

RESOLUTION NO. 28 -2010

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A STORMWATER DRAINAGE FACILITIES MAINTENANCE AGREEMENT WITH ISTAR CTL COLUMBIA-RICHFIELD LLC

WHEREAS, in connection with the development of property for FedEx Ground Package Systems, Inc., it is necessary to enter into a Stormwater Drainage Facilities Maintenance Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Stormwater Drainage Facilities Maintenance Agreement with iStar CTL Columbia-Richfield LLC, a copy of which Agreement is attached hereto as Exhibit A and incorporated herein fully as if by reference.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: July 20, 2010

John Costello
President of Council

William J. Malone
Mayor

Dated: 7/20/2010

ATTEST:
Carolyn E. Sullivan
Clerk of Council

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6-15-2010 5 p.m.

Resolution 28-2010
EXHIBIT A

**AFTER RECORDING
RETURN TO:**

This space for Recorder's use only

STORMWATER DRAINAGE FACILITIES
MAINTENANCE AGREEMENT
BETWEEN

VILLAGE OF RICHFIELD,
an Ohio municipal corporation

AND

iSTAR CTL COLUMBIA-RICHFIELD LLC,
a Delaware limited liability company

DATED: _____, 2010

STORMWATER DRAINAGE FACILITIES MAINTENANCE AGREEMENT

THIS STORMWATER DRAINAGE FACILITIES MAINTENANCE AGREEMENT (this "Agreement") is made this _____ day of _____, 2010 by and between the Village of Richfield, an Ohio municipal corporation (the "Village") and iSTAR CTL Columbia-Richfield LLC, a Delaware limited liability company (together with its successors and assigns, the "Owner").

SECTION 1. RECITALS

A. The Owner is the record owner of certain real property within the Village, all as depicted on the drawings attached hereto as Exhibit "A" and as legally described on Exhibit "B" (the "Property").

B. The Property has been improved with a building and surrounding paved parking areas for use as a distribution terminal (the "Development"), and will be further expanded to provide additional building space and additional parking areas (the "Expansion").

C. As a condition of granting the necessary permits to construct the Expansion, the Village and Summit County, Ohio have required the Owner to execute this Agreement for the maintenance of stormwater drainage facilities (the "Facilities") installed or to be installed on the Property in the locations designated on Exhibit "A".

SECTION 2. FACILITIES

- A. **Installation.** At its sole cost and expense Owner will design and install the Facilities on the Property in such a manner that they have sufficient size, capacity and components to provide stormwater drainage, management and post-construction permanent water quality service to the Property.
- B. **Ownership, Repair, Maintenance and Replacement.** Owner will own the Facilities, maintain them in strict conformance with this Agreement and the ordinances of the Village, and perform such work as may be necessary to maintain, preserve, restore or rehabilitate the Facilities, and any portion thereof, in good condition and repair, to ensure that the Facilities operate in a safe and functional manner, all as set forth in the schedule attached hereto as Exhibit "C". All activities relating to the design, installation, maintenance, preservation, restoration or rehabilitation of the Facilities are collectively referred to as the "Work".
- C. **Contracting for Work.** At its sole cost and expense the Owner will enter into one or more contracts with one or more qualified third parties to perform the Work, including, but not limited to a tenant occupying the Property. The parties acknowledge that FedEx Ground Package System, Inc. ("FedEx") is the tenant of the Property at the time of this Agreement, and notwithstanding anything to the contrary contained herein, FedEx shall be permitted to perform the Work on behalf of the Owner.

SECTION 3. NATURE, SURVIVAL AND TRANSFER OF OBLIGATION

Owner will record this Agreement in the Recorder's Office of Summit County, Ohio, all at Owner's sole cost and expense. This Agreement shall run with the land and shall inure to the benefit of and be enforceable by the Village, the Owner and any of their respective successors or assigns, tenants or representatives.

