



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

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

MAILING ADDRESS:

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

NOV 19 2010

## CERTIFIED MAIL

Allen A. Kacenjar, Esq.  
Squire, Sanders and Dempsey  
4900 Key Tower, 127 Public Square  
Cleveland, OH 44114

Paul Gelpi  
Swan Super Cleaners  
1535 Bethel Road  
Columbus, OH 43220

Theodore A. Boggs, Esq.  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43216-1008

**Re: Issuance of Covenant Not To Sue for the Former Swan Cleaners Store # 49  
Property (# 09NFA348)  
Project ID # 125-002562-004**

Dear Mr. Kacenjar, Mr. Gelpi and Mr. Boggs:

I am pleased to inform you that on NOV 19 2010, the Director of the Ohio Environmental Protection Agency issued a covenant not to sue (CNS) to Swan Super Cleaners for the Former Swan Cleaners Store # 49 Property, located at 1361 Worthington Centre Drive, Columbus, Franklin County, Ohio. The CNS was issued as final findings and orders pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300.

The CNS states that, based on the no further action letter, and subject to all conditions set forth in these findings and orders, including but not limited to the terms and conditions of the operation and maintenance (O&M) agreement, Ohio EPA covenants not to sue and releases Swan Super Cleaners and Worthington Park, LLC, and their respective agents, employees, members, shareholders, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities. The CNS and release of liability applies

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

to the property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substance or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

It is my understanding that Mr. Allen Kacenjar, attorney for the property owner, will be handling the recording of the environmental covenant and the CNS for the property owner and the volunteer. To that end, I have enclosed a fully executed original signature environmental covenant to be recorded with the Franklin County Recorder's Office in accordance with ORC Section 5301.88 and Order Number 2 of the CNS. The environmental covenant is to be recorded prior to and separate from the recording of the CNS and its remaining exhibits. The CNS becomes effective on the date of the recording of the environmental covenant.

Also enclosed is a certified copy of the CNS and its exhibits to be recorded in the same manner as a deed for the property, as instructed by the CNS (see the "Conditions and Limitations" section of the CNS). The enclosed affidavit should be presented to the Franklin County Recorder's Office staff to support the required recording. As agreed to by the parties, the O&M agreement is Exhibit 5 to the CNS. The O&M plan is incorporated by reference into the O&M agreement as if wholly rewritten, but the O&M plan is not required to be recorded with the certified copy of the CNS at the Franklin County Recorder's Office. A complete original signature and fully executed copy of the O&M agreement with its three exhibits is also enclosed for the property owner's records.

Remember to submit to Ohio EPA after the recording of the environmental covenant and the CNS a copy of both documents that shows the filing date stamp of the recorder's office in accordance with Order Numbers 2 and 3 of the CNS. For questions on the recording of these documents, you can consult Ohio EPA Legal Office attorney, Martha Cooper, at (614) 644-3037.

OAC 3745-300-03 authorizes Ohio EPA to charge for its actual costs that it may incur related to site-specific activities, such as the monitoring of compliance with the CNS and its O&M agreement including the review of the submitted reports. This agency will send a separate correspondence to provide the number of the Voluntary Action Program account established for the property and to ask you to verify the billing information.

This action of the Director is final and may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made

payable to "Ohio Treasurer Kevin Boyce," which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days after the appeal is filed with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

Congratulations on the issuance of this CNS. Many persons within the agency, Swan Super Cleaners, Worthington Park, LLC and Civil & Environmental Consultants, Inc., among others, worked hard to remove the environmental barriers associated with redeveloping this property. If you have any questions or concerns, feel free to contact me at (614) 644-2924 or [tiffani.kavalec@epa.state.oh.us](mailto:tiffani.kavalec@epa.state.oh.us).

Sincerely,



Tiffani Kavalec, Manager  
Assessment, Cleanup and Reuse (ACRE)  
Division of Emergency and Remedial Response

Enclosure:

- c: Ronald J. Wells, Certified Professional, Civil & Environmental Consultants, Inc.  
William H. Staebler, Worthington Park, LLC, C/O Mid-America Management  
DERR CO/CDO Files (09NFA348)
- ec: Raymond R. Moreno, DERR/CDO  
Deborah Strayton, DERR/CDO  
Frank Robertson, DERR/ACRE-CO  
Martha Cooper, Legal

TO BE RECORDED IN DEED RECORDS,  
PURSUANT TO ORC 317.08(A)

AFFIDAVIT

STATE OF OHIO )  
 )  
COUNTY OF FRANKLIN ) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Lassiter, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Covenant Not to Sue / Director's Final Findings and Orders issued by the Director, and entered in the Ohio EPA Director's Journal on November 19, 2010, regarding property known as Former Swan Cleaners Store # 49 Property, located at 1361 Worthington Centre Drive in Columbus, Franklin County, Ohio and further described in the attached Covenant Not to Sue.

Tonya R. Lassiter  
Tonya R. Lassiter  
Records Management Officer  
Ohio EPA Legal Office

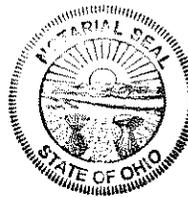
Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 19th day of November, 2010.

[Signature]  
Notary Public  
State of Ohio

*Permanent Commission*  
*No expiration, R.C. 147.03*

This instrument prepared by:

Martha J. Cooper, Attorney  
Ohio EPA Legal Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049



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



attached hereto as Exhibit 1. A property location map is attached hereto as Exhibit 2. Based on information in the NFA Letter, the Property is owned by Worthington Park, LLC and occupies a portion of Franklin County Parcel Number 610-204273.

4. The Certified Professional prepared pursuant to OAC 3745-300-13(J) an executive summary of the NFA Letter, which is attached hereto as Exhibit 3.

#### **Summary of the Voluntary Action for the Property**

5. Based upon the information in the NFA Letter, the Volunteer undertook the following investigational and remedial activities regarding the Property:
  - a. A Phase I property assessment, in accordance with OAC 3745-300-06 (effective October 21, 2002), to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property.
  - b. A Phase II property assessment, in accordance with OAC 3745-300-07 (effective October 21, 2002), including but not limited to investigations of identified areas and affected media at the Property, to assess environmental conditions related to releases of hazardous substances and/or petroleum.
  - c. Activity and use limitations contained in a proposed Environmental Covenant prepared pursuant to ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders.
  - d. Remedial activities for implementation under an Operation and Maintenance ("O&M") Plan dated August 24, 2010, pursuant to OAC 3745-300-15 (effective October 21, 2002). The O&M Plan provides for implementation of the engineering control to maintain applicable standards, and other requirements.
  - e. A demonstration that the Property complies with applicable standards following completion of remedial activities for the identified chemicals of concern in the identified areas and affected media at the Property through a comparison to background levels in accordance with OAC 3745-300-07, the use of generic numerical standards in accordance with OAC 3745-300-08 (effective October 21, 2002), or the use of a property-specific risk assessment in accordance with OAC 3745-300-09 (effective October 21, 2002).
6. The Certified Professional has verified by affidavit that the voluntary action was conducted and the NFA Letter was issued for the Property in accordance with

ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible for the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.

7. At the time that analyses were performed, Pace Analytical Services, Inc., Severn Trent Laboratories, Inc., Advanced Analytics, and TestAmerica were certified laboratories, No(s). CL0065, CL0024, CL100, and CL0059, respectively, as defined in ORC 3746.01(E) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter (the "Certified Laboratories").
8. The Environmental Covenant will be recorded in the Franklin County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. A copy of the executed Environmental Covenant is attached hereto as Exhibit 4. The Environmental Covenant upon recording will:
  - a. Restrict the Property to commercial and industrial land uses.
9. To provide for implementation of the activities specified in the O&M Plan herein, Ohio EPA and Worthington Park, LLC have entered into an O&M Agreement (Exhibit 5), which is incorporated by reference as if fully written into these Findings and Orders. The O&M Agreement includes and incorporates by reference an approved O&M Plan dated August 24, 2010, in part to maintain a barrier to prevent leaching of volatile organic compounds in soil to ground water at or under the Property. The O&M Agreement is attached hereto as Exhibit 5 and incorporated by reference herein.

#### **Applicable Standards**

10. Based on the information contained in the NFA Letter and all conditions set forth in these Findings and Orders, the Property meets applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for various uses including commercial and industrial land use and unrestricted potable ground water use. The applicable standards for the Property are those in effect when the NFA Letter was issued on February 25, 2009. The applicable standards and the methods of achieving compliance with the standards for each complete exposure pathway, are identified in the NFA Letter, which contains a summary table titled "*Applicable Standards and Remedial Activities for Each Exposure Pathway*" in Table 9 of the Phase II property assessment report. The standards include one or more of the following:
  - a. Generic numerical standards determined in accordance with OAC 3745-300-08 (effective October 21, 2002).
  - b. Property-specific risk assessment standards developed in accordance with OAC 3745-300-09 (effective October 21, 2002).

- c. Background standards determined in accordance with ORC 3746.06(A) and OAC 3745-300-07(H) (effective October 21, 2002).
  - d. Standards for residential (potable) use of ground water in the unconsolidated saturated zone underlying the Property, applied in accordance with ORC 3746.06(B).
11. Based on the implementation and maintenance of the remedies identified in this paragraph, the Property complies with applicable standards. Failure to implement one or more of the remedial activities may constitute noncompliance with applicable standards. The remedies requiring implementation include:
- a. The activity and use limitations set forth in the Environmental Covenant attached hereto, which once recorded will limit the Property to commercial or industrial land uses.
  - b. The engineering control and associated activities set forth in the O&M Agreement and the O&M Plan attached hereto, which prevent migration of volatile organic compounds in soil to ground water to the extent that the concentrations of the volatile organic compounds in ground water will exceed unrestricted potable use standards.
12. Pursuant to ORC 3746.12(A), the Director of Ohio EPA is authorized to issue a covenant not to sue for the Property through these Findings and Orders. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, the remedial activities for the Property are protective of public health and safety and the environment.

## ORDERS

### Covenant

1. Based on the NFA Letter, and subject to all conditions set forth in these Findings and Orders, including but not limited to the terms and conditions of the O&M Agreement, Ohio EPA hereby covenants not to sue and releases Swan Super Cleaners and Worthington Park, LLC, and their respective agents, employees, members, shareholders, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio (the "State") to perform additional investigational and remedial activities. This covenant not to sue and release of liability ("Covenant") applies to the Property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

## Conditions and Limitations

### Effectiveness of the Covenant— Recording of the Environmental Covenant

2. The Covenant provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within thirty (30) days after the issuance of these Findings and Orders, Worthington Park, LLC shall:
  - a. File with the Franklin County Recorder's Office for recording, in the same manner as a deed to the Property pursuant to ORC 3746.14 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA.
  - b. Submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Environmental Covenant for Former Swan Cleaners Store # 49, NFA Letter No.09NFA348.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at [records@epa.state.oh.us](mailto:records@epa.state.oh.us) or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Former Swan Cleaners Store # 49 Property.

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

3. Within thirty (30) days after the issuance of these Findings and Orders, Swan Super Cleaners shall:
  - a. File with the Franklin County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), 3 (Executive Summary) and 5 (O&M Agreement).
  - b. Submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in

accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Covenant Not to Sue for NFA Letter No. 09NFA348.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at [records@epa.state.oh.us](mailto:records@epa.state.oh.us) or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Former Swan Cleaners Store # 49 Property.

Requirement to Notify Director of each Transfer or Assignment  
of the Property or of the Covenant

4. Pursuant to ORC 3746.12(A)(2) and the O&M Agreement, Swan Super Cleaners and Worthington Park, LLC shall notify the Director of each transfer or assignment of the Property or any portion of the Property or of the Covenant. The notice to Ohio EPA shall include a cover letter that identifies "*Notice of Conveyance Pursuant to ORC 3746.12(A)(2) - NFA Letter No.09NFA348.*" The notice shall be addressed and delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at [records@epa.state.oh.us](mailto:records@epa.state.oh.us) or (2) by regular U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Former Swan Cleaners Store # 49 Property.

Limits of Covenant

5. Pursuant to ORC 3746.12(B)(1), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders. Upon a finding pursuant to ORC 3746.12(B)(2) that the Property or portion thereof no longer complies with applicable standards upon which issuance of the Covenant was based and receipt of the Director's notice of that fact and the requirements of ORC 3746.12(B)(3), the person(s) responsible for maintaining compliance with those standards shall receive an "opportunity to cure" the noncompliance. ORC 3746.12(B)(4) provides for revocation of the Covenant upon a Director's finding that the noncompliance has not been cured.
6. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the noncomplying use.

7. The Covenant shall not apply to releases of hazardous substances or petroleum that occur after the issuance of the NFA Letter, including but not limited to, releases of asbestos that may occur from asbestos-containing materials remaining at the Property that were not abated or required to be abated pursuant to OAC Chapter 3745-20.
8. The Covenant shall not apply:
  - a. To claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended.
  - b. To claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency.
  - c. As otherwise specifically provided in ORC Chapter 3746, including but not limited to obligations arising under other applicable laws and hazardous waste generator closure obligations for the accumulation areas at the Property under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., as amended, or ORC Chapter 3734, or the regulations adopted thereunder.
9. Nothing in the Covenant limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
10. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

#### **Ohio EPA Access to Property**

11. Pursuant to ORC 3746.21 or 3746.171 and the Environmental Covenant, and at reasonable times, upon proper identification, and stating the necessity and purpose as directed by applicable law, authorized representatives of the Director shall be granted access to the Property for the inspection or investigation purposes authorized under applicable law, including but not limited to determining whether the Property is being used in compliance with the activity

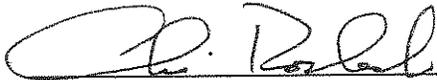
and use limitations contained in the Environmental Covenant.

**Transfer**

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

**IT IS SO ORDERED:**

**NOV 19 2010**



\_\_\_\_\_  
Chris Korleski, Director  
Ohio Environmental Protection Agency

\_\_\_\_\_  
Date

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



Civil & Environmental Consultants, Inc.  
8740 Orion Place, Suite 100 • Columbus, Ohio 43240  
Phone 614.540.6633 • Fax 614.540.6638  
CHICAGO, IL. • CINCINNATI, OH. • EXPORT, PA. • DETROIT, MI.  
INDIANAPOLIS IN. • NASHVILLE, TN. • PITTSBURGH, PA. • ST. LOUIS, MO.

DESCRIPTION OF A 0.039 ACRE TRACT  
LOCATED SOUTH OF WORTHINGTON CENTRE DRIVE AND  
WEST OF WORTHINGTON WOODS BOULEVARD  
CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO

Situate in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 1, Township 2, Range 19, United States Military District and being part of an original 11.699 acre tract (Tract I) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062, all records herein are from the Recorder's Office, Franklin County, Ohio, said 0.039 acre tract being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at a point at the southwest corner of said original 11.699 acre tract and the southeast corner of an original 8.506 acre tract (Tract II) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062 and the northerly line of said Worthington Creek Condominium, as shown and delineated in Condominium Plat Book 32, Page 100;

Thence North 39°34'28" East, a distance of 206.94 feet, along the line common to said original 11.699 acre tract and said original 8.506 acre tract, to a point;

Thence South 50°25'32" East, a distance of 15.30 feet, over and across said original 11.699 acre tract, to the **TRUE POINT OF BEGINNING**;

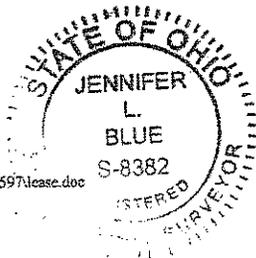
Thence the following four (4) courses and distances over and across said original 11.699 acre tract:

1. North 40°04'59" East a distance of 70.27 feet, to a point;
2. South 50°47'21" East a distance of 24.19 feet, to a point;
3. South 40°04'59" West a distance of 70.27 feet, to a point;
4. North 50°47'21" West a distance of 24.19 feet, to the **TRUE POINT OF BEGINNING**, containing 0.039 acres, more or less. Being subject to all easements, restrictions and rights-of-way of record.

