



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

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

MAILING ADDRESS:

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

CERTIFIED MAIL

July 11, 2006

Re: Environmental Covenant
City of Columbus, Ohio
Solid Waste Authority of Central Ohio
2500 Jackson Pike
Columbus, Franklin County, Ohio

Cheryl Roberto, Director
Department of Public Utilities
City of Columbus, Ohio
90 West Broad Street
Columbus, Ohio 43215

and

Michael D. Long
Solid Waste Authority of Central Ohio
6220 Young Road
Grove City, Ohio 43123

Dear Ms. Roberto and Mr. Long:

Enclosed please find the Environmental Covenant (Covenant) issued to the City of Columbus and the Solid Waste Authority of Central Ohio, Franklin County, on July 11, 2006. This Covenant will become effective when filed with the deed records maintained by the Office of the Franklin County Recorder. To that end, the second original copy of the Covenant is being returned to the attorney of record for the City of Columbus. It is the obligation of the City of Columbus, pursuant to Paragraph 15 of the Covenant, to complete the filing.

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director



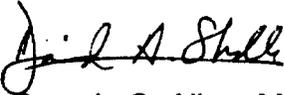
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Ohio EPA is an Equal Opportunity

Ms. Cheryl Roberto
Mr. Michael D. Long
July 11, 2006
Page 2

If you have any questions with this Covenant, do not hesitate to contact Fran Kovac, Ohio EPA Office of Legal Services, at (614) 644-2844.

Sincerely,


fr

Pamela S. Allen, Manager
Regulatory and Information Services
Division of Hazardous Waste Management

I:\USERS\SDSHARPE\FOSSENT\SWACO4.wpd

Attachments

cc: Michael A. Savage, Chief, DHWM
Ed Lim, Mgr., ERAS, DHWM
Fran Kovac, Legal
Heidi Greismer, PIC
Craig Butler, Chief, CDO
Steve Rath, Mgr., DHWM, CDO
Richard A. Pieplow, City Attorney's Office - Real Estate Division



Richard C. Pfeiffer, Jr.

CITY ATTORNEY

CITY ATTORNEY'S OFFICE • COLUMBUS OHIO

July 25, 2006

Ohio Environmental Protection Agency
Central District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
122 South Front Street
Columbus, Ohio 43215

Re: Environmental Covenant – SWACO

Dear Manager:

In accordance with the above referenced Environmental Covenant, please find enclosed a copy of the recorded instrument.

Sincerely,

Richard A. Pieplow
Real Estate Attorney

Civil Division
90 W. Broad Street
Columbus, OH 43215
614-645-7385
Fax 614-645-6949

Claims Division
90 W. Broad Street
Columbus, OH 43215
614-645-7717
Fax 614-645-2291

Prosecution Division
375 S. High Street
Columbus, OH 43215
614-645-7483
Fax 614-645-8902

Real Estate Division
109 N. Front Street
Columbus, OH 43215
614-645-7712
Fax 614-645-3913

Police Legal Advisor
120 Marconi Blvd.
Columbus, OH 43215
614-645-4530
Fax 614-645-4551

OHIO E.P.A.

JUL 11 2006



200607200142529

Pgs: 12 \$100.00 T20060853794
07/20/2006 3:52PM BXCITY ATTORN
Robert G. Montgomery
Franklin County Recorder

To be recorded with Deed
Records - ORC § 317.08

ENTERED DIRECTOR'S JOURNAL
ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the City of Columbus, Ohio, a municipal corporation, having offices at 90 West Broad Street Columbus, Ohio 43215, Franklin County, Ohio ("Owner"), the Solid Waste Authority of Central Ohio, having offices at 6220 Young Road, Grove City, Ohio 43123, ("Holder") 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, Owner is the owner of, and Holder is the operator of, certain real property consisting of a parcel of land, located at 2500 Jackson Pike, Columbus, Franklin County, Ohio, and legally described in Exhibit A hereto (collectively referred to herein as the "Property"); and