SECTION 4. ENFORCEMENT

The parties may enforce this Agreement and compel performance of its terms and provisions in any court of competent jurisdiction; however, Owner waives any right it may have to seek or recover a judgment for monetary damages against the Village or individually against any of the Village's elected or appointed officials, officers, employees, agents, representatives for breach of this Agreement, except in the case of fraud or criminal actions by any of the foregoing entities. Notwithstanding the foregoing, should either party substantially prevail against the other in any judicial or quasi-judicial proceeding, the prevailing party is entitled to reimbursement from the other of all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with the judicial proceedings.

SECTION 5. GENERAL PROVISIONS

- A. **Compliance with Laws.** Each party warrants that it shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations ("Legal Requirements") relating to the Work and the Facilities.
- B. **Notice:** Any notice or communication required or permitted to be given under this Agreement must be in writing and must be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified U.S. mail, return receipt requested or (iv) by facsimile. Notice by facsimile is valid only if actually received by the addressee and is followed by delivery of actual notice via methods (i), (ii) or (iii) above within three (3) business days thereafter. Unless otherwise expressly provided in this Agreement, notice is deemed received on the earlier of (a) actual receipt, (b) one business day after depositing with an overnight courier as evidenced by receipt of deposit, or (c) three (3) business days after depositing in the U.S. mail, as evidenced by a return receipt. Either party may change its notice address by sending notice to the other in accordance with this paragraph 5.B. Notices shall be addressed as follows:

To the Village:

The Village of Richfield
4410 West Streetsboro Road
P.O. Box 387
Richfield, OH 44286

With a copy to:

Summit Soil & Water Conservation District
2795 Front Street, Suite D
Cuyahoga Falls, OH 44221
Attention: Cindy Fink, District Administrator

To the Owner:

iStar CTL Columbia-Richfield LLC
c/o iStar Financial, Inc.
3480 Preston Ridge Road, Suite 575
Alpharetta, GA 30005
Attention: Senior Vice President, Asset Management

iStar CTL Columbia-Richfield LLC
c/o iStar Financial, Inc.
1114 Avenue of the Americas, 38th Floor
New York, NY 10036
Attention: Treasurer

With a copy to:

iStar CTL Columbia-Richfield LLC
c/o iStar Financial, Inc.
1114 Avenue of the Americas, 38th Floor
New York, NY 10036
Attention: General Counsel

And

FedEx Ground Package System, Inc.
1000 FedEx Drive
Moon Township, PA 15108
Attention: Managing Director, Environmental Services

- C. **Time is of the Essence.** Time is of the essence in the performance of the Agreement.
- D. **Entire Agreement; Effect of Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.
- E. **Non-Waiver.** The Village is under no obligations to exercise any of its rights granted in the Agreement, but the Village's failure to exercise any right shall not waive that right, nor void or effect the Village's right to enforce that right or any other right granted in this Agreement.
- F. **Governing Law.** This Agreement is governed by and enforceable in accordance with the laws of the State of Ohio, without regard to its conflicts of laws rules.
- G. **Exhibits.** Exhibits "A", "B" and "C" (collectively, the "Exhibits") attached to this Agreement are, by this reference incorporated into and made part of this Agreement as though set forth in detail. In any conflict between this Agreement and the Exhibits, the text of this Agreement shall prevail.
- H. **Amendments and Modifications.** No amendment or modification of this Agreement shall be effective and enforceable unless and until reduced to writing and approved by and executed on behalf of the parties hereto in accordance with all Legal Requirements.
- I. **Authority.** The Village, and the persons executing this Agreement on behalf of the Village, hereby warrant and represent to the Owner that they have been properly authorized to do so, and their signatures shall be binding upon the Village even if such persons were later discovered to have been acting without authority. The person executing this Agreement on behalf of the Owner warrants and represents to the Village that (i) Owner is the owner of record of fee simple title to the Property; (ii) he or she has full and complete right, power and authority to execute this Agreement, to agree to the terms, provisions and conditions set forth herein and to encumber the Property as set forth in this Agreement; (iii) all legal actions required to authorize him or her to execute this Agreement have been taken; and (iv) neither the execution of this Agreement nor the performance of the obligations assumed by the Owner will result in a breach or default under any agreement to which the Owner is a party or to which it or the Property is bound.
- J. **Severability.** If any provision of this Agreement or its application to any person, entity or property is held to be invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and their validity, enforceability and application to any person, entity or property shall not be impaired thereby, and shall be interpreted, applied and enforces so as to achieve, as near as possible, the purpose and intent of this Agreement to the greatest extent permitted by law.
- K. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person or entity will be valid against the Village or the Owner.