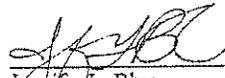
The bearings in the above description are based on the bearing of South 87°36'15" East for the centerline of Park Road, as shown in Instrument Number 20060809157062, of the Franklin County Recorder's Office, Ohio.

This description was based on record information from the Franklin County Recorders Office and an actual field survey as performed by Civil & Environmental Consultants, Inc., in October, 2008.

Civil & Environmental Consultants, Inc.



S:\Pro\2006\060597\lease.doc

  
Jennifer L. Blue      11-11-08  
Date  
Registered Surveyor No. S-8382

**SUBMITTAL & REVISION RECORD**

NO	DATE	DESCRIPTION

**SITUATE**

SITUATE IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, TRACT 1, RANGE 14, TOWNSHIP 2, RANGE 14, UNITED STATES MILITARY DISTRICT AND BEING PART OF AN ORIGINAL 11,699 ACRE TRACT (TRACT 1) CONVEYED TO WORTHINGTON PARK, LLC BY RECORD INST. 200608090157062 IN INSTRUMENT NUMBER 200608090157062, FRANKLIN COUNTY, OHIO, FROM THE RECORDS OF THE FRANKLIN COUNTY, OHIO, CLERK OF COURTS, FROM THE RECORDS OF THE FRANKLIN COUNTY, OHIO, CLERK OF COURTS, ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS**

THE BEARINGS IN THE ABOVE DESCRIPTION ARE BASED ON THE BEARING OF SOUTH 87°36'15" EAST FOR THE CENTERLINE OF PARK ROAD, AS SHOWN IN INSTRUMENT NUMBER 200608090157062, OF THE FRANKLIN COUNTY RECORDER'S OFFICE, OHIO.

**SURVEYOR'S CERTIFICATE**

THIS DESCRIPTION WAS BASED ON RECORD INFORMATION FROM THE FRANKLIN COUNTY RECORDER'S OFFICE AND AN ACTUAL FIELD SURVEY AS PERFORMED BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC., IN OCTOBER, 2008.

*Jennifer L. Blue*  
 JENNIFER L. BLUE  
 REGISTERED SURVEYOR 8382  
 DATE 11-11-08

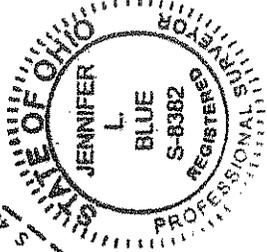
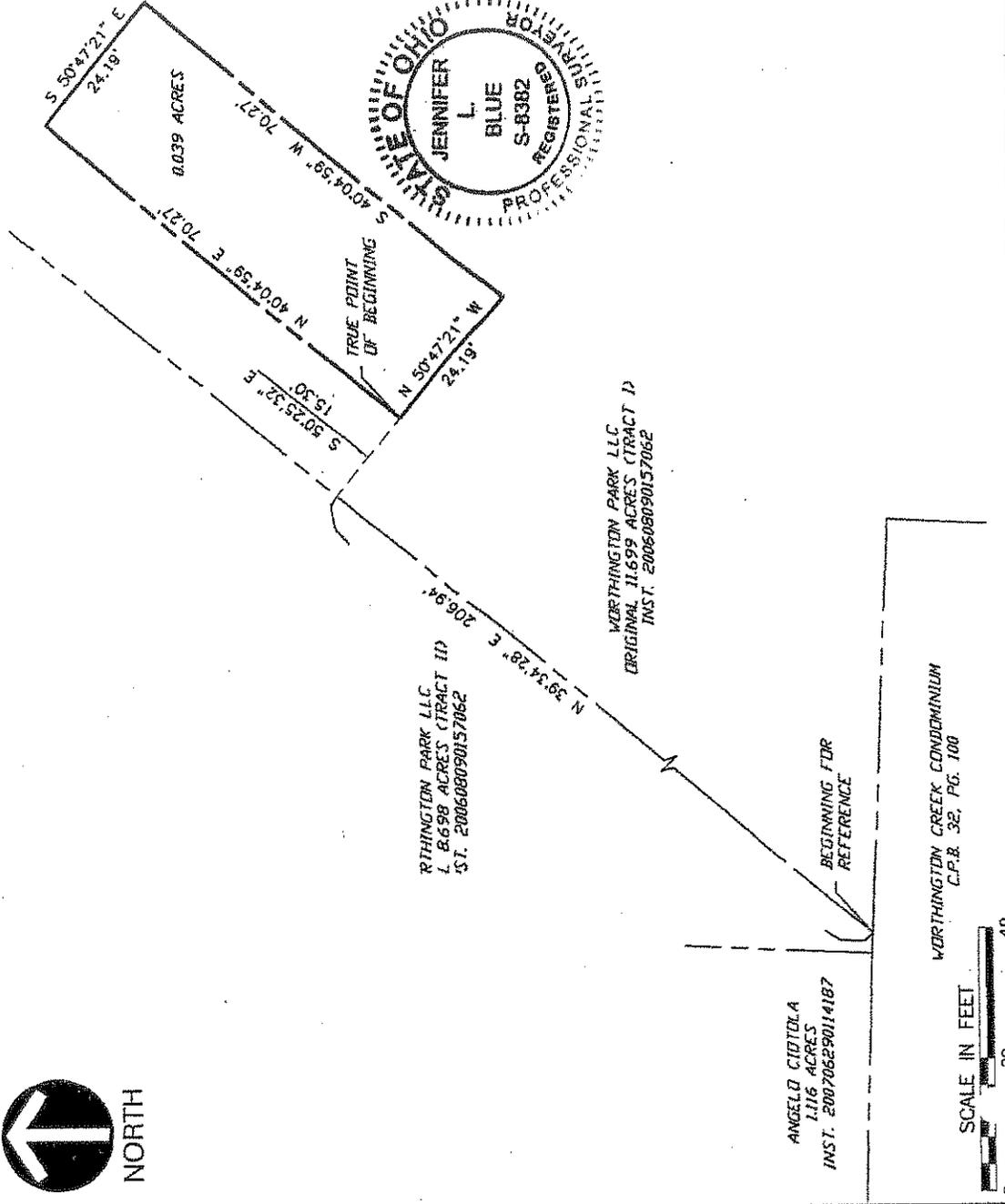


**Civil & Environmental Consultants, Inc.**  
 8740 Otton Place, Suite 100 - Columbus, OH 43240  
 614-540-6663 - 800-598-6808  
 www.cecinc.com

0.039 ACRE TRACT

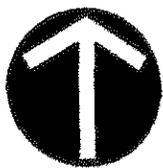
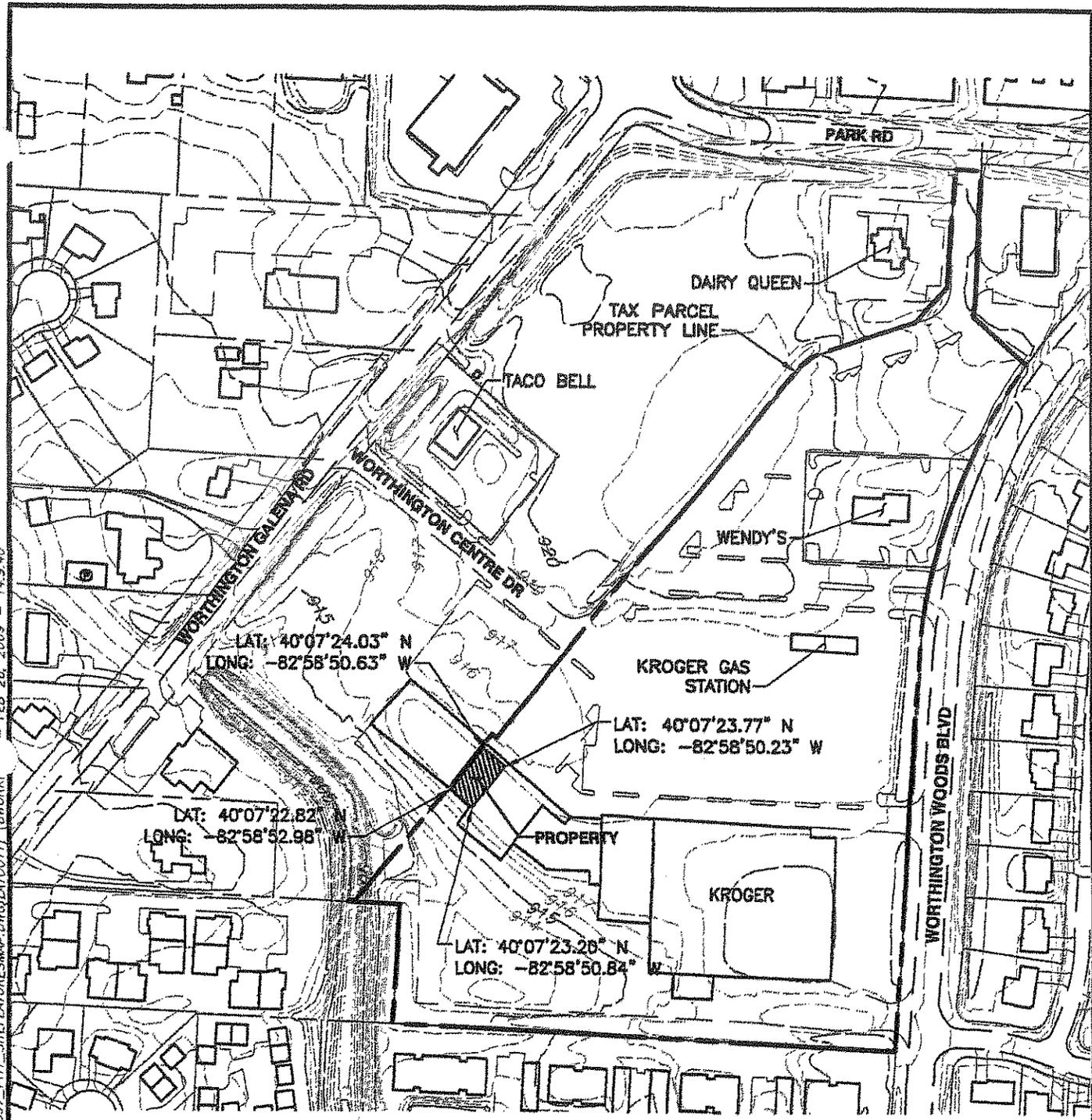
Situate in  
**CITY OF COLUMBUS**  
**FRANKLIN COUNTY, OHIO**  
 Made For  
**SWAN CLEANERS**  
**BUILDING AREA**  
**WORTHINGTON CENTRE DRIVE**

DATE: NOV. 2008 SCALE: 1"=20' DRAWING NO.:  
 DRAWN BY: JMB CHECKED BY: JMB JOB NO.:  
 PROJECT NO.: 060-597 APPROVED BY: [Signature] JOB SHEET 1 OF 1  
**LEASE**

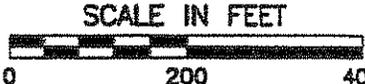


**Exhibit 2**  
**Property Location Map**

G:\PROJECTS\2009\060597\_P01\_SITEFEATURESMAP.DWG(LAYOUT1) (BWORK) FEB 26, 2009 - 14:9:40



NORTH



**Civil & Environmental Consultants, Inc.**

8740 Orion Place, Suite 100 - Columbus, OH 43240  
614-540-6633 · 888-598-6806  
www.cecinc.com

SWAN CLEANERS  
WORTHINGTON CENTRE  
COLUMBUS, OHIO

SITE FEATURES MAP

DRAWN BY:	JSC	CHECKED BY:	RW	APPROVED BY:	RW	FIGURE NO.:	2
DATE:	FEB 2009	DWG SCALE:	1" = 200'	PROJECT NO:	060597		

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



**NO FURTHER ACTION LETTER**

**REVISED EXECUTIVE SUMMARY  
FORMER SWAN CLEANERS STORE #49  
1361 WORTHINGTON CENTRE DRIVE  
COLUMBUS, OHIO**

**Prepared For:**

**SWAN SUPER CLEANERS  
1535 BETHEL ROAD  
COLUMBUS, OHIO**

**Prepared By:**

**Ronald J. Wells  
Ohio VAP CP 314  
614-310-0177**

**CIVIL & ENVIRONMENTAL CONSULTANTS, INC.  
8740 ORION PLACE  
COLUMBUS, OHIO 43240**

**CEC Project 060-597**

**August 24, 2010**

**Civil & Environmental Consultants, Inc.**

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## 1.0 INTRODUCTION

This **revised** executive summary has been prepared to present a concise summary of the activities conducted at the former Swan Cleaners Store #49 (the "Property") in preparation for submittal of a No Further Action (NFA) Letter under the Ohio Voluntary Action Program (VAP) to solicit a Covenant Not-to-Sue (CNS) from the Ohio Environmental Protection Agency (OEPA). This summary meets the requirements of Ohio Administrative Code (OAC) 3745-300-13(H), including use of the format provided by the OEPA for submitting the NFA Letter, and OAC 3745-300-13(J), which outlines requirements for recording a summary of the NFA Letter in the county recorder's office.

The Property consists of the tenant space associated with the former Swan Cleaners (Swan) store #49, an approximate 0.04 acre parcel located at 1361 Worthington Centre Drive in the Worthington Park Center shopping center in Columbus, Franklin County, Ohio. The VAP assessment has been completed solely with regard to the former Swan store/tenant space, and does not include any other portion of the Worthington Park Centre shopping center property.

The Property lies within a larger 22.7 acre parcel located between Park Road and Worthington-Galena Road in northeast Columbus. A copy of the legal description for The Property was included in Attachment A to the original Executive Summary submitted in February 2009. The area was formerly undeveloped before the shopping center was built in 1991. Swan operated a dry cleaning business at the Property from 1995 through 2007; this tenant space is currently occupied by Marcos Pizza restaurant.

Ronald J. Wells, VAP Certified Professional (CP) #314, directed preparation of the Phase I Property Assessment and Phase II Property Assessment of the Property in accordance with the requirements of the VAP, as outlined in OAC 3745-300-06, and 07. The original NFA Letter was issued on February 26, 2009.

Copies of the NFA Letter can be obtained for reproduction and associated labor charges by contacting Civil & Environmental Consultants, Inc. (CEC) at 8740 Orion Place, Suite 100, Columbus, Ohio 43240, or by telephone at 614-540-6633. A copy of the NFA Letter is available for review at CEC's Columbus, Ohio office, and at Ohio EPA's Central District Office.



## 2.0 SUMMARY OF NO FURTHER ACTION LETTER

Based on the results of the Phase I and Phase II Property Assessments conducted under the direction of the CP, the Property meets the Applicable Standards determined in accordance with the VAP suitable for issuance of a CNS. The current and foreseeable use of The Property is commercial with no other use restrictions.

Documents associated with and in support of the NFA Letter include:

- Phase I Property Assessment Report (November 21, 2008); and,
- Phase II Property Assessment Report (February 26, 2009).

## 2.1 PHASE I PROPERTY ASSESSMENT

The purpose of the Phase I Property Assessment was to evaluate the historical and current uses of the Property relative to known or suspected releases of hazardous substances or petroleum products which could qualify for designation as an Identified Area (IA), and as such, require additional investigation per the VAP rules. The Phase I Property Assessment was conducted between April 2006 and November 2008.

Methods of inquiry employed for the Phase I Property Assessment included the following:

- Acquisition and review of state and federal databases and records regarding ownership use and environmental compliance;
- Property inspection by the CP;
- Review of previous environmental assessment reports prepared for the Property;
- Review of adjoining property records and drive-by inspection of these properties;
- Interviews with former facility personnel; and
- Use of geologic, hydrogeologic and hydrologic data from public records.

