmental Protection Agency ("Director") and Pizzuti Properties/Miranova Limited, an Ohio Limited liability company ("Pizzuti"), and modified on May 8, 2000, is hereby modified a second time pursuant to Section 4.0 of the O&M Plan, as follows. The document entitled "O&M Plan Revision 2.0", dated August 2000, is the updated version of the O&M Plan that incorporates the May 8, 2000 modification and this second modification.

The final paragraph of **Section 1.2** of the O&M Plan is deleted and replaced with the following new paragraphs:

The Residential Portion of the Property consists of two parcels. Parcel 1 is approximately 1.918 acres and is located at the northeastern portion of the Property. The condominium tower, pump house and swimming pool are located on Parcel 1. An exact legal description of Parcel 1 is attached hereto as Appendix A. Parcel 2 is approximately 0.355 acres and is located at the southeastern portion of the Property. The future tennis court will be located on Parcel 2. Currently, the construction trailers are located on Parcel 2. An exact legal description of Parcel 2 is attached hereto as Appendix A. A map of the Residential Portion of the Property delineating Parcel 1 and Parcel 2 is attached hereto as Appendix A.

The NFA letter for the Residential Portion of the Property will be submitted during construction of the condominium tower. The one remedial action that will not be completed prior to submittal of the NFA letter is placement of soil required to meet the Point of Compliance (POC) for residential use on the Residential Portion of the Property. The soil cover POC for the Residential Portion of the Property includes the establishment of 2.5 feet of clean soil cover and adequate erosion control. It is estimated that placement of this soil on Parcel 1 will be made approximately 6 to 9 months following submittal of the NFA letter. It is estimated that placement of this soil on Parcel 2 will be made after completion of construction of the commercial portion of the Property.

This O&M Plan addresses O&M issues for the Residential Portion of the Property during the construction period for exposure of the construction worker and also during residential land use. Once the VAP applicable residential land use standards are met for Parcel 1, the interim land use procedures will not apply to Parcel 1. Once the VAP applicable residential land use standards are met for Parcel 2 (i.e., after completion of the establishment of the soil cover POC on Parcel 2 and completion of construction of the tennis court on Parcel 2), the interim land use procedures will not apply to Parcel 2.

This O&M Plan addresses the operation and maintenance of the Residential Portion of the Property only. This O&M Plan does not address the operation and maintenance of the commercial portion of the Property, as defined in Section 1.1. For purposes of this O&M Plan, the term "Property" means the Residential Portion of the Property.

Revise the title of **Section 2.1.3** of the O&M Plan as follows:

Engineering Control: Surveillance Access Restriction for the Property

The final paragraph of **Section 2.1.3** of the O&M Plan is deleted and replaced with the following new paragraph:

Establishment of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover POC engineering control on Parcel 1 of the Property will be completed prior to the date the first resident begins residing at the Property (the "commencement of residency"). The soil cover POC engineering control includes the establishment of adequate erosion control as specified in Section 3.1.3 of the O&M Plan. In the event such erosion control is not established prior to the commencement of residency, within 5 days of the commencement of residency, the Owner/designee will: (1) notify Ohio EPA via certified mail and facsimile of the date of the commencement of residency; and (2) submit a schedule to Ohio EPA for the establishment of adequate erosion control as specified in Section 3.1.3 of the O&M Plan that complies with the following requirements:

- (a) In the event adequate erosion control as specified in Section 3.1.3 of the O&M Plan will be established within 21 days of the commencement of residency, the Owner/designee will, prior to the commencement of residency, establish a caution tape fence surrounding the portions of Parcel 1 that lack such erosion control, and exercise best management practices to limit erosion (e.g., straw, geotextile fabric, silt fence). The caution tape fence and other such measures may be removed not more than 1 day prior to the commencement of the establishment of adequate erosion control as specified in Section 3.1.3 of the O&M Plan. The Owner/designee will ensure that the surveillance access restriction engineering control, which will still be in effect for the Property at this time, will monitor the Property and prevent access by residents or the public to the portions of Parcel 1 that lack adequate erosion control as specified in Section 3.1.3 of the O&M Plan.