Whereas, the Administrative Record of the hazardous waste closure is maintained as the file titled "SWACO/City of Columbus Waste-to-Energy Facility," which is known by the EPA ID number OHD 986 971 968, in the Ohio EPA Central District Office, 3232 Alum Creek Drive, Columbus, Ohio 43207; and

Whereas, Holder, pursuant to a Closure Plan approved by the Director of Ohio EPA on July 13, 2000, and amended on June 20, 2001, October 15, 2001, October 24, 2001 and April 2, 2002, was required to implement the approved plan, and excavate and remove all materials/wastes in order to properly close the hazardous waste unit; and

Whereas, the implementation of appropriate use restrictions that restrict land use on the Property, and specifically the area where the hazardous waste surface impoundment and associated appurtenances is required to protect human health and the environment, based upon a human health risk assessment and an ecological risk assessment performed for the hazardous waste management units addressed in the closure plan were the subjects of this closure;

Now therefore, Owner 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 a 1.643 acre tract of real property located at 2500 Jackson Pike, in Columbus, Franklin County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").

TRANSFERRED
NOT NECESSARY
JUL 20 2006
JOSEPH W. TESTA

CONVEYANCE TAX
EXEMPT

Owner The City of Columbus, Ohio, a municipal corporation, having offices

ENVIRONMENTAL COVENANT
City of Columbus
Solid Waste Authority of Central Ohio
Ohio Environmental Protection Agency
Page 2 of 8

at 90 West Broad Street Columbus, Ohio 43215, Franklin County, Ohio ("Owner") is the owner of the Property.

4. Holder. Owner, whose address is listed above, and the Solid Waste Authority of Central Ohio, having offices at 6220 Young Road, Grove City, Ohio 43123, ("Holder"), are the holders of this Environmental Covenant.

5. Activity and Use Limitations. As part of the closure of a hazardous waste management unit, Owner hereby imposes and agrees to comply with the following activity and use limitations:

- A. The Property shall not be used for residential, commercial (other than those associated with and incidental to industrial operations) or agricultural activities, but may be used for certain industrial activities. The term "residential activities" shall include, but not be limited to, the following:
- (i) Single and multi-family dwelling and rental units;
 - (ii) Day care centers and preschools;
 - (iii) Hotels and motels;
 - (iv) Educational (except as a part of industrial activities within the Subject Property) and religious facilities;
 - (v) Restaurants and other food and beverage services (except as a part of industrial activities within the Subject Property);
 - (vi) Entertainment and recreational facilities (except as a part of industrial activities within the Subject Property);
 - (vii) Hospitals and other extended care medical facilities; and
 - (viii) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

B. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11.D. below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA

within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

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

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the 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.

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

9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

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

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT _____, or BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

The Property shall not be used for residential, commercial (other than those associated with and incidental to industrial operations) or agricultural activities, but

may be used for certain industrial activities. The term "residential activities" shall include, but not be limited to, the following:

- (a) Single and multi-family dwelling and rental units;
- (b) Day care centers and preschools;
- (c) Hotels and motels;
- (d) Educational (except as a part of industrial activities within the Subject Property) and religious facilities;
- (e) Restaurants and other food and beverage services (except as a part of industrial activities within the Subject Property);
- (f) Entertainment and recreational facilities (except as a part of industrial activities within the Subject Property);
- (g) Hospitals and other extended care medical facilities; and
- (h) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

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

11. Representations. Owner hereby represents 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 which is subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;
 - 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 hold 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.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, the Holder(s), 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 and the Holder(s) 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 Franklin County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

13. 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.

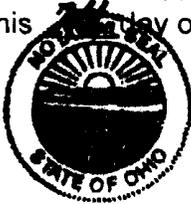
14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. 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 Franklin County Recorder's Office.

16. 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.

Before me, a notary public, in and for said county and state, personally appeared Cheryl Roberto, a duly authorized representative of the City of Columbus, Ohio who acknowledged to me that he did execute the foregoing instrument on behalf of the City of Columbus, Ohio.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ~~16th~~ day of JUNE, 2006.