6-15-2010 5 p.m.

Resolution 28-2010
EXHIBIT A

- L. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original document and together shall constitute the same instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the Effective Date set forth first above.

VILLAGE:

VILLAGE OF RICHFIELD
an Ohio municipal corporation

By: _____
Michael K. Lyons, Mayor
Pursuant to Ordinance No. _____
Passed: _____

and

APPROVED AS TO FORM:

By: _____
Charles T. Riehl, Law Director
Village of Richfield

By: _____
Eleanor Lukovics, Finance Director

OWNER:

iSTAR CTL COLUMBIA-RICHFIELD LLC
a Delaware limited liability company

ATTEST/WITNESS:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

CONSENT

The undersigned hereby consents to the foregoing agreement.

FEDEX GROUND PACKAGE SYSTEMS, INC.

By: _____
Name: _____
Its: _____

STATE OF OHIO)
)
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said County and State, personally appeared the above-named VILLAGE OF RICHFIELD, an Ohio municipal corporation, by Michael K. Lyons, its Mayor, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said municipal corporation and his free act and deed individually and in the capacity indicated.

IN WITNESS WHEREOF, I hereunto have set my hand and seal at _____ this _____ day of _____, 2010.

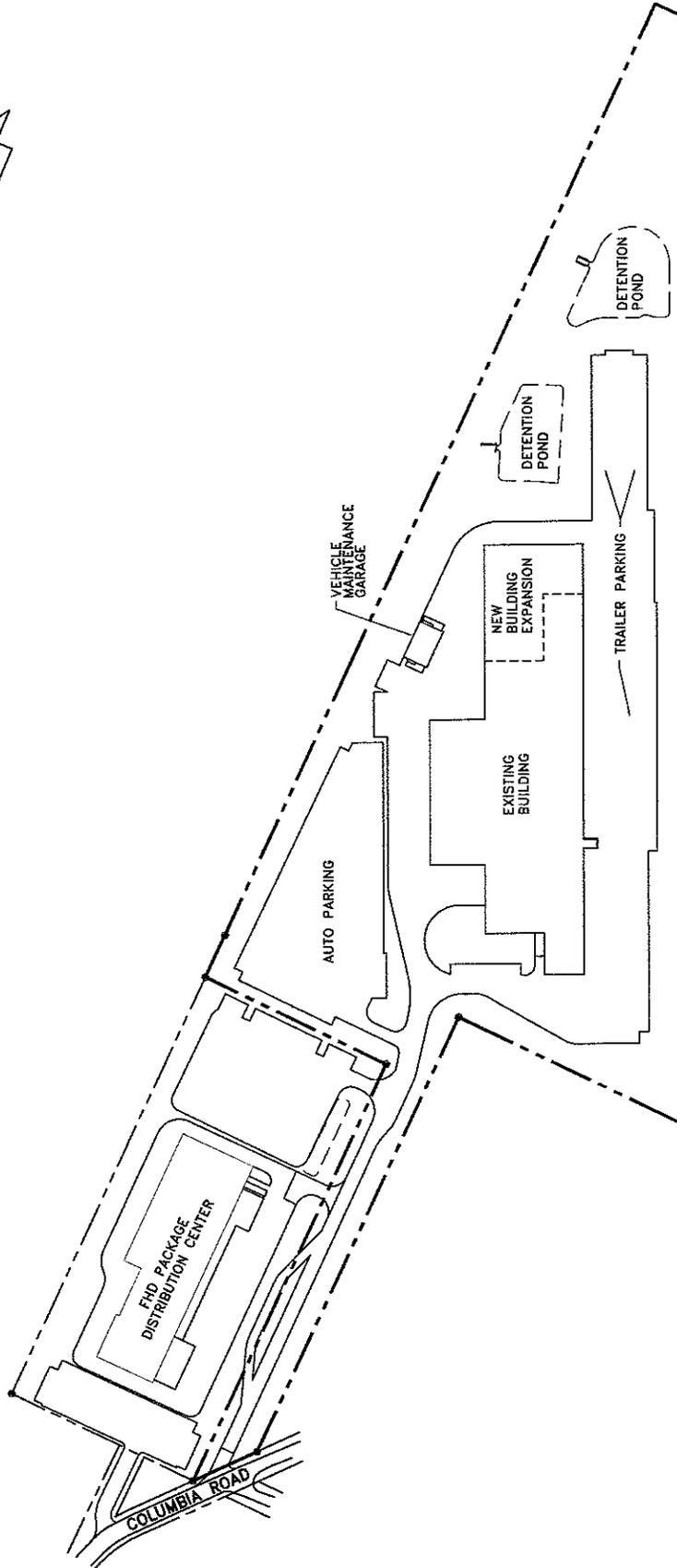
Notary Public
My commission expires: _____