- (b) In the event adequate erosion control as specified in Section 3.1.3 of the O&M Plan cannot be established within 21 days of the commencement of residency, the Owner/designee will, prior to the commencement of residency, establish a silt fence surrounding the portions of Parcel 1 that lack such erosion control, and exercise any additional best management practices that may be necessary to limit erosion. The silt fence may be removed not more than 1 day prior to the commencement of the establishment of adequate erosion control as specified in Section 3.1.3 of the O&M Plan. The Owner/designee will ensure that the surveillance access restriction engineering control, which will still be in effect for the Property at this time, will monitor the Property and prevent access by residents or the public to the portions of Parcel 1 that lack adequate erosion control as specified in Section 3.1.3 of the O&M Plan.

Adequate erosion control as specified in Section 3.1.3 of the O&M Plan will be established not later than 60 days of the commencement of residency. The Owner/designee will monitor and maintain the soil cover POC engineering control, including all controls specified in paragraphs (a) and (b) of Section 2.1.3 of the O&M Plan during this interim period, in accordance with Section 3.0 of the O&M Plan. Upon completion of the establishment of the building foundation engineering control, swimming pool foundation engineering control, and soil cover POC engineering control (including adequate erosion control as specified in Section 3.1.3 of the O&M Plan), the Owner/designee will conduct an inspection to verify that the criteria set forth in Sections 3.1.1, 3.1.2, and 3.1.3 of this O&M Plan have been met for Parcel 1 of the Property.

This new section follows **Section 2.1.3** of the O&M Plan:

2.1.4 Engineering Control: Fence and Surveillance Access Restriction for Parcel 2

Upon the establishment of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover POC engineering control on Parcel 1 of the Property, a fence engineering control in accordance with Section 2.0 of the O&M Plan will be maintained surrounding Parcel 2. The fence engineering control will prohibit public and residential access to Parcel 2. Access to Parcel 2 will be limited to authorized personnel and construction workers access only. The fence engineering control surrounding Parcel 2 will be monitored and maintained in accordance with Section 2.1.1, 2.2.1, 2.3.1, and 2.4 of the O&M Plan. The Current Owner/designee will maintain the fence engineering control surrounding Parcel 2 until a date not more than fourteen (14) days prior to commencement of the establishment of the soil cover POC engineering control at Parcel 2. At that time, the fence engineering control will be dismantled and removed to allow the establishment of the soil cover POC engineering control on Parcel 2.

Upon commencement of the dismantling and removal of the fence engineering control and continuing until completion of the establishment of the soil cover POC engineering control for Parcel 2 and completion of the construction of the tennis court on Parcel 2, a surveillance access restriction engineering control will be established at Parcel 2 of the Property. The

surveillance access restriction engineering control will consist of monitoring by a security guard or the construction supervisor on a continuous basis to restrict access to Parcel 2 by persons other than authorized personnel and construction workers. Under normal circumstances, the security guard will be stationed at the Property from 5:00 p.m. to 6:00 a.m. on each day from Monday afternoon through Friday morning, from 5:00 p.m. Friday to 6:00 a.m. Monday, and at any other time, including holidays and rain days, when the construction supervisor is not present at the Property. The Property will normally be monitored by the construction supervisor from 6:00 a.m. to 5:00 p.m. on each day from Monday through Friday. The surveillance access restriction engineering control will be monitored and maintained in accordance with Sections 2.2.3, 2.3.3, and 2.4.1 of the O&M Plan.

The surveillance access restriction engineering control for Parcel 2 of the Property will ensure the restriction of public and residential access until completion of the establishment of the soil cover POC engineering control for Parcel 2 and completion of the construction of the tennis court on Parcel 2. The surveillance access restriction engineering control for Parcel 2 of the Property will terminate after completion of the establishment of the soil cover POC engineering control for Parcel 2 and completion of the construction of the tennis court on Parcel 2.

Delete the paragraph under **Section 2.4** of the O&M Plan and replace with the following paragraph:

During inspections, conducted in accordance with Section 2.3, all breaches or problems with the integrity of the fence or activities inconsistent with the institutional controls, as defined in Section 2.2, will be documented on the Form A – Weekly Interim Inspection Report included in Appendix B. Unscheduled inspections that reveal a breach or any other detriment with the integrity of the fence, or a violation of the institutional control will also result in the submittal of a completed Form A – Weekly Interim Inspection Report. The Form B – Scheduled Semi-Annual Inspection Reports will be compiled with the weekly inspection reports and will be submitted to Ohio EPA with the supporting documentation and an affidavit from the Owner/designee, with knowledge, attesting that all information submitted is truthful, accurate and complete within 60 days of completion of construction on Parcel 1. The reporting documentation will be kept on file by the Owner/designee of the Property for 10 years from the date of inspection. Prior to the destruction of

any reporting documentation, the Owner/designee will notify Ohio EPA by Certified Mail of its intent to destroy the document and allow Ohio EPA 45 days to obtain the documents before disposal.