RICHARD A. PIEPLOW
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Richard A. Pieplow
Notary Public

The Solid Waste Authority of Central Ohio

W. Paul Long
Signature

June 16, 2006
Date

State of OH)
County of FR) ss:

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of the Solid Waste Authority of Central Ohio, who acknowledged to me that he did execute the foregoing instrument on behalf of the Solid Waste Authority of Central Ohio.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 16 day of June, 2006

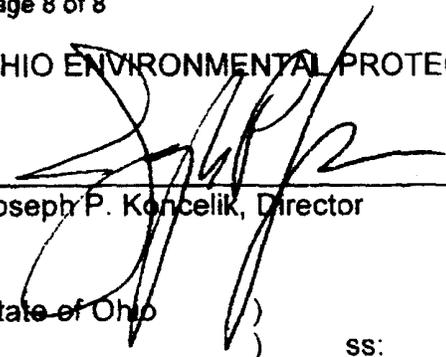
Cheryl Montoney
Notary Public



CHERYL A. MONTONEY
Notary Public, State of Ohio
My Commission Expires 07-01-07

USE RESTRICTION AGREEMENT
City of Columbus
Solid Waste Authority of Central Ohio
Ohio Environmental Protection Agency
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OHIO ENVIRONMENTAL PROTECTION AGENCY



Joseph P. Koncelik, Director

July 11, 2006

Date

State of Ohio)
)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Joseph P. Koncelik, 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 30th day of June, 2006.


Charma Diane Casteel

Notary Public

**CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
MAY 10, 2009**

This instrument prepared by:

Frances M. Kovac, Esq.
Ohio Environmental Protection Agency
122 South Front Street
Columbus, OH 43215

EXHIBIT A
DESCRIPTION OF AN
EASEMENT AREA

Situate in the State of Ohio, County of Franklin, Township of Jackson, and being located in Virginia Military Survey number 4312, and being a part of a 52.087 acre tract as described in a deed to the City of Columbus of record Deed Book 3738 Page 791, all records on file at the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Commencing for reference at an iron pin set at a southerly corner of the said 52.087 acre tract, being also in the northeasterly line of a 185.198 acre tract as described in a Special Warranty Deed to Columbus Limestone, Inc. of record Instrument Number 200206250156219;

Thence North $56^{\circ}25'30''$ West, along a southwesterly line of the said 52.087 acre tract, and along a northeasterly line of the said 185.198 acre tract, a distance of 226.83 feet;

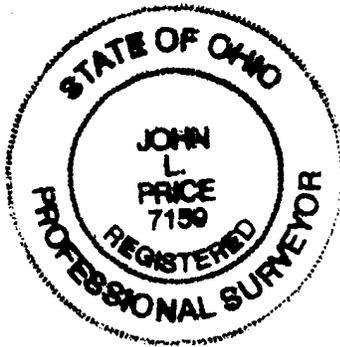
Thence North $33^{\circ}34'30''$ East, into the said 52.087 acre tract, a distance of 24.70 feet to the **True Place of Beginning** of the herein described tract;

Thence crossing the said 52.087 acre tract by the following eleven (11) described course:

- 1) North $33^{\circ}34'30''$ East, a distance of 125.00 feet to an angle point;
- 2) South $71^{\circ}58'58''$ East, a distance of 70.00 feet to an angle point;
- 3) North $61^{\circ}07'45''$ East, a distance of 70.00 feet to an angle point;
- 4) South $55^{\circ}38'41''$ East, a distance of 20.00 feet to an angle point;
- 5) North $34^{\circ}21'19''$ East, a distance of 180.00 feet to an angle point;
- 6) North $56^{\circ}34'35''$ West, a distance of 200.00 feet to an angle point;
- 7) North $33^{\circ}25'25''$ East, a distance of 95.00 feet to an angle point;
- 8) South $56^{\circ}34'35''$ East, a distance of 164.34 feet to a point of curvature;
- 9) Along the arc of a curve to the right with a radius of 135.00 feet, a central angle of $90^{\circ}55'54''$, an arc length of 214.25 feet to a point of tangency, said arc being subtended by a chord bearing South $11^{\circ}06'38''$ East, a chord length of 192.46;
- 10) South $34^{\circ}21'19''$ West, a distance of 126.62 feet to a point of curvature;