The historical uses of the Property described in this section are based on the information obtained from the above sources. The Property was part of a larger land parcel formerly used for farming until around 1964 when farming was discontinued and the land returned to nature with the growth of trees on the parcel. The first building on the larger parcel was a rural home which



was constructed between 1938 and 1957. Other than the growth of the woods after 1964, the parcel remained virtually unchanged through at least 1980. As the demand for residential development increased, many of the surrounding properties were converted from agricultural land use to suburban residential land use. This development prompted the development of the shopping center property in 1991 in which the Property is located to supply the increased population with the services needed. Final development of the shopping center property included a retail strip center occupied by numerous retail businesses, including Swan in 1995, and the construction of several free-standing businesses (Monroe Muffler, Wendy's, Taco Bell) on the perimeter of the shopping center property. Swan continued to operate at the Property through 2007; the tenant space associated with the Property is currently occupied by Marcos Pizza restaurant.

The former operations manager for Swan was interviewed as part of the Phase I Property Assessment and indicated that he knew of no specific releases of dry cleaning chemicals associated with the store operations. Based on findings from previous environmental investigations conducted at the Property, there has been a release of tetrachloroethene (PCE) inside the Property to the concrete floor that has migrated to the underlying soils. In summary, the results of the Phase I Property Assessment revealed one IA as the area of the former dry cleaning equipment within the Property. No other sources or potential sources were identified.

## 2.2 PHASE II PROPERTY ASSESSMENT

The purpose of the Phase II PA was to determine the concentrations of chemicals of concern (COCs) in soil and groundwater beneath the Property. The Phase II activities were conducted between April 2006 and October 2007 and included the following:

- Evaluation of potential receptors and exposure pathways;
- Collection and analysis of sub-slab soil samples from five borings inside the Identified Area;
- Installation and development of an additional groundwater monitoring well (MW-4) to augment the network installed previously by URS;
- Collection and analysis of two rounds of groundwater samples from the four monitoring wells on the shopping center property;
- Collection of an ambient air sample from the interior of the Property;



- Installation of two sub-slab soil vapor probes beneath the floor slab of the Identified Area;
- Collection and analysis of sub-slab soil vapor samples from the two soil vapor probes, as well as the collection and analysis of an outside ambient air sample from behind the tenant space at The Property;
- Property-specific risk analysis (PSRA) for the indoor air pathway using the sub-slab vapor samples and the Johnson & Ettinger software program;
- Fate and transport modeling of contaminants in soil to leach to groundwater using the SESOIL software modeling program;
- Derivation of Applicable Standards for complete exposure pathways considered complete; and,
- Preparation of a report to document on-site assessment activities; results of analytical testing; and findings and conclusions, including whether remedies are required for the Property to meet the Applicable Standards.

### *2.2.1 Soil Investigation and Findings*

Soil samples were collected from beneath the floor slab within the interior of the tenant space at the Property, and from exterior borings drilled for the installation of monitoring wells. After coring of the concrete slab, the interior samples were typically collected using a stainless steel hand auger from below the bottom of the slab to about 2 feet below ground surface (bgs). The hand auger was decontaminated prior to use and between samples using an alconox/water solution and rinsed thoroughly with distilled water. Deeper samples to 16 feet bgs were collected using direct-push drilling equipment with a macro sampler; disposable acetate liners were used for each sampling interval.

Four groundwater monitoring wells were installed using 4.25-inch inside diameter (ID) hollow-stem augers which created an approximate 8-inch diameter borehole. Soil was sampled continuously from the existing ground surface to the boring termination depths that ranged between about 8 to 32 feet bgs to obtain detailed geologic stratigraphy of the conditions underlying the Property. The soil was sampled using a steel split spoon that was decontaminated and rinsed before each sample was taken.

COCs include dry cleaning related chemicals: primarily PCE and its associated degradation chemicals including trichloroethene (TCE), cis-and trans-1,2-dichloroethenes, and vinyl chloride.



The samples submitted for testing were analyzed for the entire list of volatile organic compounds (VOCs) included in U.S. EPA Method 8260. Detected chemicals and their maximum concentrations in the soil samples are as follows:

Chemical Name	Maximum Detected Concentration in Soil (mg/kg)
PCE	33
TCE	1.78
Xylenes	0.00692
Ethylbenzene	0.0079
Toluene	0.00533

### 2.2.2 Groundwater Investigation and Findings

Four monitoring wells were installed into the uppermost saturated zone in close proximity to the Property (MW-1 through MW-4) in order to evaluate potential impacts from the Property. MW-1 through MW-3 were installed in 2006 by URS; MW-4 was added in 2007 by CEC. The results of the boring and monitoring well installation program showed that the unconsolidated deposits underlying the Property consist mainly of glacially-derived silty clay with sand and gravel (till) overlying shale bedrock. The occurrence of groundwater in the uppermost aquifer is at the interface of the bottom of the till and the top of the shale bedrock.

The monitoring wells were constructed using 2-inch ID, flush-threaded schedule 80 PVC. The well screens were encased with a clean sand pack to 2 feet above the top of the screen, then a bentonite seal was placed above the sand with a minimum thickness of 2 feet, and the wells were grouted to just below the ground surface. Once the down-hole materials were set, a steel protective casing was set in concrete at the surface of each well.

Dedicated bailers were used to partially develop each well and remove the heavy sediments in the bottom of the wells. The wells were purged dry during this process; as recharge permitted in each well, additional groundwater was extracted to remove as much of the fine sediments from the wells as was practical.



The three pre-existing monitoring wells were sampled in 2006, and all four of the wells were sampled twice in 2007. The sampling events were conducted using conventional sampling methods with disposable dedicated bailers and rope. Each groundwater sample was analyzed for VOCs using U.S. EPA Method 8260. Analytical results for dry cleaning-related COCs in all of the samples were below the detection limits; however, the following other chemicals were detected:

- Methylene chloride (1 event) with a maximum concentration of 3.72 micrograms per Liter (ug/l),
- Acetone (1 event) with a maximum concentration of 13.0 ug/l;
- Carbon disulfide (1 event) with a maximum concentration of 0.38 ug/l; and,
- Xylenes (1 event) with a maximum concentration of 0.89 ug/l.

Because none of the results exceeded the Generic Unrestricted Potable Use Standards (GUPUS), groundwater classification was not required.

### *2.2.3 Surface Water and Sediments Investigation and Findings*

There are no surface waters or sediment present on The Property; however there is a drainage ditch located approximately 100 feet south of the Property.

### *2.2.4 Air Sampling Findings*

One composite air sample was collected from the ambient air within the interior of the tenant space at The Property in July 2007 after Swan had vacated the Property but before the space was renovated for occupancy by Marco's Pizza. The results showed detectable concentrations of several VOCs including chloromethane, methylene chloride, carbon disulfide, acrolein, chloroform, n-hexane, methanol, carbon tetrachloride, 2-butanone (MEK), benzene, 2,2,4-trimethylpentane, toluene, PCE, ethylbenzene, and various xylenes.

### *2.2.5 Sub-Slab Soil Gas Sampling Findings*

Sub-slab soil gas samples were collected from beneath the floor slab within the interior of the tenant space at The Property in conjunction with sampling of ambient air within the interior of



the tenant space, as well as from outside the exterior of the Property. The two sub-slab soil gas sample locations were chosen by Ohio EPA, based on the results of the prior sub-slab soil sampling results. Various VOCs were detected in the sub-slab soil gas samples including acrolein, benzene, 2-butanone, carbon disulfide, chloroform, n-hexane, cumene, 4-methyl-2-pentanone, methylene chloride, styrene, PCE, toluene, TCE, and m-, p-, and o-xylenes.

### 2.2.6 Exposure Pathway Assessment

Based on the initial pathway analysis, the following exposure pathways were identified to be complete at The Property:

- Direct contact with impacted soils by onsite workers, and/or future construction workers;
- Vapor intrusion from COCs within soil to indoor air to onsite workers;
- Leaching of COCs within soil to groundwater;
- Ingestion of contaminated groundwater by off-site residents and workers;
- Vapor intrusion from COCs within groundwater to indoor air to on and off-site workers and residents; and,
- Migration of contaminated groundwater to surface water off-site (drainage ditch).

These complete exposure pathways were evaluated in the Phase II data evaluation process.

## 2.3 DETERMINATION OF APPLICABLE STANDARDS

Applicable Standards were established using a combination of the generic numerical standards (GNS) published by the VAP and through Property-Specific Risk Assessment (PSRA), as outlined below.

- Soil Direct Contact: the GNS published as the Generic Direct Contact Standards (GDSC) by the VAP within Table III of OAC 3745-300-08, effective October 21, 2002, for commercial/industrial land use were used for this exposure pathway for samples collected from within a vertical point-of-compliance (POC) of 0 to 2 feet bgs based on the existing and anticipated future commercial land use of The Property.
- Soil Direct Contact for Construction & Excavation Activities: the GNS published as the GDSC by the VAP within Table IV of OAC 3745-300-08, effective October 21, 2002, for construction and excavation activities category were used for this exposure pathway



for samples collected from within a vertical POC of 0 to 7 feet bgs as selected by the Volunteer.

- Soil Leaching to Groundwater: soil concentrations were initially compared to the Ohio EPA Derived Leach-Based Soil Values for a vertical POC equal to the vadose zone. SESOIL modeling was conducted for COCs where the representative concentrations (maximum value) exceeded the Leach-Based Soil Values. Results of the SESOIL modeling indicate the representative soil concentrations do not result in groundwater exceeding the GUPUS using the existing building floor slab to mitigate the amount of precipitation infiltrating downward through the contaminated soils. Therefore, the representative concentrations for these COCs were chosen as the Applicable Standards for soil leaching to groundwater.
- Groundwater Ingestion: the GNS published as the GUPUS by the VAP within Tables VI and VII of OAC 3745-300-08, effective October 21, 2002, were used for this exposure pathway.
- Vapor Intrusion: the results of the sub-slab soil gas sampling and analyses were used to evaluate risks associated with this exposure pathway as outlined in Section 2.4.3.

Where multiple chemicals were detected within a media specific to a given exposure pathway, a multiple chemical adjustment evaluation was completed to assess whether the cumulative effect of the COCs would exceed an incremental risk of  $1 \times 10^{-5}$  for carcinogens or a hazard index of 1 for non-carcinogens. Based on these evaluations, the cumulative effect of the multiple chemicals for each media does not result in the acceptable risk levels being exceeded. Therefore, multiple chemical adjustments were not required.

## 2.4 DETERMINATION OF COMPLIANCE WITH APPLICABLE STANDARDS

The results of this assessment indicate the Property meets all Applicable Standards as long as an engineering control remains in-place (the existing building/concrete floor slab) to limit leaching of the contaminants in the soil beneath the Property (See Section 2.4.3 below). Maintenance of this engineering control requires that an Operations and Maintenance (O&M) plan and O&M agreement be prepared. Therefore, no remedial activities were required to meet the Applicable standards. Because the Property was assessed for compliance with the Applicable Standards under the Commercial/Industrial Land Use scenario, an Environmental Covenant will be recorded restricting future use of the property to Commercial/Industrial.



#### 2.4.1 Data Analysis

Table 9 from the Phase II Property Assessment Report has been revised and presents a concise comparison of COCs in the IA to the corresponding Applicable Standards, and it is reproduced in Attachment E of the **November 2009** NFA Addendum. In addition to these standards, the Johnson and Ettinger Model (Version 3.1) was used as part of a PSRA with the results of the sub-slab soil gas sampling to assess the possible risk to commercial workers from soil vapors migrating through the concrete slab. The results of the PSRA are summarized in Section 2.4.3.

The SESOIL model was run to evaluate potential impacts to groundwater from all of the chemicals detected in soil, whether or not they exceeded their respective generic leach-based soil values. The SESOIL model indicates that groundwater concentrations above UPUS are predicted for PCE and TCE using conservative model input values under the scenario where there is no building or concrete slab present to reduce precipitation and downward infiltration. However, when the SESOIL modeling was conducted with a low-permeability layer in-place (existing concrete slab), UPUS was not exceeded for any of the chemicals.

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

A comparison to the GNS was conducted for detected COCs for the IA on The Property, including multi-chemical adjustment evaluations, to develop Applicable Standards for the soil direct contact; soil direct contact under the construction and excavation activities category; and groundwater ingestion pathways. Based on these comparisons, the representative concentrations do not exceed the GNS for these three exposure pathways.



### 2.4.3 Property-Specific Risk Assessment Findings

A PRA was performed to evaluate potential risks to human health associated with from possible migration of volatile COCs into the indoor air through the concrete floor slab at The Property. The Johnson and Ettinger Model (Version 3.1) was used to predict the indoor air concentrations resulting from the migration of the soil vapors upward into the interior of The Property, which were then used to estimate carcinogenic and non-carcinogenic risks to on-site commercial workers. The results of the PSRA show that none of the chemicals detected in the sub-slab soil gas or ambient air samples individually or in aggregate, pose an unacceptable risk via the vapor inhalation pathway with the exception of acrolein, which by itself exceeds the non-cancer hazard index of 1. Acrolein is not however, a COC associated with the former dry cleaning operations. Published literature (see Attachment B of the **November 2009** NFA Addendum) regarding sources of acrolein in the environment indicates cigarette smoke is the primary source of exposure for the general population. Occupational sources may occur during the combustion and pyrolysis of materials such as wood, petrochemical fuels, and plastics. Workers involved in the production of acrylates, methionine, perfumes, plastics, refrigerants, rubber, or textile resins may be exposed to acrolein. Workers involved in welding or heating painted metal may also be exposed to acrolein. Firefighters are at risk of exposure to acrolein from wild fires and house fires. Attachment A to the **November 2009** NFA Addendum includes revised toxicity spreadsheets with acrolein removed from the calculations.

Several other VOCs besides the chemicals referenced in Section 2.2.1 were detected in the sub-slab soil gas samples and the ambient indoor and outdoor air samples collected at the Property including benzene, 2-butanone, carbon disulfide, chloroform, n-hexane, cumene, 4-methyl-2-pentanone, methylene chloride, styrene, toluene, and m-, p-, and o-xylenes. None of these chemicals are known to be associated with typical dry cleaning operations, or historical activities conducted at the Property by Swan. Therefore, although the chemicals were included in the risk evaluation and the individual and aggregate results showed no exceedences of the acceptable risk levels, they are not considered COCs for the Property.



The laboratory detection limits were elevated for one sub-slab soil gas sample (No. 1877) due to the elevated concentration of PCE found in the sample. A sensitivity analysis was performed to account for chemicals that may be present in the soil gas just below the elevated laboratory detection limits using the detection limits as input values for the calculations (acrolein was omitted from this exercise). The resulting calculated risks were still below the acceptable risk levels. A copy of the work sheet used in this sensitivity analysis is included in Attachment D of the **November 2009** NFA Addendum.

Based on these evaluations, the predicted risks were determined to be acceptable as compared to the risk thresholds applicable to the Property (incremental risk of  $1 \times 10^{-5}$  and hazard index of 1). The results of the PSRA were used with the risk estimates for the remaining complete exposure pathways to assess the cumulative risk at the Property resulting from the combination of the complete exposure pathways. The resulting aggregate carcinogenic risk in the Identified Area is less than the target of  $1 \times 10^{-5}$ , and the resulting aggregate hazard quotient (non-carcinogenic risk) does not exceed 1, to one significant figure.

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

Because existing conditions at the Property meet Applicable Standards, remediation is not required to meet the Applicable Standards.

## **2.5 REMEDIAL ACTIVITIES**

No active remediation was needed to meet the Applicable Standards; however, an environmental covenant restricting the use of The Property to commercial use is required to permit use of the GNS for this land use setting and maintain compliance with these standards. In addition, a requirement to retain and maintain a "cap" over the Property will be required as an engineering control in order to protect groundwater currently meeting UPUS.

## **2.6 PLANNED REMEDIES**

With the exception of the environmental covenant restricting use of the Property to commercial land use, and the engineering control described above, no remediation is planned.