Delete the three paragraphs under **Section 2.4.1** of the O&M Plan and replace with the following paragraphs:

The requirement to maintain the surveillance access restriction engineering control for the Property will terminate when: (1) the inspection of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover POC engineering control for Parcel 1 of the Property have been completed in accordance with Section 2.1.3 of this O&M Plan; (2) the final engineering and institutional controls for Parcel 1 have been established in accordance with Section 3.0 of this O&M Plan; and (3) the fence engineering control for Parcel 2 has been established in accordance with Section 2.1.4 of this O&M Plan.

Within 60 days of termination of the surveillance access restriction engineering control for the Property, the signed monitoring logs and incident reports will be submitted to Ohio EPA.

Within 60 days of termination of the surveillance access restriction engineering control for the Property, a report will be submitted to Ohio EPA as an addendum for placement in Appendix A in this O&M Plan, documenting the final placement of the engineering controls described in Section 3.0 for Parcel 1. The report will contain record drawings, including contractors' as-built drawings of the building foundation and swimming pool foundation engineering controls, a description of the activities related to the establishment of the soil cover POC for Parcel 1, and survey documentation and final elevations at each location.

This new section follows **Section 2.4.1** of the O&M Plan:

2.4.2 Engineering Control: Fence and Surveillance Access Restriction for Parcel 2

The requirement to maintain the fence engineering control for Parcel 2 will terminate at a date not more than fourteen (14) days prior to the commencement of the establishment of the soil cover POC engineering

control at Parcel 2 in accordance with Section 2.1.4 of this O&M Plan. The requirement to maintain the surveillance access restriction engineering control for Parcel 2 will terminate after completion of the establishment of the soil cover POC engineering control for Parcel 2, completion of the construction of the tennis court on Parcel 2, and establishment of final engineering and institutional controls in accordance with Section 3.0 of this O&M Plan for Parcel 2.

Within 60 days of termination of the surveillance access restriction engineering control for Parcel 2, the Form A - Weekly Interim Inspection Report for Parcel 2 will be submitted to Ohio EPA with the supporting documentation and an affidavit from the Owner/designee, with knowledge, attesting that all information submitted is truthful, accurate and complete. The reporting documentation will be kept on file by the Owner/designee of the Property for 10 years from the date of inspection. Prior to the destruction of any reporting documentation, the Owner/designee will notify Ohio EPA by Certified Mail of its intent to destroy the document and allow Ohio EPA 45 days to obtain the documents before disposal.

Within 60 days of termination of the surveillance access restriction engineering control for Parcel 2, the signed monitoring logs and incident reports for Parcel 2 will be submitted to Ohio EPA.

Within 60 days of termination of the surveillance access restriction engineering control for Parcel 2, a report will be submitted to Ohio EPA as an addendum for placement in Appendix A of this O&M Plan, documenting the final establishment of the soil cover POC engineering control for Parcel 2, the completion of the construction of the tennis court on Parcel 2, and the placement of the final engineering controls described in Section 3.0 for Parcel 2. The report will contain record drawings and a description of the activities related to the establishment of the soil cover POC for Parcel 2 and the construction of the tennis court on Parcel 2, and survey documentation and final elevations for Parcel 2.

The second paragraph of **Section 3.1.3** of the O&M Plan is deleted and replaced with the following new paragraph:

"Clean soil cover", as used in this O&M Plan, means soil and fill material which are not suspected to be contaminated with any hazardous substance or petroleum or which do not exceed applicable standards. The planned

locations on the Property of soil cover POC engineering controls include Parcel 1 and Parcel 2 and are shown on Figure A-1 of Appendix A of this O&M Plan. It is estimated that the soil cover POC engineering control on Parcel 1 will be established approximately 6 to 9 months following submittal of the NFA letter. It is estimated that the soil cover POC engineering control on Parcel 2 will be established after completion of construction of the commercial portion of the Property. Record drawings of the final soil cover POC engineering control for Parcel 1, including detailed descriptions of the erosion control implemented and final elevations at each location, will be provided to Ohio EPA within sixty (60) days of completion of the Interim Plan for Parcel 1 as discussed in Section 2.4.1. Record drawings of the final soil cover POC engineering control for Parcel 2 will be provided to Ohio EPA within sixty (60) days of completion of the Interim Plan for Parcel 2 as discussed in Section 2.4.2.

