IN THE SUPREME COURT OF OHIO

STATE EX REL. GERALD O.E. NICKOLI AND ROBIN L.B. NICKOLI, ET AL.,	:	
	:	Case No. 09-0026
Relators,	:	
v.	:	
ERIE METROPARKS, et al.,	:	
Respondents.	:	

RELATORS' MEMORANDUM IN SUPPORT OF THEIR COMPLAINT FOR A WRIT OF MANDAMUS

Relators respectfully request that this Court issue a Writ of Mandamus compelling Respondents Erie MetroParks and Erie MetroParks Board of Commissioners (collectively, "Respondents" or "Erie MetroParks") to commence appropriation proceedings to compensate Relators for the physical seizure and occupation of land owned by Relators (the "Property").

STATEMENT OF THE CASE

The Relators' Property is situated along a 6.5 mile strip or corridor of land that Respondents have taken, without right or title and without commencing appropriation proceedings or paying just compensation to Relators for the taking of their property, and developed as a public hiking and biking trail. *See* Exs. A-1 through A-12 (deeds of property owned by Relators). The Relators' unencumbered ownership of their respective Property was conclusively established in prior litigation between Respondents and Relators (the "*Key Trust*

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

Litigation"),[1] which this Court, in *State ex rel. Coles v. Granville*, 2007-Ohio-6057 (attached hereto as Ex. B), held had a preclusive effect concerning the Relators' ownership of their respective Property.

However, notwithstanding the aforementioned decisions, and in contravention of this Court's specific Writ of Mandamus issued in *Coles*, Respondents continue to occupy Relators' Property, without commencing appropriation proceedings or compensating Relators for their Property as required by the Ohio and United States Constitutions. More than nine years have passed since Erie MetroParks appropriated the Relators' Property. More than nine years have passed in which Erie MetroParks has wrongfully benefited from its unlawful refusal to pay the Relators just compensation. Relators respectfully ask this Court for a Writ of Mandamus requiring Erie MetroParks to satisfy Relators' constitutional right to just compensation.

STATEMENT OF FACTS

A. The *Key Trust* and *Coles* Litigation

1. Right-of-Way Ownership History

The State of Ohio chartered the Milan Canal Company in 1827; the Milan Canal Company constructed and operated a canal in and around Milan, Ohio. *See Coles*, 2007-Ohio-6057, at ¶ 2. Portions of the canal corridor were acquired by deeds from two landowners named Ebeneser Merry and Kneeland Townsend (the "Merry and Townsend Tracts") (*See* Exs. E-F). In 1881, after the Milan Canal Company ceased operating, it leased to the Wheeling and Erie Railroad property owned by the Milan Canal Company. The lease was for 99 years. In 1980, the lease was renewed for a second 99-year term.

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[1] *See Erie MetroParks Bd. of Comm'rs v. Key Trust Co. of Ohio, N.A.* (6th Dist. 2001), 145 Ohio App.3d 782 ("*Key Trust I*"); *Bd. of Park Comm'rs v. Key Trust Co. of Ohio* (6th Dist. 2002), 2002 WL 31054032, 2002-Ohio-4287 ("*Key Trust II*") (collectively, "*Key Trust* Litigation") (attached hereto as Exs. C and D).

In 1904, the Milan Canal Company was dissolved. Its assets were purchased by Stephen Lockwood, whose interests eventually devolved to a testamentary trust and its trustee, Key Trust Company of Ohio ("Key Trust"). *See Coles*, 2007-Ohio-6057, at ¶ 3.

In 1999 and 2000, Key Trust deeded all its interests in any and all Canal Company property to, among others, Relators Richard Rinella and Carol Rinella and to Buffalo Prairie, Ltd., a corporation organized to administer the Canal Company's lands. *See* Exs. G and A-12 (deeds of Buffalo Prairie Ltd. and Rinellas). The deeds from Key Trust reserved no interest in the Railway or any other party. In turn, Buffalo Prairie conveyed portions of the land to adjacent property owners, including the other Relators herein. *See* Exs. A-1 through A-11(deeds of other Relators herein).