### 3.0 CONCLUSIONS

The Property currently meets Applicable Standards for commercial/industrial land use. POCs extend to the Property line (horizontal) and include 0 to 2 feet bgs for soil direct contact; 0 to 7 feet bgs for construction and excavation activities; and the vadose zone for the soil leaching to groundwater and the soil to indoor air exposure pathways. Although groundwater at the Property does not currently contain detectable concentrations of COCs applicable to the former dry cleaning operations, predictive modeling using conservative model inputs show that there is a potential for PCE and TCE to leach into the first water-bearing zone above UPUS in the future without the existing building. However, the modeling also predicts that UPUS will not be exceeded under the existing conditions with the building floor slab present. Therefore, an environmental covenant has been prepared that restricts the Property to commercial/industrial land use, and also includes the requirement that an engineering control be maintained to limit precipitation infiltration (in this case the retention and maintenance of the existing building floor slab over the Property. A copy of the environmental covenant is included as Attachment F to the **November 2009** NFA Addendum. This remedy is protective of public health and safety and the environment.

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

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Worthington Park LLC, an Ohio limited liability company ("Owner"), and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

WHEREAS, Worthington Park LLC is the owner of a 0.039 acre parcel that is part of the Worthington Park Center shopping center located at 1361 Worthington Centre Drive, City of Columbus, Franklin County, Ohio (the "Property"). The Property is more fully described in the legal description and survey prepared by Registered Surveyor, Jennifer L. Blue (RS No. S-8382) dated November 11, 2008 and attached hereto as Exhibit A.

WHEREAS, Swan Super Cleaners, Inc. is a former store tenant of the Property owned by Worthington Park LLC. Swan has undertaken a Voluntary Action with respect to the Property described herein under Ohio's Voluntary Action Program (VAP) pursuant to ORC Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300. The Property is also known as the "Former Swan Cleaners Store #49 VAP Project".

WHEREAS, the environmental investigation and remediation of the Property included the completion of a Phase I and Phase II Property Assessment, and a risk assessment. The voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant. Ronald Wells, a Certified Professional (CP No. 314) with Civil & Environmental Consultants, Inc. (CEC) issued a No Further Action Letter for the Property on February 25, 2009 and submitted the NFA Letter to Ohio EPA with a request for a Covenant Not to Sue (NFA Letter No. 09NFA348).

WHEREAS, the activity and use limitations support the issuance of the NFA Letter and a Covenant Not to Sue for the Property. The activity and use limitations protect against exposure to the hazardous substances in the soil underlying the Property.

WHEREAS, an overview of the voluntary action at the Property is contained in the NFA Letter Executive Summary. The Executive Summary may be reviewed as an exhibit to the Covenant Not to Sue issued by the Director of Ohio EPA for the Property recorded with the Franklin County, Ohio Recorder's Office. The administrative record

for this project, including the Covenant Not to Sue, Executive Summary, and complete NFA Letter for the Property may be reviewed by contacting the Records Management Officer, Ohio EPA Division of Emergency and Remedial Response, Voluntary Action Program, Lazarus Government Center, 50 West Town St. Suite 700, Columbus, Ohio 43215 or Ohio EPA Central District Office, Division of Emergency and Remedial Response, Voluntary Action Program, 50 W. Town Street, Suite 700, Columbus, Ohio 43215 (614-728-3778), or Civil & Environmental Consultants, Inc, 8740 Orion Place, Suite 100, Columbus, Ohio 43240 (614-540-6638).

NOW THEREFORE, Worthington Park LLC, and Ohio EPA agree to the following:

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

2. Property. This Environmental Covenant concerns an approximately 0.039 acre tract of real property owned by Worthington Park LLC and located in the Worthington Park Center shopping center at 1361 Worthington Centre Drive, City of Columbus, Franklin County, Ohio that is more fully described in Exhibit A attached hereto and incorporated by reference herein and which has been previously defined in this Environmental Covenant as the "Property".

3. Owner. Worthington Park LLC, an Ohio Limited Liability Company, is an affiliate of Mid-America Management. Worthington Park LLC has a mailing address of 1100 Eaton Center, 1111 Superior Ave., Cleveland, Ohio 44114 and is the owner of the Property.

4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.

5. Activity and Use Limitations. As part of the voluntary action described in the NFA Letter, Owner hereby imposes and agrees to comply with the following activity and use limitations:

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

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

OAC 3745-300-08(B) (2) (c) (iii) defines industrial land use as “land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.”

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

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

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and to Holder, its agents, and assigns the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Notice upon Conveyance. Except for leases entered into by Owner with tenants in the normal course of business for retail or office uses which will not violate the use limitations as provided in Section 5 of this Environmental Covenant, each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 2010, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON \_\_\_\_\_, 2010, IN DOCUMENT NUMBER \_\_\_\_\_. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

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

Owner shall notify Ohio EPA within thirty (30) days after each conveyance of an interest in any portion of the Property, except for leases entered into by Owner with tenants in the normal course of business for retail or office uses. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

10. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property subject to matters of record, including, but not limited to easements, assessments and mortgages of record. Said interests will not conflict with the activity and use limitations set forth in this Environmental Covenant.
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner has identified all other persons that own an interest in or holds an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

11. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, and the Ohio EPA pursuant to ORC § 5301.90 and other applicable law. The term, Amendment, as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, Termination, as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

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

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

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

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

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

16. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA and each person required to be given notice pursuant to Section 10 above.

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

Ohio EPA – Central Office  
Attention: DERR Administrative Supervisor  
50 West Town Street, Suite 700  
PO Box 1049  
Columbus, Ohio 43216-1049

Voluntary Action Program  
Ohio EPA Central District Office  
Division of Emergency and Remedial Response  
50 W. Town Street, Suite 700  
Columbus, Ohio 43215

Worthington Park LLC  
C/O Mid-America Management  
3333 Richmond Road, Suite 350  
Beachwood, Ohio 44122

18. Authority of Signatory. Owner certifies that Mark Misencik is the Agent of Worthington Park LLC and has been duly authorized to sign this Environmental Covenant on behalf of the Owner.

The undersigned representative of Owner represents and certifies that he/she is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

**WORTHINGTON PARK LLC**

\_\_\_\_\_  
Owner  
By: Mark S. Misencik, Agent  
Mark S. Misencik

9-21-2010  
Date

State of Ohio )  
 )  
County of Cuyahoga ) ss:

Before me, a notary public, in and for said county and state, personally appeared MARK MISENICK, a duly authorized representative of Worthington Park LLC, who acknowledged to me that he/she did execute the foregoing instrument on behalf of Worthington Park LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 21<sup>ST</sup> day of SEPTEMBER, 2010.



Patricia Kronik  
Notary Public **PATRICIA KRONIK**  
Notary Public - State of Ohio  
My Commission Expires February 20, 2011  
Recorded in Lorain County

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

By Chris Korleski  
Chris Korleski, Director

Date 11/17/10

State of Ohio )  
 )  
County of Franklin ) ss:

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 17<sup>th</sup> day of NOVEMBER, 2010.



Charma Diane Casteel  
Notary Public  
**CHARMA DIANE CASTEEL**  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES  
May 10, 2014

This instrument prepared by:

Theodore A. Boggs  
Attorney at Law  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, Ohio 43215

Exhibit A



**Civil & Environmental Consultants, Inc.**

8740 Orion Place, Suite 100 • Columbus, Ohio 43240

Phone 614.540.6633 • Fax 614.540.6638

CHICAGO, IL. • CINCINNATI, OH. • EXPORT, PA. • DETROIT, MI.  
INDIANAPOLIS, IN. • NASHVILLE, TN. • PITTSBURGH, PA. • ST. LOUIS, MO.

**DESCRIPTION OF A 0.039 ACRE TRACT  
LOCATED SOUTH OF WORTHINGTON CENTRE DRIVE AND  
WEST OF WORTHINGTON WOODS BOULEVARD  
CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO**

Situate in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 1, Township 2, Range 19, United States Military District and being part of an original 11.699 acre tract (Tract I) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062, all records herein are from the Recorder's Office, Franklin County, Ohio, said 0.039 acre tract being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at a point at the southwest corner of said original 11.699 acre tract and the southeast corner of an original 8.506 acre tract (Tract II) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062 and the northerly line of said Worthington Creek Condominium, as shown and delineated in Condominium Plat Book 32, Page 100;

Thence North 39°34'28" East, a distance of 206.94 feet, along the line common to said original 11.699 acre tract and said original 8.506 acre tract, to a point;

Thence South 50°25'32" East, a distance of 15.30 feet, over and across said original 11.699 acre tract, to the **TRUE POINT OF BEGINNING**;

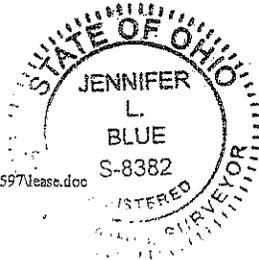
Thence the following four (4) courses and distances over and across said original 11.699 acre tract:

1. North 40°04'59" East a distance of 70.27 feet, to a point;
2. South 50°47'21" East a distance of 24.19 feet, to a point;
3. South 40°04'59" West a distance of 70.27 feet, to a point;
4. North 50°47'21" West a distance of 24.19 feet, to the **TRUE POINT OF BEGINNING**, containing 0.039 acres, more or less. Being subject to all easements, restrictions and rights-of-way of record.

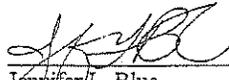
The bearings in the above description are based on the bearing of South 87°36'15" East for the centerline of Park Road, as shown in Instrument Number 20060809157062, of the Franklin County Recorder's Office, Ohio.

This description was based on record information from the Franklin County Recorder's Office and an actual field survey as performed by Civil & Environmental Consultants, Inc., in October, 2008.

Civil & Environmental Consultants, Inc.



S:\Proj\2006\060597\Tease.doc

  
Jennifer L. Blue Date 11-11-08  
Registered Surveyor No. S-8382

**SUBMITTAL & REVISION RECORD**

NO	DATE	DESCRIPTION

**SITULATE**

SITULATE IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, LYING BY QUARTER TOWNSHIP 2, RANGE 19, UNITED STATES MILITARY DISTRICT AND BEING PART OF AN ORIGINAL 11.699 ACRE TRACT (TRACT U) CONVEYED TO WORTHINGTON PARK, LLC, BY DEED OF RECORD IN INSTRUMENT NUMBER 200608090157062, ALL RECORDS HEREIN ARE FROM THE RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO, SAID 0.039 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS**

THE BEARINGS IN THE ABOVE DESCRIPTION ARE BASED ON THE BEARING OF SOUTH 87°36'15" EAST FOR THE CENTERLINE OF PARK ROAD, AS SHOWN IN INSTRUMENT NUMBER 200608090157062, OF THE FRANKLIN COUNTY RECORDER'S OFFICE, OHIO.

**SURVEYOR'S CERTIFICATE**

THIS DESCRIPTION WAS BASED ON RECORD INFORMATION FROM THE PUBLIC RECORDS, THE SURVEYOR'S OFFICE AND A FIELD SURVEY AS PERFORMED BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC., IN OCTOBER, 2008.

JENNIFER L. BLUE  
REGISTERED SURVEYOR 6382  
11-1-08  
DATE



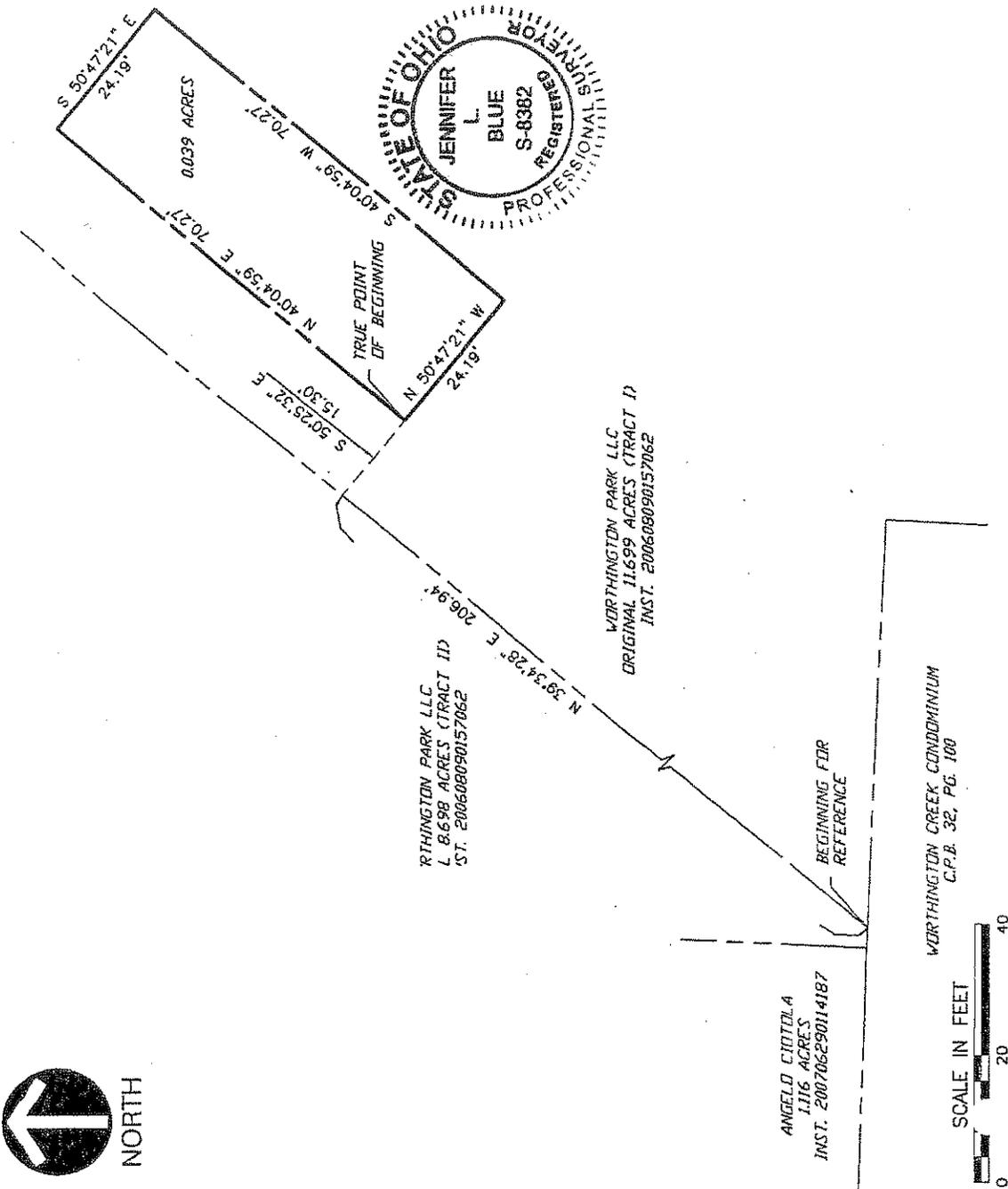
**Civil & Environmental Consultants, Inc.**  
8740 Orion Place, Suite 100 - Columbus, OH 43240  
614-540-8833 • 888-588-8808  
www.cecinc.com

0.039 ACRE TRACT

Situate In  
**CITY OF COLUMBUS**  
FRANKLIN COUNTY, OHIO  
Made For  
**SWAN CLEANERS**  
BUILDING AREA  
WORTHINGTON CENTRE DRIVE

DATE:	NOV. 2008	SCALE:	1" = 20'	DRAWING NO.:	
DRAWN BY:	JMH	CHECKED BY:		JOB	
PROJECT NO.:	060-587	APPROVED BY:		JOB SHEET	1 OF 1

**LEASE**



**Exhibit 5**  
**Operation and Maintenance Agreement**

**OPERATION AND MAINTENANCE AGREEMENT**  
**Between Ohio EPA and Worthington Park, LLC**  
**Regarding the Worthington Park Center Property,**  
**Columbus, Franklin County, Ohio**

---

This Operation and Maintenance Agreement ("Agreement") is entered into by the Director of the Ohio Environmental Protection Agency ("Director") and Worthington Park, LLC ("Worthington Park"), 1100 Eaton Center, 1111 Superior Ave, Cleveland, OH 44114 pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300. In consideration of the mutual covenants and subject to the terms and conditions of this Agreement, the parties agree as follows:

1. **The NFA Letter.** A no further action letter (NFA Letter No. 09NFA348; the "NFA Letter") under the Voluntary Action Program ("VAP") was submitted to the Director on behalf of Worthington Park on February 25, 2009, by Ron Wells, a certified professional (Certified Professional No. 314) with Civil and Environmental Consultants, Inc., for approximately 0.039 acre parcel that is part of the 22.7 acre Worthington Park Center shopping center owned by Worthington Park, LLC, an Ohio limited liability company, and located at 1361 Worthington Centre Drive, Columbus, Franklin County, Ohio (the "Property"). The legal description of the Property is attached hereto as Exhibit 1, and is incorporated by reference herein. The NFA Letter includes an Operation and Maintenance Plan ("O&M Plan") for the Property. The term "O&M Plan" refers to the O&M Plan dated August 24, 2010.
2. **Addenda to the NFA Letter.** On November 20, 2009 and August 25, 2010, addenda to the NFA Letter were submitted to the Director by Ron Wells in response to comments from Ohio EPA. For the purposes of this Agreement, the term "NFA Letter" means the NFA Letter submitted on February 25, 2009, and the addenda submitted on November 20, 2009 and August 25, 2010. The term "O&M Plan" refers to the O&M Plan dated August 24, 2010 attached as Exhibit 2 to this O&M Agreement and is incorporated into this Agreement by reference. The O&M Plan is available for review as a public record with the NFA Letter, Number 09NFA348, and a copy may be obtained by contacting the Records Management Officer at Ohio EPA, Central District Office, 50 West Town Street, Columbus, Ohio 43215, 614-728-3778.
3. **Requirement for an Operation and Maintenance Agreement.** This Agreement is required for the Property pursuant to ORC 3746.10(C)(2) or 3746.12(A)(2) and OAC 3745-300-15(A)(3) and 3745-300-15(F)(4) (effective October 21, 2002).
4. **Remedy for the Property.** The remedy for the Property includes:
  - a. **Activity and Use Limitations.** Activity and use limitations imposed on the Property as provided in the proposed Environmental Covenant developed pursuant to ORC 5301.80 to 5301.92. Following the issuance of a covenant not

to sue for the Property, the Environmental Covenant will be recorded pursuant to ORC 3746.14 with the Franklin County Recorder's Office as a deed record for the Property.