APPENDIX A

LEGAL DESCRIPTION – PARCEL 1
LEGAL DESCRIPTION – PARCEL 2
FIGURE A-1 – PLANNED ENGINEERING CONTROL LAYOUT

APPROVAL

PLAN SUBMITTED
DEED FORM FOR FINAL OK

FRANKLIN COUNTY
ENGINEERING DEPT.

3-15-99 BY: DRP

1.918 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, Half Section 26, Township 5, Range 22, Refugee Lands and being 1.096 acres out of that tract as conveyed to Pizzuti Properties/Miranova Limited of record in Instrument Number 199806220153940, and 0.870 acre of those tracts of land as conveyed to Pizzuti Development Inc. of record in Instrument Number 199711250304330, (all references refer to the records of the Recorder's Office, Franklin County, Ohio and described as follows:

Beginning at an iron pin set at the intersection of the southerly right-of-way line of West Main Street with the westerly right-of-way line of Civic Center Drive;

thence South $00^{\circ} 03' 09''$ East, with said westerly right-of-way line, a distance of 6.98 feet to an iron pin set at the northeasterly corner of that tract as conveyed to American Electric Power, in the southerly right-of-way line of Vacated Levee Street (City of Columbus Ordinance No. 2894-94);

thence North $89^{\circ} 25' 01''$ West, with the northerly line of said American Electric Power tract and said southerly right-of-way line, a distance of 122.06 feet to an iron pin set at the intersection of said southerly right-of-way line with the easterly right-of-way line of said Vacated Short Street (City of Columbus Ordinance No. 2894-94);

thence South $00^{\circ} 38' 16''$ West, with the easterly right-of-way line of said Vacated Short Street, a distance of 392.62 feet to an iron pin set

thence across said Pizzuti Properties/Miranova Limited tract, and said Pizzuti Development Inc. tract, the following courses:

With a curve to the left, having a central angle of $56^{\circ} 23' 42''$ and a radius of 205.00 feet, a chord bearing and distance of North $47^{\circ} 29' 30''$ West, 193.73 feet to a P.K. Nail set at a point of tangency;

North $75^{\circ} 41' 20''$ West, a distance of 55.48 feet to a P.K. Nail set;

North $24^{\circ} 33' 21''$ West, a distance of 38.25 feet to a P.K. Nail set;

North $63^{\circ} 16' 26''$ West, a distance of 128.91 feet to a P.K. Nail set;

North $26^{\circ} 46' 34''$ East, a distance of 60.44 feet to a P.K. Nail set;

North $22^{\circ} 21' 12''$ West, a distance of 42.10 feet to an iron pin set in the northerly right-of-way line of said Vacated Levee Street;

thence North $67^{\circ} 38' 48''$ East, with said northerly right-of-way line, a distance of 290.75 feet to an iron pin found;

1.918 ACRES

-2-

thence North $78^{\circ} 07' 59''$ East, continuing with said northerly right-of-way line, a distance of 10.00 feet to an iron pin found on a curve in said northerly right-of-way line of West Main Street;

thence with said northerly right-of-way line and said curve to the left, having a central angle of $12^{\circ} 26' 28''$ and a radius of 785.00 feet, a chord bearing and distance of South $74^{\circ} 46' 33''$ East, 170.12 feet to the point of beginning and containing 1.918 acres of land, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Bearings herein are based on South $89^{\circ} 53' 00''$ East for a portion of the northerly right-of-way line of West Mound Street, as shown of record in Instrument Number 199806220153940.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Jeffrey A. Miller 3-11-99
Jeffrey A. Miller
Registered Survey No. 7211



JAM:td

0.355 ACRE

Situated in the State of Ohio, County of Franklin, City of Columbus and being 0.355 acre of land described as follows:

Beginning at the intersection of the westerly right-of-way line of Short Street with the southerly right-of-way line of West Mound Street;

thence South $00^{\circ} 06' 34''$ East with said westerly right-of-way line, a distance of 117.00 feet to a point in the northerly limited access right-of-way line of Interstate 70;

thence North $79^{\circ} 32' 25''$ West with said northerly limited access right-of-way line, a distance of 152.55 feet to a point;

thence North $00^{\circ} 06' 32''$ West, a distance of 89.00 feet to a point in the southerly right-of-way line of said West Mound Street;

thence North $89^{\circ} 53' 00''$ East with said southerly right-of-way line, a distance of 149.96 feet to the point of beginning and containing 0.355 acre of land, more or less.