11) Along the arc of a curve to the right with a radius of 220.00 feet, a central angle of $89^{\circ}13'11''$, an arc length of 342.58 feet to the True Place of Beginning containing 1.643 acres, said arc being subtended by a chord bearing South $78^{\circ}57'54''$ West a chord length of 309.00 feet;

The bearings described herein are based on the bearing of North $33^{\circ}34'30''$ East along the centerline of State Route 104 (Jackson Pike), as delineated on the centerline plat for FRA-104-(2.73-7.64). The above described description was prepared by ms consultants, inc. for the City of Columbus based on a field survey performed by ms consultants, inc. as well as previous private surveys.



ms consultants, inc.

John L. Price 6/30/05
John L. Price
Registered Professional Surveyor No. 7159



ms consultants, inc.

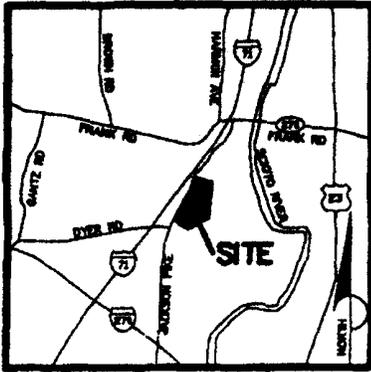
1000 SCHROCK ROAD, COLUMBUS, OHIO 43260

PHONE (614) 898-7100

FAX (614) 898-7157

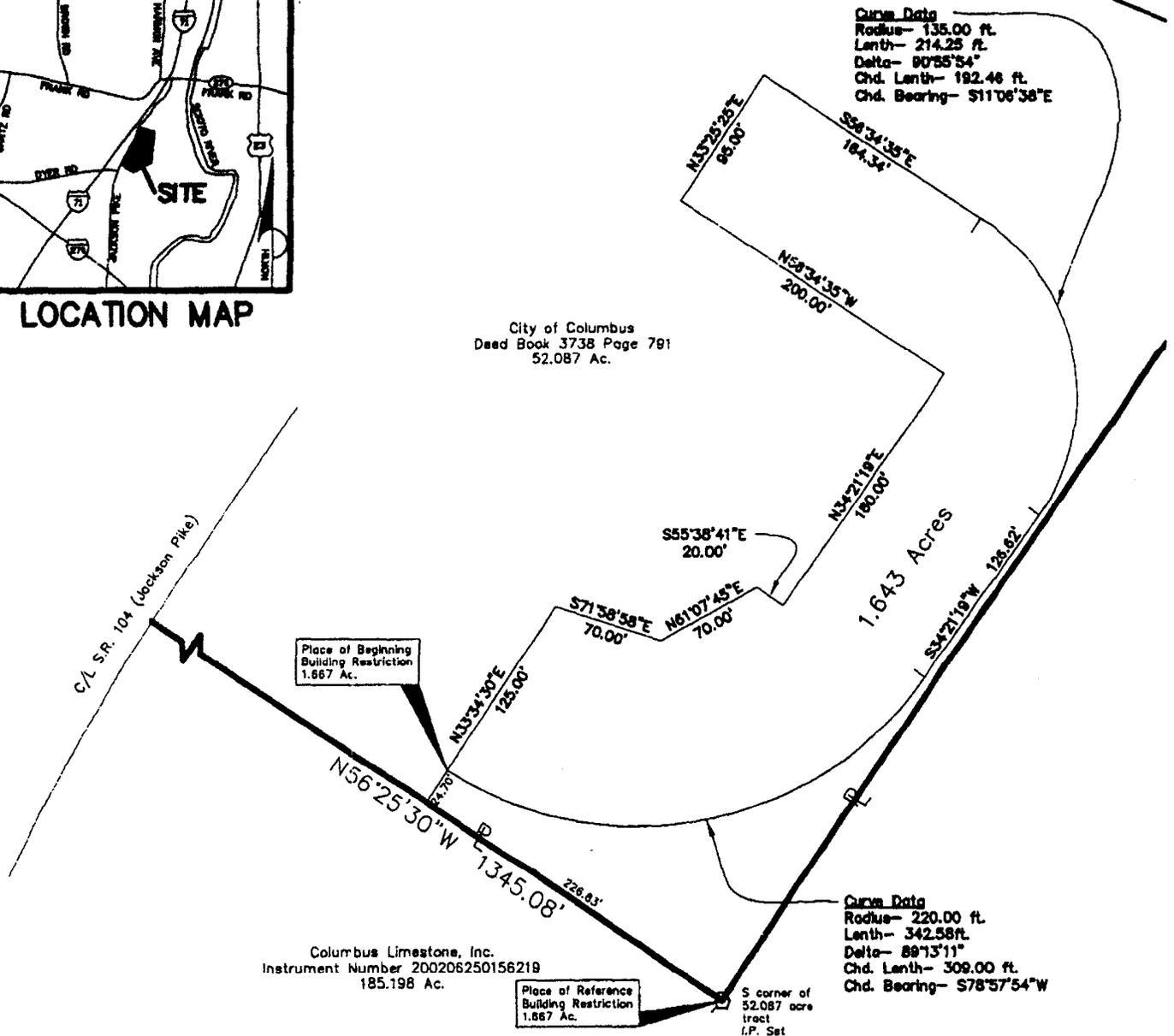
Situate in the State of Ohio, County of Franklin, Township of Jackson and being located in Virginia Military Survey Number 4312, being a Easement Area located in that 52.087 acre tract as described in a Deed to the City of Columbus, as recorded in Deed Book 3738 Page 791, all references to records herein are on file in the Recorder's Office, Franklin County, Ohio, said Building Restriction being more particularly described as follows