- b. Engineered Cap.** A constructed cap consisting of the existing building/concrete floor slab will be maintained over the Property as a barrier to the contaminated soils on the Property to prevent the infiltration or migration of chemicals of concern in the soil to the ground water currently meeting UPUS underlying the Property.
- 5. Constructed Cap Subject to Operation and Maintenance Plan.** The constructed cap as a barrier to protect the underlying ground water zone meeting UPUS, not including institutional controls, as set forth in the *Remedy for the Property* section of this Agreement, are part of the voluntary action remedy and must be maintained by Worthington Park in accordance with this Agreement and the O&M Plan to demonstrate that the Property will maintain and comply with the applicable standards set forth in ORC Chapter 3746 and OAC Chapter 3745-300 and in the covenant not to sue issued pursuant to ORC 3746.12 for the Property (the "Covenant").
- 6. Implementation of O&M Plan.** Worthington Park agrees to implement the engineering controls described herein to protect the underlying ground water zone meeting UPUS in accordance with the O&M Plan, and perform all inspections, repairs, reporting, record keeping, and all other requirements in accordance with the O&M Plan. Worthington Park shall submit to Ohio EPA verification that the Property maintains compliance with the applicable standards for unrestricted potable use of ground water below the Property in accordance with the O&M Plan and OAC 3745-300-15 (effective October 21, 2002). Such verification shall be completed in accordance with the O&M Plan and OAC 3745-300-15(E)(effective October 21, 2002). The Annual O&M Plan reports shall be submitted to Ohio EPA on or before March 1<sup>st</sup> of each year beginning with March 1, 2011. The annual O&M Plan reporting period is January 1 to December 31, with the first reporting period being January 1, 2010 to December 31, 2010.
- 7. Property Access.** Worthington Park is the current property owner and certifies it has access to the Property sufficient to fully implement the O&M Plan and this Agreement. Further, upon transfer of the Property or portion thereof, Worthington Park shall use best efforts to maintain such access as needed to implement the O&M Plan.

8. **Recording of Agreement.** Worthington Park shall record this Agreement as required by the Covenant and as required by ORC 3746.14.
9. **Effect of Violation of this Agreement.** Failure to comply with this Agreement or the O&M Plan may constitute the failure to maintain an applicable standard in accordance with ORC 3746.12(B) and OAC Chapter 3745-300, and may be subject to the process outlined in the Compliance Schedule Agreement Section of this Agreement. Noncompliance with an institutional control for the Property voids the Covenant, as provided in ORC 3746.05.
10. **Financial Assurance.** Until this O&M Agreement terminates pursuant to the Termination Section below, Worthington Park agrees to ensure that reasonable and adequate funds in the amount of at least Five Thousand Dollars (\$5,000.00) ("Minimum Amount") are available to comply with this Agreement and the O&M Plan by providing an acceptable financial assurance instrument. Examples of acceptable financial assurance include a trust fund, a surety bond guaranteeing payment into a trust fund, a surety bond guaranteeing performance of this Agreement and the O&M Plan, a letter of credit, an insurance policy, a financial test and corporate guarantee, an escrow account or such other financial assurance as approved by Ohio EPA.

For its financial assurance, Worthington Park has caused to be established a one (1) year Certificate of Deposit No. 112-0524197545 dated August 19, 2010 in the amount of \$5,000 purchased by the volunteer and issued to Worthington Park by Fifth Third Bank, 4400 No. High Street, Columbus, Ohio (branch 00152 Clintonville North BC) for the benefit of the Property as evidenced by a copy of the Certificate of Deposit attached hereto as Exhibit 3. Worthington Park agrees to maintain the Certificate of Deposit or execute and fund another comparable financial assurance mechanism acceptable to Ohio EPA. A copy of the current Certificate of Deposit, or other acceptable financial assurance documentation, shall be included as part of the annual O&M Plan report in accordance with Section 3.5 of the O&M Plan and paragraph 6 of this Agreement. In the event the amount or form of financial assurance provided herein is inadequate to comply with the terms of this Agreement, the Director may propose a modification of this paragraph pursuant to the Modification Section of this Agreement.

11. **Notice to Prospective Property Transferees.** At least thirty (30) days prior to the execution of any sales contract or other document transferring ownership of the Property or any portion of the Property, Worthington Park agrees to provide written notice to the prospective Property transferee that the Property, or such portion of the Property, is subject to the Covenant, this Agreement, and the O&M Plan.

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

Upon the Director's receipt of such notice of the Transfer Terms and Conditions in accordance with this section of the Agreement, the Transferee shall be considered a party to this Agreement in accordance with the Transfer Terms and Conditions.

14. **Subparceling.** Upon written notice submitted by Worthington Park to the Director, that one or more parcels of the Property have been divided or subparceled, this Agreement shall apply separately to each subdivided parcel upon the date of subdivision or the date of the submission of written notice, whichever occurs later. Worthington Park shall provide such written notice by submitting:
- a. The legal description of the subdivided parcels;
  - b. A survey map or maps of the subdivided parcels;
  - c. The date of the subdivision;
  - d. A copy of the legal instrument(s) providing for the subdivision; and
  - e. The names of the new owner, if any, of the subdivided parcels.

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

15. **Document Submittals / Notifications to Parties.** All documents, including but not limited to notices and reports, required to be submitted by Worthington Park pursuant to this Agreement shall be identified by NFA Number 09NFA348 and addressed to:

Ohio Environmental Protection Agency  
Division of Emergency and Remedial Response  
50 West Town Street  
P.O. Box 1049  
Columbus, OH 43216-1049

Attn: Records Management Officer

Electronic filings: [records@epa.state.oh.us](mailto:records@epa.state.oh.us)

and Ohio Environmental Protection Agency  
Central District Office  
Division of Emergency and Remedial Response  
50 West Town Street  
Columbus, OH 43215  
Attn: Project Coordinator for Worthington Park Shopping Center Property  
(09NFA348)

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

Worthington Park, LLC  
1100 Eaton Center  
1111 Superior Ave.  
Cleveland, Ohio 44114  
Attn: William H. Staebler

Either party may designate an alternative contact name or mailing address upon written notification to the other party.

- 16. Modification of this Agreement or the O&M Plan.** Worthington Park shall submit to the Director for review and approval each proposed modification of this Agreement or the O&M Plan, except for a minor modification, as defined below, or a modification proposed by the Director. This Agreement or the O&M Plan may be modified by agreement of the appropriate parties. Modifications shall be in writing, signed by the authorized representative of Worthington Park and by the Director, and shall be effective on the date signed by the Director of Ohio EPA. Ohio EPA reserves the right to require the submittal of a new NFA Letter for a proposed modification that will result in the application of an applicable standard, land use, or a remedy different than that contained in the NFA Letter approved by the Covenant.

For purposes of this Agreement, "modification" means any substantive or material change to a term or condition of this Agreement or the O&M Plan, such as a proposal to revise, replace, or terminate an engineering control, or to revise the Financial Assurance Section of this Agreement.

For purposes of this Agreement, "minor modification" means a non-substantive or non-material, administrative change to a term or condition of this Agreement or the O&M Plan, such as the transfer of this Agreement and the O&M Plan in accordance with the Option to Transfer Section of this Agreement, or a change of a named contact person or an address contained in this Agreement or the O&M Plan. Within fourteen (14) days after implementation of a minor modification to this Agreement or the O&M Plan, Worthington Park agrees to provide Ohio EPA written notice of the minor modification.

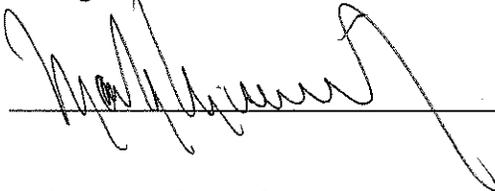
17. **Compliance Schedule Agreement.** Within thirty (30) days after the mailing of notice from the Director of the finding that the Property or a portion of the Property no longer complies with the applicable standards upon which the issuance of the Covenant was based, Worthington Park shall notify the Director of its intention to return the Property or such portion of the Property to compliance with the applicable standards upon which the Covenant was based ("cure") and enter into a compliance schedule agreement with the Director for such cure, in accordance with ORC 3746.12(B).
18. **Compliance with Other Laws.** Worthington Park shall conduct all activities pursuant to this Agreement and the O&M Plan in compliance with all local, state, and federal laws and regulations, including but not limited to requirements to obtain permits or authorizations. Worthington Park acknowledges that Ohio EPA's review and approval of any health and safety measures or the risk mitigation plan contained in the O&M Plan is limited to ensuring compliance with the requirements of ORC Chapter 3746 and OAC Chapter 3745-300 and does not extend to determining compliance with the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, the regulations adopted under that act, or any obligation imposed by the Occupational Safety and Health Administration.
19. **Inspections by Ohio EPA.** Worthington Park shall allow the Director or his authorized representatives to perform inspections to determine compliance with this Agreement. Such inspections shall be consistent with ORC Chapter 3746 and OAC Chapter 3745-300, including but not limited to the reasonableness of inspection timing and frequency in accordance with ORC 3746.21.
20. **Program Costs for Monitoring Compliance with this Agreement.** Worthington Park agrees to reimburse Ohio EPA for the actual direct and indirect costs incurred by the Ohio EPA in monitoring compliance with this Agreement pursuant to ORC 3746.04(B)(8) and OAC 3745-300-03(E).

- a. Ohio EPA will periodically submit to Worthington Park an itemized statement of its monitoring costs for the previous year(s). Monitoring costs include, but are not limited to, costs for reviewing submissions or reports required by this Agreement, conducting Property inspections, and corresponding with the Volunteer or its representative.
  - b. Within thirty (30) days of receipt of such itemized statement, Worthington Park shall remit payment for all of Ohio EPA's monitoring costs for the previous year(s). If Worthington Park disputes the accuracy of items on the itemized statement, a request for review of the statement may be made within thirty (30) days of receipt of the statement. After review, Ohio EPA will resubmit to Worthington Park an itemized statement with appropriate revisions. Worthington Park shall remit payment within fourteen (14) days of receipt of the resubmitted statement.
  - c. Worthington Park shall remit payments to Ohio EPA pursuant to this Section of the Agreement as follows:
    - i. Payment shall be made by an official (or certified) check made payable to "Treasurer, State of Ohio." The check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.
    - ii. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.
    - iii. A copy of the transmittal letter and check shall be sent to the Records Management Officer, DERR, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-1049.
- 21. Termination.** This Agreement shall terminate upon (a) revocation or voidance of the Covenant, (b) a demonstration, in accordance with OAC 3745-300-15(E) (effective October 21, 2002) and Section 4.7 of the O&M Plan, that implementation of this Agreement and the O&M Plan is no longer necessary for the Property to comply with applicable standards, upon written acknowledgment by the Manager of the Voluntary Action Program of the demonstration, or (c) otherwise upon the written approval of the Director of the Ohio EPA.

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

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

**Worthington Park LLC:**

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

Date: 9-21-2010

Printed Name: Mark S. Misencik

Title: Agcat

**OHIO ENVIRONMENTAL PROTECTION AGENCY:**

By:   
Chris Korleski  
Director of Ohio EPA

Date: 11/17/10

Exhibit 1



**Civil & Environmental Consultants, Inc.**

8740 Orion Place, Suite 100 • Columbus, Ohio 43240

Phone 614.540.6633 • Fax 614.540.6638

CHICAGO, IL. • CINCINNATI, OH. • EXPORT, PA. • DETROIT, MI.  
INDIANAPOLIS, IN. • NASHVILLE, TN. • PITTSBURGH, PA. • ST. LOUIS, MO.

**DESCRIPTION OF A 0.039 ACRE TRACT  
LOCATED SOUTH OF WORTHINGTON CENTRE DRIVE AND  
WEST OF WORTHINGTON WOODS BOULEVARD  
CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO**

Situate in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 1, Township 2, Range 19, United States Military District and being part of an original 11.699 acre tract (Tract I) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062, all records herein are from the Recorder's Office, Franklin County, Ohio, said 0.039 acre tract being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at a point at the southwest corner of said original 11.699 acre tract and the southeast corner of an original 8.506 acre tract (Tract II) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062 and the northerly line of said Worthington Creek Condominium, as shown and delineated in Condominium Plat Book 32, Page 100;

Thence North 39°34'28" East, a distance of 206.94 feet, along the line common to said original 11.699 acre tract and said original 8.506 acre tract, to a point;

Thence South 50°25'32" East, a distance of 15.30 feet, over and across said original 11.699 acre tract, to the **TRUE POINT OF BEGINNING**;

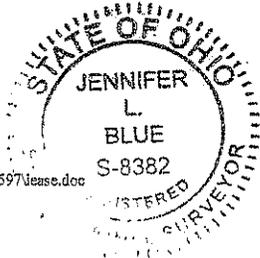
Thence the following four (4) courses and distances over and across said original 11.699 acre tract:

1. North 40°04'59" East a distance of 70.27 feet, to a point;
2. South 50°47'21" East a distance of 24.19 feet, to a point;
3. South 40°04'59" West a distance of 70.27 feet, to a point;
4. North 50°47'21" West a distance of 24.19 feet, to the **TRUE POINT OF BEGINNING**, containing 0.039 acres, more or less. Being subject to all easements, restrictions and rights-of-way of record.

The bearings in the above description are based on the bearing of South 87°36'15" East for the centerline of Park Road, as shown in Instrument Number 20060809157062, of the Franklin County Recorder's Office, Ohio.

This description was based on record information from the Franklin County Recorders Office and an actual field survey as performed by Civil & Environmental Consultants, Inc., in October, 2008.

Civil & Environmental Consultants, Inc.