STATE OF OHIO)
)
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above-named VILLAGE OF RICHFIELD, an Ohio municipal corporation, by Eleanor Lukovics, its Finance Director, who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said municipal corporation and her free act and deed individually and in the capacity indicated.

IN WITNESS WHEREOF, I hereunto have set my hand and seal at _____ this _____ day of _____, 2010.

Notary Public
My commission expires: _____



FedEx
Ground

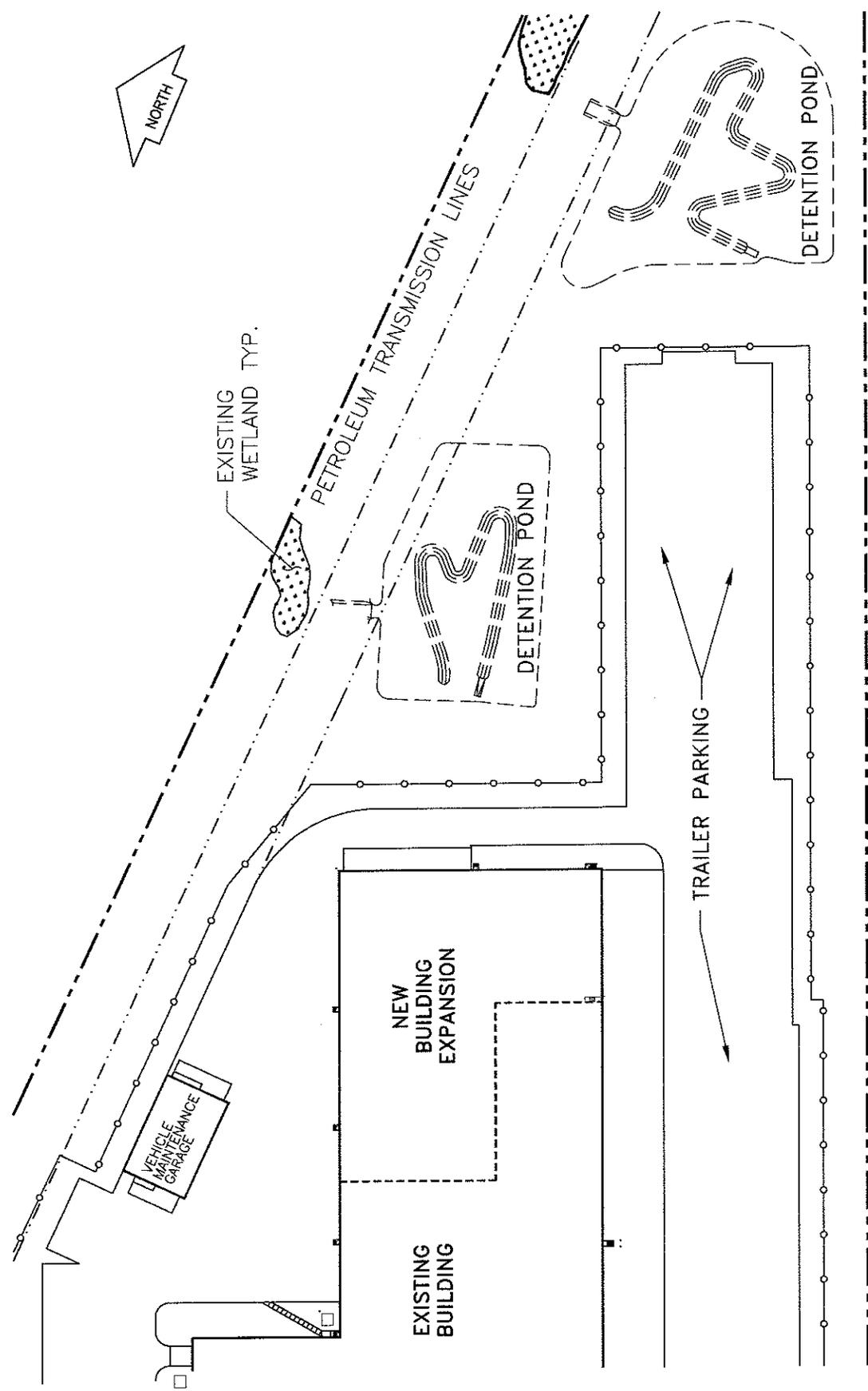
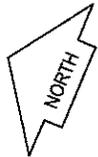
FACILITIES & MATERIAL HANDLING SYSTEMS 1000
FedEx Drive Moon
Towanso, PA 15108
412/265-1000