Easement Exhibit



LOCATION MAP

City of Columbus
Deed Book 3738 Page 791
52.087 Ac.



Curve Data
Radius- 135.00 ft.
Lenth- 214.25 ft.
Delta- 90°55'34"
Chd. Lenth- 182.48 ft.
Chd. Bearing- 511°06'38"E

Curve Data
Radius- 220.00 ft.
Lenth- 342.58ft.
Delta- 89°13'11"
Chd. Lenth- 309.00 ft.
Chd. Bearing- S78°57'54"W

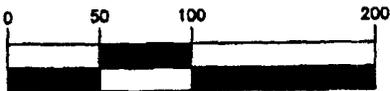
Columbus Limestone, Inc.
Instrument Number 200206250156219
185.198 Ac.

Place of Reference
Building Restriction
1.667 Ac.

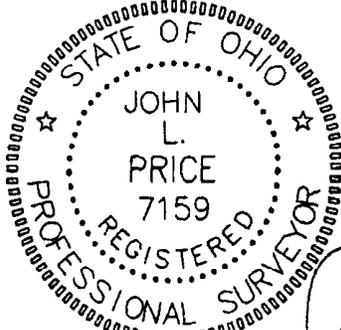
S corner of
52.087 acre
tract
I.P. Set



GRAPHIC SCALE



(IN FEET)



We hereby certify that the foregoing easement exhibit was prepared from an actual field survey of the premises in August, 2004 by ms consultants, inc. under the direct supervision of John L. Price, Registered Professional Surveyor No. 7159.

ms consultants, inc.

John L. Price 6/30/05
John L. Price
Registered Professional Surveyor No. 7159

EXHIBIT "B"

1. Solid Waste Authority of Central Ohio.
Lease agreement between the City of Columbus, Ohio, "Lessor", and the Solid Waste Authority of Central Ohio, "Lessee". Memorandum of Lease recorded April 20, 1993 in Official Records Volume 22340, Page C-16, Recorder's Office, Franklin County, Ohio.

2. American Aggregates Corporation, an Ohio corporation, or its successors and assigns.
American Aggregates Corp. is holder of certain easements pursuant to the reservation of easements in a Warranty Deed from American Aggregates Corp. to the City of Columbus, Ohio, recorded July 17, 1979 in Deed Book Volume 3738, Page 791, Recorder's Office, Franklin County, Ohio.