SAPro2006\060597\sease.doc

  
 \_\_\_\_\_  
 Jennifer L. Blue Date 11-11-08  
 Registered Surveyor No. S-8382

**SUBMITTAL & REVISION RECORD**

NO	DATE	DESCRIPTION
1		

**SITUATE**

SITUATE IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, LYING IN QUARTER TOWNSHIP 1, TOWNSHIP 2, RANGE 19, UNITED STATES MILITARY DISTRICT AND BEING PART OF AN ORIGINAL 11.699 ACRE TRACT (TRACT I) CONVEYED TO WORTHINGTON PARK, LLC, BY DEED OF RECORD BY INSTRUMENT NUMBER 200608090157062. ALL RECORDS HEREIN ARE FROM THE RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO, SAID 0.039 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS**

THE BEARINGS IN THE ABOVE DESCRIPTION ARE BASED ON THE BEARING OF SOUTH 87°36'15" EAST FOR THE CENTERLINE OF PARK ROAD, AS SHOWN IN INSTRUMENT NUMBER 200608090157062, OF THE FRANKLIN COUNTY RECORDER'S OFFICE, OHIO.

**SURVEYOR'S CERTIFICATE**

THIS DESCRIPTION WAS BASED ON RECORD INFORMATION FROM THE FRANKLIN COUNTY RECORDERS OFFICE AND AN ACTUAL FIELD SURVEY AS PERFORMED BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC., IN OCTOBER, 2008.

JENNIFER L. BLUE  
REGISTERED SURVEYOR 8382  
DATE: 11-11-08



**Civil & Environmental Consultants, Inc.**  
8740 Otton Place, Suite 100 - Columbus, OH 43240  
614-540-6633 • 888-588-6808  
www.cecinc.com

0.039 ACRE TRACT

Situate in  
**CITY OF COLUMBUS**  
**FRANKLIN COUNTY, OHIO**  
Needed For  
**SWAN CLEANERS**  
**BUILDING AREA**  
**WORTHINGTON CENTRE DRIVE**

DATE: NOV. 2008 | SCALE: 1"=20'  
DRAWN BY: JIMH | CHECKED BY: JIB  
PROJECT NO: 080-587 | APPROVED BY:  
**LEASE**  
JOB SHEET 1 OF 1

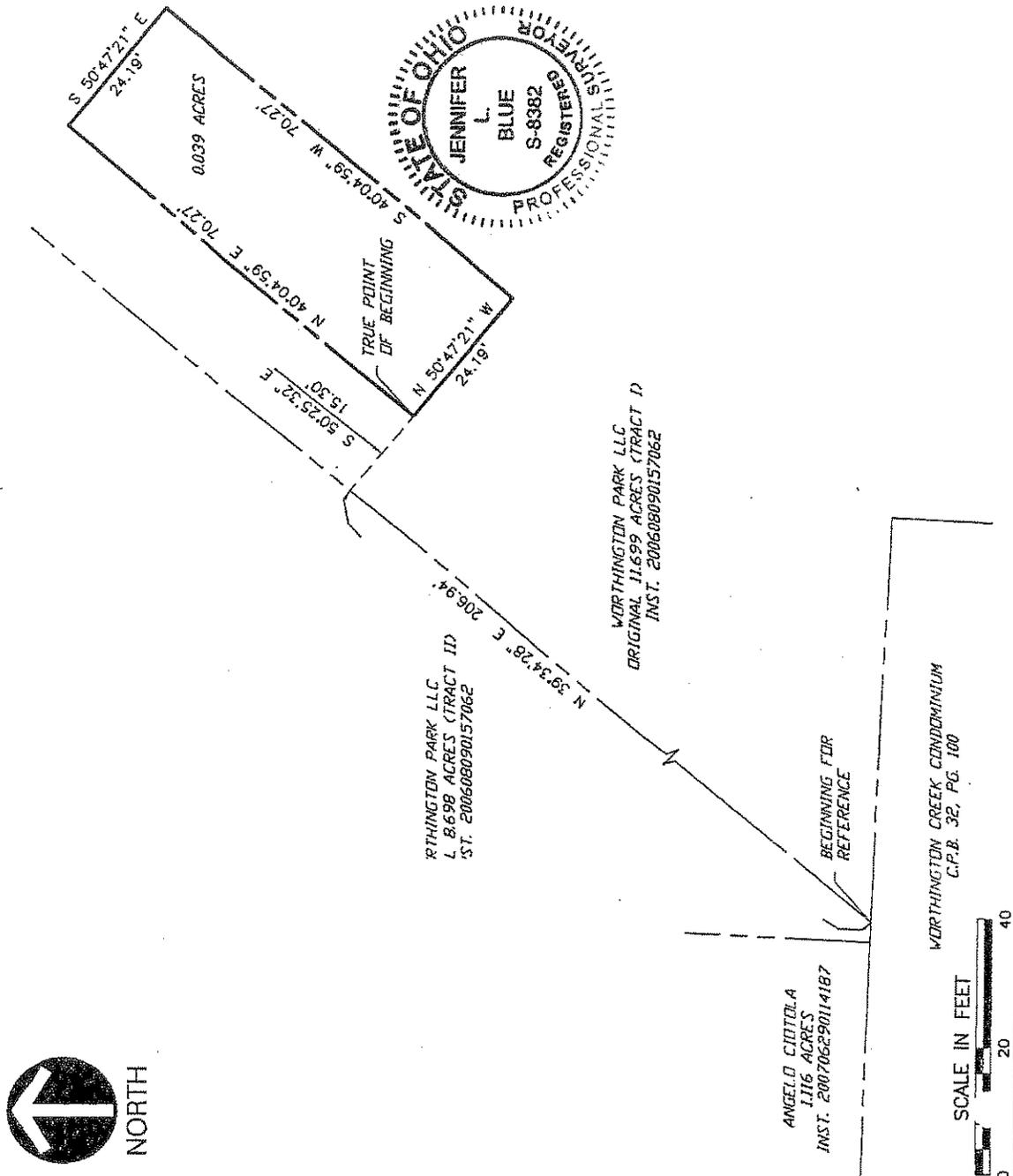


Exhibit 2



**OPERATION AND MAINTENANCE PLAN**

**FORMER SWAN CLEANERS STORE #49  
1361 Worthington Centre Drive  
Columbus, Ohio**

Prepared by:

**Civil & Environmental Consultants, Inc.  
8740 Orion Place  
Columbus, Ohio 43240**

CEC Project Number 060-597

November 21, 2009  
Revised August 24, 2010

**Civil & Environmental Consultants, Inc.**

**Columbus**

8740 Orion Place, Suite 100 • Orion Office Park • Columbus, Ohio 43240  
Phone 614/540-6633 • Fax 614/540-6638 • Toll Free 888/598-6808 • E-mail [columbus@cecinc.com](mailto:columbus@cecinc.com)

*Chicago Cincinnati Cleveland Detroit Export Indianapolis Nashville Phoenix Pittsburgh St. Louis*

Corporate Web Site <http://www.cecinc.com>



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## FIGURES

FIGURE 1	Property Location Map
FIGURE 2	Identified Area Requiring Engineering Control



## ACRONYMS AND ABBREVIATIONS

O & M	Operation and Maintenance
the "Property"	former Swan Cleaners Store #49 located in Columbus, Ohio
VAP	Ohio Voluntary Action Program
PCE	Perchloroethylene (also known as tetrachlorethene)
TCE	Trichloroethene
UPUS	Unrestricted Potable Use Standard
NFA	No Further Action
PSRA	Property Specific Risk Assessment
SESOIL	Seasonal Soil Compartment Model
GDCS	Generic Direct Contact Standards



## 1.0 INTRODUCTION AND BACKGROUND

### 1.1 PURPOSE

This Operation and Maintenance (O&M) Plan has been prepared by Civil & Environmental Consultants, Inc. (CEC) for the business space occupied by the former Swan Cleaners Store #49 located in Columbus, Ohio (referred to as "the Property"). The Property address is 1361 Worthington Centre Drive in the Worthington Park Center shopping center (Figure 1 provides a Property Location Map). Swan Cleaners is the "Volunteer" for the Property and authorized CEC to prepare and submit a No Further Action (NFA) Letter on their behalf to the Ohio EPA in order to obtain a Covenant Not to Sue (CNS) for the Property. This O&M Plan has been prepared as part of activities performed under the Ohio Voluntary Action Program (VAP) at the Property.

This plan is compliant with VAP rules outlined in Ohio Administrative Code (OAC) Rule 3745-300-15, which was in effect when the NFA Letter was submitted to the Ohio EPA. For the purposes of this O&M Plan, references to "Owner" means the person who will assume the obligations and responsibilities specified in this O&M Plan through transfer of this plan (with the O&M agreement to this plan) by existing ownership or assignment or in conjunction with acquisition of title to the Property or portion of the Property.

This O&M Plan addresses monitoring requirements and necessary notifications to the Ohio Environmental Protection Agency (Ohio EPA) for engineering controls and institutional controls necessary to:

1. Maintain the acceptable Property-specific remedy that will ensure compliance with the standards set forth in the No Further Action Letter Addendum for the Property (CEC, November 21, 2009) and described within this O&M Plan,
2. Assure elimination or mitigation of exposures to all receptors sufficient to meet risk goals and applicable standards,
3. Assure the reliability and effectiveness of engineering or institutional controls at the Property, and



4. Provide a mechanism for monitoring and maintenance of engineering controls and monitoring of institutional controls.

## 1.2 PROPERTY DESCRIPTION

The Property includes approximately 0.04 acres and consists of an individual retail space within the Worthington Park Center shopping center. The Property is part of a larger 22.7-acre parcel located between Park Road and Worthington-Galena Road in northeast Columbus. The area was formerly undeveloped before the shopping center was built in 1991. Swan Cleaners operated a dry cleaning business at the Property from 1995 through 2007. The retail space that corresponds to the Property is currently occupied by a restaurant.

## 1.3 ENVIRONMENTAL DATA SUMMARY

Several environmental assessments have been conducted at the Property, either for the entire Worthington Park Center parcel, or more selectively for the Property itself. The results of the assessments have shown:

- Soil sampling shows that there has been a release of perchloroethylene (PCE) to the soil underlying the concrete floor slab at the Property. Trichloroethene (TCE), a biological breakdown product of PCE, has also been detected in the soil. The detected concentrations are less than the Generic Direct Contact Standards (GDSCS) applicable to commercial/industrial land use as established under the VAP rules.
- Risk calculations using the maximum concentrations of PCE and TCE detected in sub-slab soil gas samples and ambient air samples collected within the Property were within the Ohio EPA acceptable risk levels for commercial/industrial workers.
- The results of groundwater sampling of the four monitoring wells near the Property demonstrate that groundwater has not been impacted with PCE or TCE, and groundwater currently meets the generic unrestricted potable use standards (UPUS).
- Predictive modeling using the maximum PCE and TCE concentrations detected in the sub-slab soils shows that without the existing building and concrete floor slab present, these chemicals could migrate downward to the groundwater over time, eventually possibly resulting in contaminated groundwater that will exceed UPUS.



- The same predictive modeling with input parameters that simulate the existing building and concrete floor slab, and the associated prevention of precipitation infiltrating through the contaminated soils, shows that PCE and TCE will not migrate downward to groundwater to the extent that the concentrations of PCE and TCE in groundwater will exceed UPUS.



## 2.0 APPLICABLE STANDARDS AND REMEDIES

Applicable standards for COCs at the Property were established and met as described in the NFA Letter and NFA Letter Addendum as follows:

- None of the soil results exceeded the GDSCS applicable to the commercial/industrial land use scenario.
- Groundwater results met UPUS.
- The Property-Specific Risk Assessment (PSRA) showed that the calculated risk associated with the release of dry cleaning chemicals to the soil and the associated potential exposure from vapor intrusion from the soils to indoor air is below the Ohio EPA risk levels.
- The maximum PCE and TCE concentrations detected in the soils under the concrete floor slab exceed the Ohio EPA Leach-based Soil Values. Subsequent predictive modeling using the SESOIL modeling software shows that without the existing building and concrete floor slab in-place to reduce the infiltration of precipitation downward through the contaminated soils that eventually, PCE and TCE could leach into the first groundwater zone in excess of UPUS. The modeling also shows that with a barrier present to reduce the infiltration, that UPUS will not be exceeded in the future.

## 2.1 INSTITUTIONAL CONTROLS

The Environmental Covenant for the Property will establish the following institutional control as part of the permanent remedy for the Property under the VAP. The institutional control is incorporated into the O&M Plan as detailed below. The institutional control is intended to remain with the Property and bind future owners of the Property.

- The Property can be used only for industrial or commercial land uses, as defined by the VAP. This restriction applies only to the Property (former Swan Cleaners store #49 business space).

The Institutional control will be monitored by verifying that the use of the Property is consistent with the Environmental Covenant for the Property. The use of the Property is monitored on an ongoing basis but will be performed at least once per year.



## 2.2 ENGINEERING CONTROLS

The following engineering control will be used to protect groundwater currently meeting UPUS beneath the Property:

- The Property owner will be required to maintain a "cap" over the existing contaminated soils to protect groundwater beneath the Property (the Remedy). This cap may consist of the existing building/concrete floor slab, or some other sufficient low-permeability barrier. In the event that the Owner elects to substitute the existing building/concrete floor with an alternative barrier, the Owner will obtain approval from Ohio EPA prior to the removal of the existing barrier.



### 3.0 OPERATIONS AND MAINTENANCE REQUIREMENTS

As specified under OAC 3745-300-15, the applicability of the following components were considered in the preparation of this Plan:

- (a) A summary of the applicable standards for the Property and the purpose of the remedial activities. (Included in Section 2.0)
- (b) A description of activities required for normal operation and maintenance of engineering controls or procedures for maintenance of an institutional control. (Included in Section 3.1)
- (c) A Plan for evaluating the effectiveness of the remedial activities. (Not needed)
- (d) Equipment requirements. (Not needed)
- (e) A Plan for addressing potential operating problems. (Included in Section 3.2)
- (f) A Plan for modifications of normal operation and maintenance. A description of modifications to normal operation and maintenance of the remedy that are reasonably anticipated to ensure the remedy remains effective. (Included in Section 3.3)
- (g) A Monitoring plan. (Included in Section 3.4)
- (h) Reporting requirements. (Included in Section 3.5)
- (i) A Plan for termination of the remedial activities. (Included in Section 3.6)

### 3.1 DESCRIPTION OF TASKS AND PROCEDURES FOR MAINTAINING ENGINEERING OR INSTITUTIONAL CONTROLS

The following tasks will be required to verify that the Remedy remains in-place and is effective.

1. The existing building and associated components (roof, floor and walls) will be maintained in such a manner as to prevent or reduce precipitation from infiltrating through the soils at the Property.
2. If construction/renovation activities are conducted at the Property, preventative measures (e.g., installation of low-permeable barriers or temporary roofing, etc.) will be implemented during the activities such that precipitation will not be allowed to contact the contaminated soils.



3. If the existing building/floor slab are removed and/or damaged such that they no longer serve as an adequate engineering control, a suitable low-permeability barrier will be installed as a replacement within at most 60 days from the date such was determined.

4. Prior to any major future Property modifications that may render the remedy ineffective, the Property owner will review this Plan and make appropriate modifications only after obtaining the approval of a VAP Certified Professional and the Ohio EPA.

### **3.2 APPROACH FOR ADDRESSING POTENTIAL OPERATING PROBLEMS**

Should operating problems be encountered, such as breaches in the building roof or the concrete floor, the operating problems will be remedied within a period of no longer than 30 days after discovery. The "cap" will be visually inspected at least annually by the Owner or by designated representative of the Owner to verify its integrity is maintained. In addition, the Owner will instruct future occupants of the Property to report all such operating breaches to the Owner upon discovery so the Owner can take appropriate remedial actions.

### **3.3 MODIFICATIONS TO NORMAL OPERATION AND MAINTENANCE**

Normal operation and maintenance of the Property restrictions should not be burdensome to the Property owner. Continued use of the Property as a retail business space within the existing shopping center building is anticipated as the future use. This use is consistent with the commercial land use scenario, and therefore requires no modifications to the current operations.

Normal operations and maintenance of the Property should include routine maintenance of the building roof and floor slab. Roof replacement would also be considered a normal maintenance activity.