EXHIBIT "A" DRAWING OF PROPERTY

Project: SER
Date: 9-03-10
Drawing Type: General
Scale: 1"=300'-0"

Order Number: 441-Y-109

Revision:



FedEx Ground

FACILITIES & MATERIAL HANDLING SYSTEMS 1000
 8485 Drive Mason Township, PA 15038
 412/289-1000

DATE: 7-23-10
 DRAWING NUMBER: 441-Y-108
 SHEET: 1-120-0

LEGAL DESCRIPTION

Situated in the Village of Richfield, County of Summit and State of Ohio and known as being part of Block "F" in the Friedman Industrial Park Allotment of Part of Original Richfield Township Lot 14, Tract 5, as shown by the recorded Plat in Volume 67, Pages 63-65 of Summit County Plat Records, and part of Original Richfield Township Lots 14 and 15, Tract 5, and bounded and described as follows:

Beginning at the Northwesterly corner of said Original Lot 14, said point being in the Summit County/Cuyahoga County line;

Thence South 02 deg. 51' 17" West along the Westerly line of said Original Lot 14, 438.56 feet to its intersection with the Northeasterly line of Columbia Road, 60 feet wide, and the principal place of beginning of the parcel herein described, and from which point a 5/8 inch iron pin found bears South 02 deg. 51' 17" West, 0.13 feet, South 87 deg. 58' 43" East, 0.08 feet;

Thence South 87 deg. 58' 08" East along the Southerly line of Block "E" in said Friedman Industrial Park Allotment, being also the Southerly line of a parcel of land conveyed to Eott Energy OP by deed recorded in Volume 1654, Page 33 of the Official Records of Summit County, 994.28 feet to its intersection with the Easterly line of said land so conveyed, and from which point a 5/8 inch iron pin bears North 87 deg. 58' 08" West, 0.05 feet, North 02 deg. 01' 52" East, 0.39 feet;

Thence North 02 deg. 51' 17" East along the Easterly line of said Block "E" and said land conveyed to Eott Energy OP, 438.56 feet to its intersection with the Summit County/Cuyahoga County line, and from which point a 5/8 inch iron pin bears North 02 deg. 51' 17" East, 0.34 feet, North 87 deg. 08' 43" West, 0.03 feet;