Modifications to the normal operations and maintenance of the Property would include major structural changes to the building which compromises the integrity of the remedy, demolition of the building on the Property, or other alterations that could potentially affect the effectiveness of the engineering control. These modifications will require written notification to the Ohio EPA at least 1 month prior to implementation of the modification.



### 3.4 MONITORING

Monitoring to verify compliance with the restrictions specified in the Environmental Covenant and the engineering control outlined herein will be performed at least annually. Monitoring for compliance with the Environmental Covenant will include a physical site visit to confirm that use of the Property is consistent with the restrictions outlined in the Environmental Covenant. Monitoring for the engineering control will consist of an inspection of the "cap" system to verify that the "cap" is in place and preventing precipitation from infiltrating the contaminated soils present below the "cap". Where the "cap" consists of the building and concrete floor slab, the inspection will include a visual assessment of the effectiveness of the roof to prevent precipitation from contacting the concrete floor, and a visual inspection of the floor for cracks and other potential breaches that could allow water to migrate through to the underlying soils. In the event that the effectiveness of the remedy is compromised such that precipitation is allowed to contact and penetrate the concrete floor, the Property owner will take corrective action to rectify the situation within a period of not more than one month from the time of discovery.

### 3.5 REPORTING REQUIREMENTS

Reporting will consist of the submittal of an annual report to Ohio EPA. Each annual report shall be submitted on or before March 1st of the following year and shall contain the following information at a minimum:

- Date on which the required inspection was conducted at the Property
- Description of the results of the inspection including photos of the "cap" and any breaches or compromises to the remedy.
- Description of all maintenance, repairs, and modifications made to the "cap" during the reporting year.
- Use of the Property relative to the restrictions outlined in the Environmental Covenant.

Any modification of the remedial system or change in this Operation and Maintenance Plan shall be reported to the Ohio EPA.



### 3.6 TERMINATION OF REMEDIAL ACTIVITIES

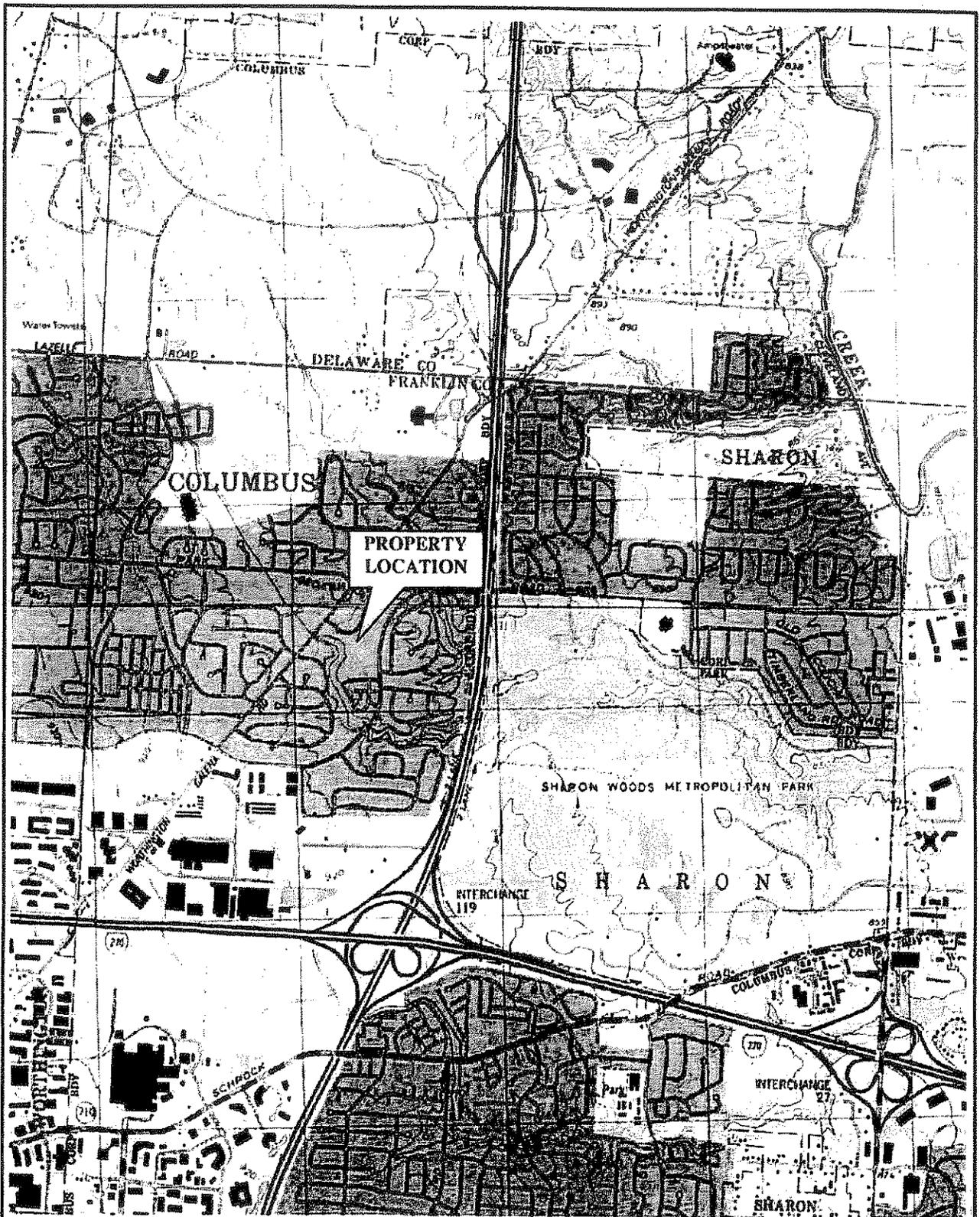
Implementation and maintenance of the engineering and institutional controls as specified in this Plan are expected to be maintained for the current and expected future use of the Property as a commercial retail business. However, if it is determined that the remedial activities are no longer needed or appropriate in order for the Property to comply with the applicable standards, termination of the remedial activities can be implemented in accordance with the procedures specified in OAC 3745-300-15(F)(1)(b).



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**FIGURES**

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Source: U.S. Geological Survey

USGS Quadrangle Coverage: Galena and Northeast Columbus, Ohio



Civil & Environmental Consultants, Inc.

Columbus, OH 43240

(614) 540-6633 1-888 598-6808

Cincinnati, OH Pittsburgh, PA Indianapolis, IN Detroit, MI Nashville, TN Chicago, IL St. Louis, MO

PROPERTY LOCATION MAP  
 SWAN CLEANERS  
 WORTHINGTON CENTRE  
 COLUMBUS, OHIO



Drawn By: CEO

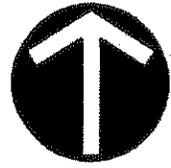
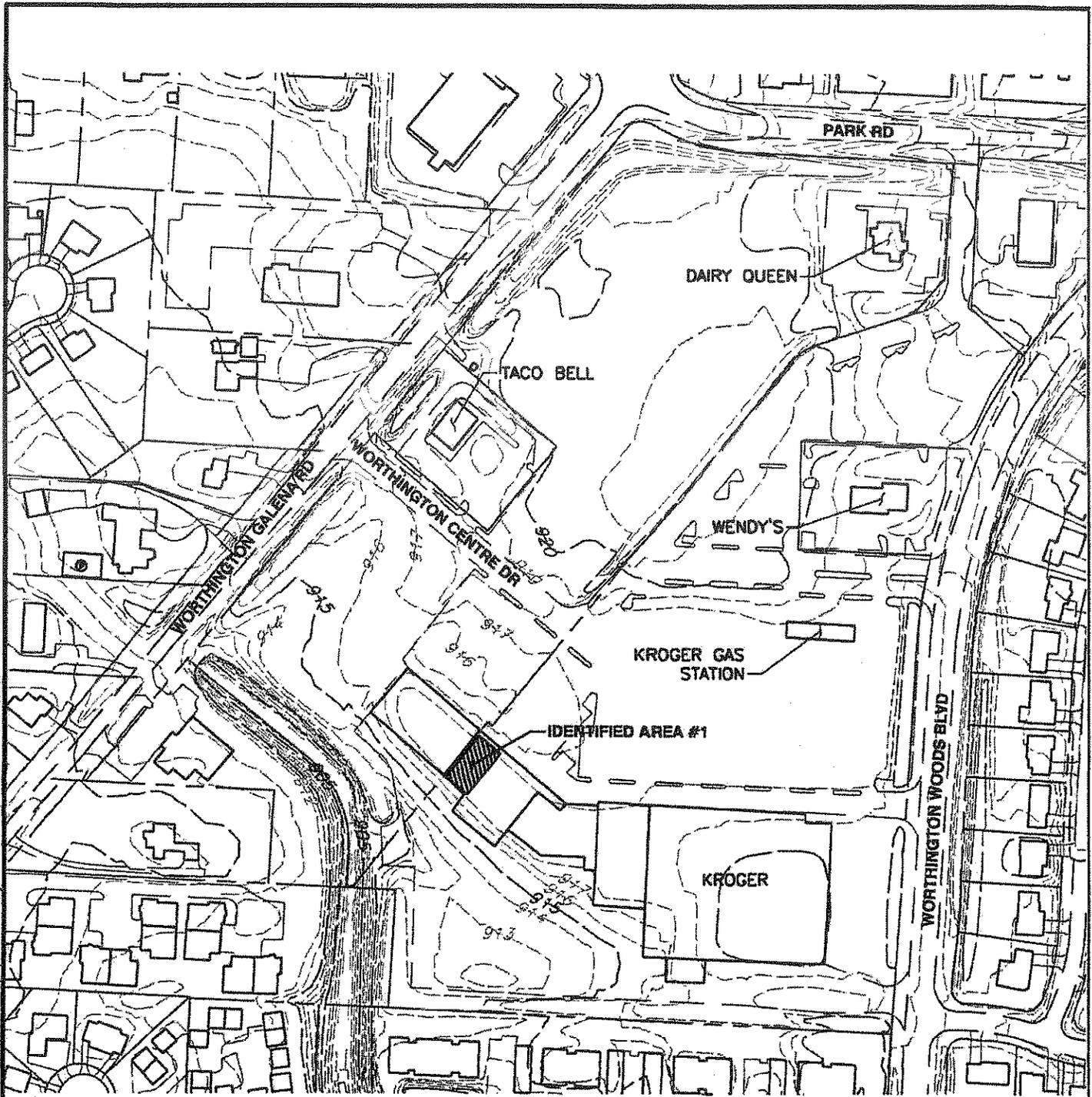
Scale: 1:24000

Date: 5/7/07

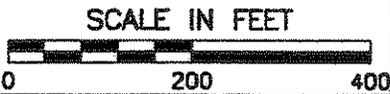
Project No.: 060597

Figure 1

G:\PROJECTS\2006\060597\DWG\EXHIBITS\O&M\060597\_FIG2.DWG\LAYOU11 (JCL\MINGCS) - JUN 25, 2010 - 14:46:38



NORTH



**Civil & Environmental Consultants, Inc.**

8740 Orion Place, Suite 100 - Columbus, OH 43240  
614-540-6633 · 888-598-6808  
www.ceclinc.com

SWAN CLEANERS  
WORTHINGTON CENTRE  
COLUMBUS, OHIO

**IDENTIFIED AREA REQUIRING  
ENGINEERING CONTROL**

DRAWN BY:	JSC	CHECKED BY:	RW	APPROVED BY:	RW	FIGURE NO.:	
DATE:	JUNE 2010	DWG SCALE:	1" = 200'	PROJECT NO:	060597		<b>2</b>

Exhibit 3



# Certificate of Deposit

Number: 112-0524197545

Issue Date: 08/19/2010

Effective Date:

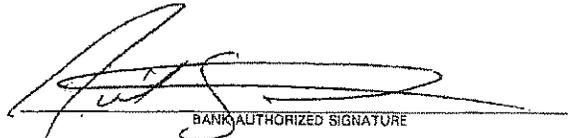
The above named bank, 12 MONTHS after the above Issue Date  
will pay \$5,000.00 plus interest thereon at the rate of  
.30 % per annum, interest will be CAPITALIZED ANNUALLY.

Maturity Date: 08/19/2011

Maturity: SINGLE

Opened at: 00152 CLINTONVILLE NORTH BC

To: WORTHINGTON PARK LLC



BANK AUTHORIZED SIGNATURE

NOT TRANSFERABLE

MEMBER F.D.I.C. SEE BELOW FOR EARLY WITHDRAWAL PENALTIES AND OTHER TERMS AND CONDITIONS

**THIS IS A RECEIPT OF BOOK ENTRY CERTIFICATE OF DEPOSIT. THIS RECEIPT IS NOT NEEDED FOR REDEMPTION.**

If this is a Multiple Maturity Certificate of Deposit, it will automatically renew for successive maturity periods of equal duration at the interest rate then in effect as determined by Bank, unless this Certificate is redeemed for payment within ten days (one day for Certificate with term of less than 32 days) after the original or any extended maturity date. Any Certificate of Deposit that does not automatically renew according to its terms will not earn interest after its stated maturity date.

Bank reserves the right to redeem this Certificate at any maturity date upon written notice to the depositor prior to the maturity date at the address appearing on the books of the Bank.

Assignment of Depositor's interest in this Certificate will be effective only when registered on the books of the issuing office of Bank. Payment of this Certificate in accordance with its terms shall be a complete discharge of Bank from any and all further liability hereunder.

Current interest rates and annual percentage yields are available at all Fifth Third Banking Centers. The interest rate will remain the same until the maturity date of the CD\*. The annual percentage yield assumes interest remains on deposit until maturity. A withdrawal of interest will reduce earnings. Interest begins to accrue on the business day of deposit. Interest will be calculated using the daily balance method. This method applies a periodic rate to the balance in the account each day.

For CDs issued in an amount less than \$100,000, 529 Plan CDs and IRA CDs (regardless of issue amount), interest is compounded continuously.

For CDs issued in an amount of \$100,000 or more and with a term greater than one month, interest is compounded and credited monthly if "Capitalized" is selected as the interest payment method. For CDs with a term of one month or less, the simple interest method is used, interest is not compounded and interest is paid at maturity. For CD terms not ending in a complete monthly period, simple interest will be paid for the last period.

Depending upon the account term and IRA federal guidelines, interest may be credited to the CD, credited to a Fifth Third checking or savings account, or received in the form of a check. If the interest payment method is by "Transfer", "Check", or "Capitalized"\*\*, interest may be credited monthly (with a principal balance of \$5,000 or more), quarterly, semi-annually, annually or at maturity (for CDs with a term of one year or less). Interest will not be paid after the maturity date unless the account is renewed. If the CD is closed before accrued interest is credited, interest will not be paid.

\*For variable rate CDs, the interest rate and annual percentage yield may change.

\*\* For CDs issued in an amount less than \$100,000, 529 Plan CDs and IRA CDs, only

This Certificate is subject to all applicable laws and regulations of the United States of America and its agencies and to the laws and regulations of the state in which the Bank is located and the rules of and regulations of Bank.

Customers are required to maintain these funds on deposit for the contracted period of time. If this deposit is withdrawn before maturity, an early withdrawal penalty will be applied as required. The penalty will be as follows:

If deposit's current term is (1) year (365 days) or more, the penalty will be equal to one half the stated interest for the remaining term of the certificate, or six (6) months interest, whichever is greater. If the deposit's current term is less than one (1) year (364 days or less) and 90 days or greater, the penalty will be equal to one half the stated interest for the remaining term of the certificate, or three (3) months interest, whichever is greater. If the deposit's current term is less than 90 days, the penalty will be one half of the stated interest for the term of the certificate, seven (7) days interest, or all interest earned, whichever is greater. Partial withdrawals are not allowed.

Early withdrawal penalty does not apply in the event of the death or the court declared incompetency of the owner and may not apply to IRA, SEP or Keogh deposits if the owner is either 59 1/2 or older, or disabled.



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

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

MAILING ADDRESS:

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

**MEMORANDUM**

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

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

**DATE:** 11/17/10

**RE:** Covenant Not to Sue Issued to Swan Super Cleaners for the Former Swan Cleaners Store # 49 Property

As Director of the Ohio Environmental Protection Agency, I certify that Swan Super Cleaners performed investigational and remedial activities at the property listed below and has been issued a covenant not to sue under the authority of Ohio Revised Code (ORC) Chapter 3746. This information is being provided in satisfaction of ORC 5709.87(B).

Property name: Former Swan Cleaners Store # 49

Property address: 1361 Worthington Centre Drive, Columbus, Ohio 43085

Property owner: Worthington Park, LLC

Property owner address: C/O Mid America Management, 1100 Eaton Center,  
1111 Superior Avenue, Cleveland, Ohio 44114

Parcel number(s): 610 – 204273 (0.039 acre - partial parcel)

County: Franklin

Taxing District: Columbus Worthington CSD

Date Covenant Not to Sue Issued: NOV 19 2010

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

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

Ohio EPA is an Equal Opportunity Employer



If additional information regarding the property or the voluntary action is required, I suggest you first contact Ronald J. Wells, the certified professional for the property, at (614) 540-6633. In the alternative, you can contact Ray Moreno with the Ohio Environmental Protection Agency at (614) 728-3833.

c: Paul Gelpi, Swan Super Cleaners,  
1535 Bethel Road, Columbus, OH 43220

William H. Staebler, Worthington Park, LLC, C/O Mid-America Management  
1100 Eaton Center, 1111 Superior Avenue, Cleveland, Ohio 44114

Ronald J. Wells, Certified Professional, Civil & Environmental Consultants, Inc.  
8740 Orion Place, Suite 100, Columbus, OH 43240

Clarence E. Mingo, II, Franklin County Auditor  
373 S. High Street, 21<sup>st</sup> Floor, Columbus, OH 43215

DERR – CO/CDO Files (#09NFA348)

ec: Tiffani Kavalec, Manager, Ohio EPA, DERR/ACRE  
Deborah Strayton, Manager, Ohio EPA, DERR/CDO  
Marty Cooper, Ohio EPA, Legal



**Civil & Environmental Consultants, Inc.**

8740 Orion Place, Suite 100 • Columbus, Ohio 43240

Phone 614.540.6633 • Fax 614.540.6638

CHICAGO, IL. • CINCINNATI, OH. • EXPORT, PA. • DETROIT, MI.  
INDIANAPOLIS, IN. • NASHVILLE, TN. • PITTSBURGH, PA. • ST. LOUIS, MO.

**DESCRIPTION OF A 0.039 ACRE TRACT  
LOCATED SOUTH OF WORTHINGTON CENTRE DRIVE AND  
WEST OF WORTHINGTON WOODS BOULEVARD  
CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO**

Situate in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 1, Township 2, Range 19, United States Military District and being part of an original 11.699 acre tract (Tract I) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062, all records herein are from the Recorder's Office, Franklin County, Ohio, said 0.039 acre tract being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at a point at the southwest corner of said original 11.699 acre tract and the southeast corner of an original 8.506 acre tract (Tract II) conveyed to Worthington Park, LLC, by deed of record in Instrument Number 200608090157062 and the northerly line of said Worthington Creek Condominium, as shown and delineated in Condominium Plat Book 32, Page 100;

Thence North 39°34'28" East, a distance of 206.94 feet, along the line common to said original 11.699 acre tract and said original 8.506 acre tract, to a point;

Thence South 50°25'32" East, a distance of 15.30 feet, over and across said original 11.699 acre tract, to the **TRUE POINT OF BEGINNING**;

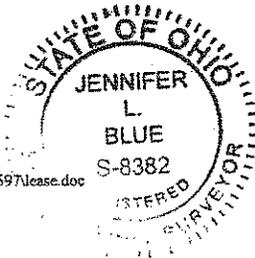
Thence the following four (4) courses and distances over and across said original 11.699 acre tract:

1. North 40°04'59" East a distance of 70.27 feet, to a point;
2. South 50°47'21" East a distance of 24.19 feet, to a point;
3. South 40°04'59" West a distance of 70.27 feet, to a point;
4. North 50°47'21" West a distance of 24.19 feet, to the **TRUE POINT OF BEGINNING**, containing 0.039 acres, more or less. Being subject to all easements, restrictions and rights-of-way of record.

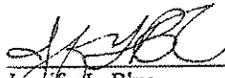
The bearings in the above description are based on the bearing of South 87°36'15" East for the centerline of Park Road, as shown in Instrument Number 20060809157062, of the Franklin County Recorder's Office, Ohio.

This description was based on record information from the Franklin County Recorders Office and an actual field survey as performed by Civil & Environmental Consultants, Inc., in October, 2008.

Civil & Environmental Consultants, Inc.



S:\Pro\2006\060597\lease.doc

  
\_\_\_\_\_  
Jennifer L. Blue Date 11-11-08  
Registered Surveyor No. S-8382

**SUBMITTAL & REVISION RECORD**

NO	DATE	DESCRIPTION
1		

**SITUAIE**

SITUAIE IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, LIVING IN QUARTER TOWNSHIP 1, RANGERS 2, RANGE 19, LANTIER STRAITS MILITARY DISTRICT AND BEING PART OF AN ORIGINAL 1 ACRE TRACT (TRACT 1) OWNED BY ANGEL DIOGOLA, LLC. RECORDS NUMBER ARE SHOWN IN THE RECORDS OFFICE, FRANKLIN COUNTY, OHIO. SAID 0.039 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS**

THE BEARINGS IN THE ABOVE DESCRIPTION ARE BASED ON THE BEARINGS OF SOUTH 87°36'15" EAST FOR THE CENTERLINE OF PARK ROAD, AS SHOWN IN INSTRUMENT NUMBER 200608090157062, OF THE FRANKLIN COUNTY RECORDERS OFFICE, OHIO.

**SURVEYOR'S CERTIFICATE**

THIS DESCRIPTION WAS BASED ON RECORD INFORMATION FROM THE FRANKLIN COUNTY RECORDERS OFFICE AND AN ACTUAL FIELD SURVEY AS PERFORMED BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC., IN OCTOBER, 2008.

*Jennifer L. Blue*  
 JENNIFER L. BLUE  
 REGISTERED SURVEYOR S.832  
 11-1-08  
 ONE

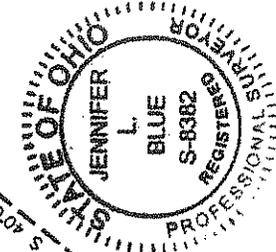
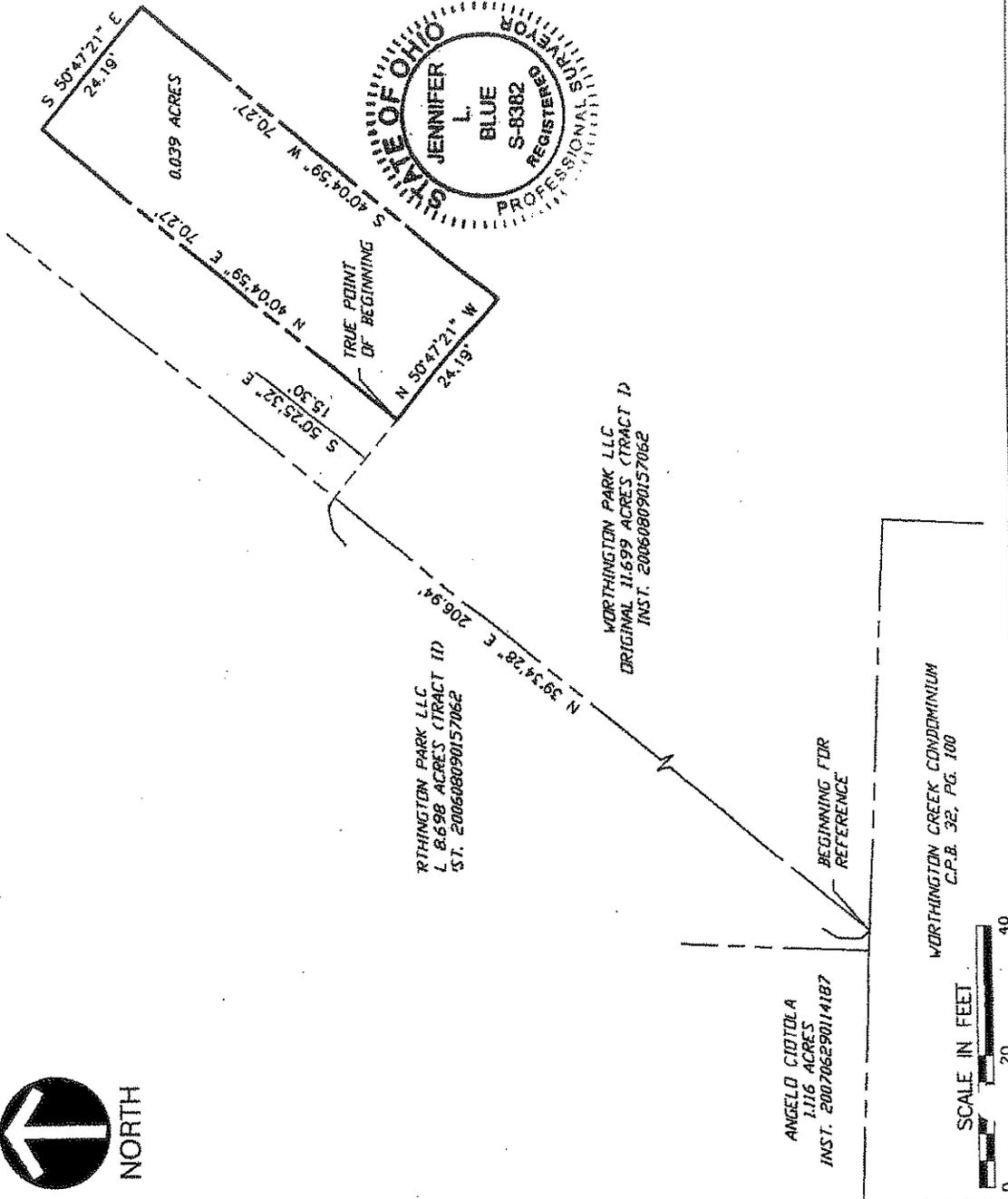


**Civil & Environmental Consultants, Inc.**  
 8740 Otton Place, Suite 100 · Columbus, OH 43240  
 614-510-8683 · 888-588-8888  
 WWW.CECINC.COM

0.039 ACRE TRACT

Situate in  
 CITY OF COLUMBUS  
 FRANKLIN COUNTY, OHIO  
 Made For  
 SWAN CLEANERS  
 BUILDING AREA  
 WORTHINGTON CENTRE DRIVE

DATE:	NOV. 2008	SCALE:	1"=20'	DRAWING NO.:	
DRAWN BY:	JMB	CHECKED BY:	JMB	JOB	
PROJECT NO.:	060-507	APPROVED BY:		JOB SHEET	1 OF 1

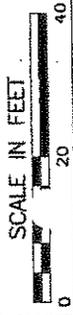


ANGEL DIOGOLA  
 1.116 ACRES  
 INST. 20070629014187

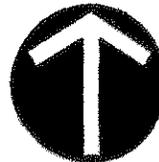
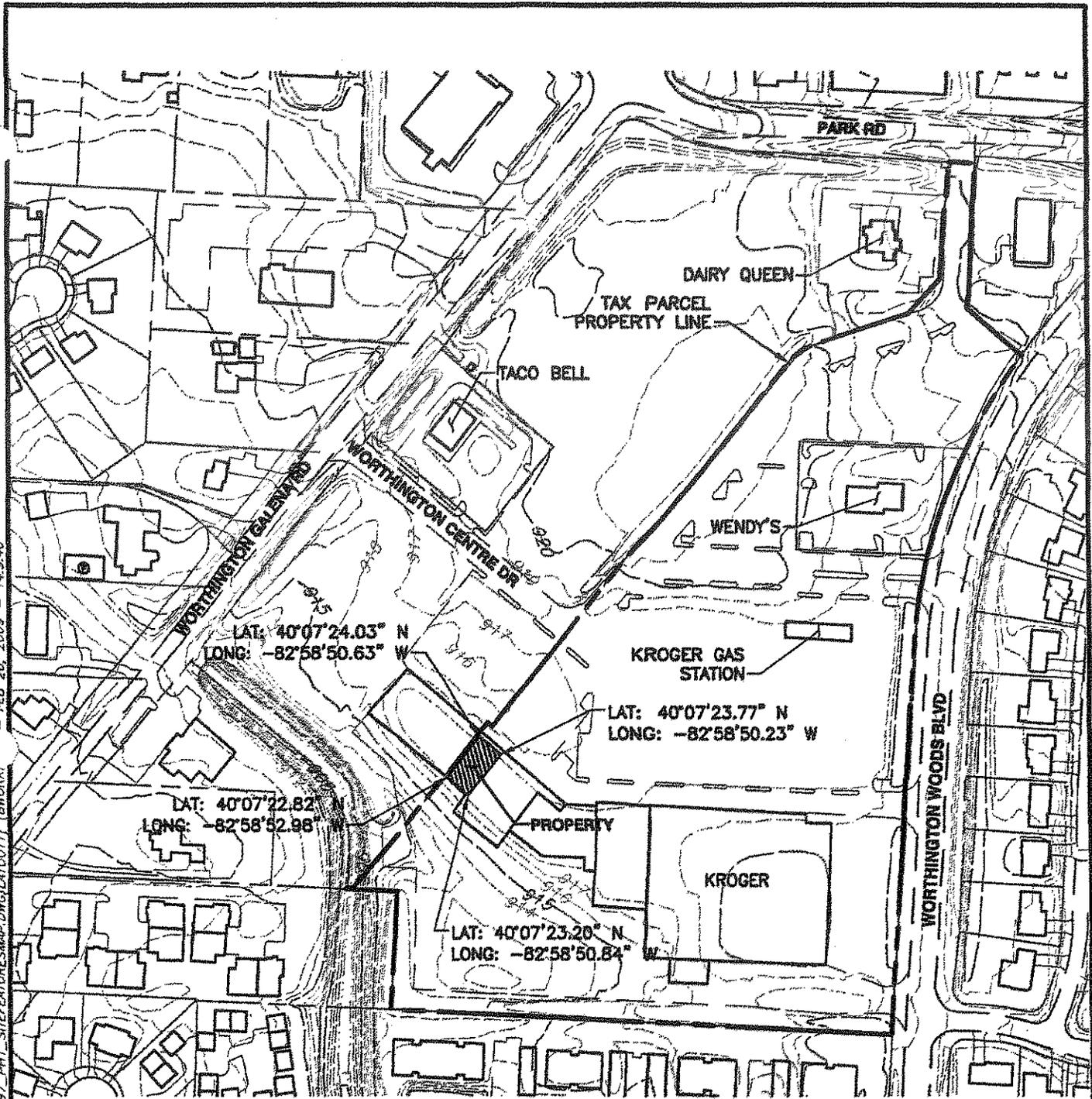
WORTHINGTON PARK LLC  
 ORIGINAL 11.699 ACRES (TRACT 1)  
 INST. 200608090157062

BEGINNING FOR  
 REFERENCE

WORTHINGTON CREEK CONDOMINIUM  
 C.P.B. 32, PG. 100

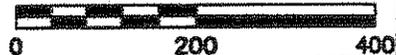


G:\PROJECTS\2009\597\DWG\EXHIBITS\PHASE 1\060597\_P11\_SITEFEATURESMAP.DWG[LAYOUT] (BW)RJK - FEB 26, 2009 - 14:9:40



NORTH

SCALE IN FEET



**Civil & Environmental Consultants, Inc.**

8740 Orion Place, Suite 100 - Columbus, OH 43240  
614-540-8633 · 888-598-6808  
www.cecinc.com

SWAN CLEANERS  
WORTHINGTON CENTRE  
COLUMBUS, OHIO

SITE FEATURES MAP

DRAWN BY:	JSC	CHECKED BY:	RW	APPROVED BY:	RW	FIGURE NO.:	
DATE:	FEB 2009	DWG SCALE:	1" = 200'	PROJECT NO:	060597		<b>2</b>