Thence South 87 deg. 58' 08" East along the Northerly line of Summit County, 99.94 feet to an iron pin found at its intersection with the Westerly line of Original Lot 15, and from which point a 5/8 inch iron pin bears North 02 deg. 00' 17" East, 0.34 feet, South 87 deg. 59' 43" East, 0.15 feet;

Thence South 87 deg. 59' 43" East along the Northerly line of Summit County, 2,219.75 feet to its intersection with a Westerly line of the remainder of a parcel of land conveyed to the Cleveland Electric Illuminating Company by deed recorded in Volume 4703, Page 152 of Summit County Records, and from which point a 5/8 inch pin bears North 02 deg. 00' 17" East, 0.95 feet, South 87 deg. 59' 43" East, 0.19 feet;

Thence South 02 deg. 00' 17" West along said Westerly line of the remainder of said land conveyed to the Cleveland Electric Illuminating Company, 60.42 feet to its intersection with the Northwesterly line of the remainder of said land so conveyed, and from which point a 5/8 inch iron pin bears North 02 deg. 00' 17" East, 0.81 feet, South 87 deg. 59' 43" East, 0.24 feet;

Thence South 66 deg. 51' 31" West along the Northwesterly line of the remainder of said land conveyed to the Cleveland Electric Illuminating Company and its Southwesterly prolongation,

2403.33 feet to its intersection with the Easterly of a parcel of land conveyed to Bath Development Co. by deed recorded in Volume 2325, Page 1072 of the Official Records of Summit County, and from which point a 5/8 inch iron pin bears North 02 deg. 51' 17" East, 0.05 feet, South 87 deg. 08' 43" East, 0.22 feet;

Thence North 02 deg. 51' 17" East along the Easterly line of said land conveyed to Bath Development Co., 543.18 feet to its intersection with the Northerly line of said land so conveyed, and from which point a 5/8 inch iron pin bears North 02 deg. 51' 17" East, 0.07 feet, South 87 deg. 08' 43" East, 0.23 feet;

Thence North 87 deg. 58' 08" West along the Northerly line of said land conveyed to Bath Development Co. and its Westerly prolongation, 1,037.20 feet to its intersection with the Southeasterly prolongation of the Northwesterly line of Columbia Road, from which point a 5/8 inch iron pin bears South 02 deg. 01' 52" West, 0.02 feet, South 87 deg. 58' 08" East, 0.16 feet;

Thence North 47 deg. 09' 48" West along the Southeasterly prolongation of the Northeasterly line of Columbia Road and along said Northeasterly line, 153.02 feet to the principal place of beginning and containing 32.4489 acres of land according to a survey by the North Coast Engineering and Surveying Co., Inc. in July of 1999, be the same more or less, but subject to all legal highways.

The courses used in this description are referenced to an assumed meridian and are used to indicate angles only.

EXHIBIT "C"**Maintenance Schedule**

EASTERN AND WESTERN DETENTION BASIN MAINTENANCE SCHEDULE	
SCHEDULE	ACTIVITY
MONTHLY	CLEAN TRASH AND DEBRIS FROM OUTLET STRUCTURE
BI-MONTHLY	MOW BASIN EMBANKMENT
ANNUALLY	INSPECT EMBANKMENT AND OUTLET CONTROL STRUCTURE FOR DAMAGE AND PROPER FLOW. REMOVE WOODY VEGETATION AND FIX ANY ERODING AREAS. MONITOR SEDIMENT ACCUMULATION IN FOREBAY AND MICROPOOL. REMOVE SEDIMENT FROM FOREBAY AND MICROPOOL WHEN STORAGE VOLUME HAS BEEN REDUCED BY 50%.
15+20 YEARS	MONITOR SEDIMENT ACCUMULATION IN MAIN BASIN POOL. REMOVE SEDIMENT WHEN POOL VOLUME HAS BEEN REDUCED NOTICEABLY.