In the 1980's, the Railroad ceased operations over the corridor. *See Coles*, 2007-Ohio-6057, at ¶ 3. In 1995, the Railroad quitclaimed and assigned its interest in the Railroad Lease to MetroParks for use as a recreational trail. *Id.* Owners of the land underlying the proposed trail objected to the trail's creation. *Id.*

2. The *Key Trust* Decisions

In 1999, MetroParks commenced an action in Erie County Court of Common Pleas against Key Trust. *Coles*, 2007-Ohio-6057, at ¶ 6. In July 2000, MetroParks filed an amended complaint adding the Relators and other land owners (the "landowners") who claimed title to the property on which the recreational trail was built as grantees from the Milan Canal Company's successors. MetroParks sought a declaratory judgment against the landowners for the sole and exclusive right of possession and occupancy of the Railway property. *Id.* at ¶¶ 7-8. Each of the Relators in the present mandamus action was named as a defendant in the *Key Trust* Litigation.

Metroparks raised, and the trial court rejected, the argument that Metroparks owned any of the pertinent canal corridor not only as to its interests under the railroad lease, but in fee. *Id.* at ¶ 55.

At the conclusion of the bench trial, the trial court ruled in favor of the landowners on several points, including that the railroad lease was limited to the land obtained by the Canal Company from Merry and Townsend. *Id.* at ¶¶ 9-10.

On appeal, the Sixth District Court of Appeals affirmed in part and remanded in part the trial court's decision. The Sixth District reversed certain conclusions of law that are not relevant to Relators' claims in this mandamus petition. More importantly, the appellate court affirmed the conclusion that the railroad lease was limited to only the Merry and Townsend Tracts. *Id.* at ¶ 10. On remand, the trial court reiterated that the scope of the leased property was limited to the Merry and Townsend Tracts. *Id.* at ¶¶ 11-12.

On a second appeal to the Sixth District Court of appeals, the landowners argued that the trial court should have identified more specific boundaries to the Merry and Townsend Tracts. The Sixth District, in the *Key Trust II* opinion, decided that the trial court's judgment entry was consistent with *Key Trust I* and sufficient in that it limited the scope of the Railroad Lease to the Merry and Townsend Tracts. *See id.* at ¶ 13.

3. The *Coles* Decision

In 2006, a group of landowners who were named defendants in the *Key Trust* Litigation (the "*Coles* relators"), but not including Relators here, brought an action in this Court for a Writ of Mandamus compelling the respondents, who are also the Respondents in this action, to commence an appropriation proceeding to compensate the *Coles* relators for the taking of their property. The Court granted an alternative writ on the appropriation claim, and the parties presented evidence and briefs on the appropriation claim. This Court took judicial notice of the

filings in the *Key Trust* Litigation. *Coles,* 2007-Ohio-6057, ¶ 20. The dispositive issue before this Court concerned the "Res Judicata Effect of *Key Trust* Litigation." *Id.* at ¶¶ 33, 49. This Court applied principles of res judicata to reach the conclusion that the *Key Trust* Litigation "conclusively determined that the property subject to [MetroParks'] interests under the railroad lease lay within the boundaries of the Merry and Townsend parcels." *Coles*, 2007-Ohio-6057, at ¶ 48. Likewise, this Court applied the principles of res judicata and held that the *Key Trust* Litigation conclusively established that the Metroparks did not own a fee interest in any of the canal corridor at issue in *Key Trust*. *Id.* at ¶ 55.

B. The Relators' Property is Outside the Scope of the Railroad Lease, as Adjudicated in *Key Trust* and *Coles*

Like the *Coles* relators, Relators are among the thirty-two landowners named as defendants in the *Key Trust* Litigation, all of whom have a deed from either Buffalo Prairie or Key Trust. Like the *Coles* relators, Relators own property lying outside of the Merry and Townsend Tracts, and thus, unencumbered by the Railroad Lease.

Relators are not seeking to relitigate the issues in *Key Trust* or in *Coles*. Rather, they are seeking to protect their property rights as recognized by courts of every level within the State of Ohio, including this Supreme Court of Ohio.

C. MetroParks' Willful Refusal to Abide by *Key Trust* and *Coles*, and Failure to Compensate Relators for the Property Taken

Notwithstanding the *Key Trust* and *Coles* decisions, MetroParks and its agents and employees have continued to deprive the Relators of their constitutional right to just compensation. They do so despite acknowledging that the Relators own property that does not fall within the Merry and Townsend Tracts. However, MetroParks takes the remarkable position that, despite the *Key Trust* and *Coles* decisions and the fact that the Relators own property not

within the Merry and Townsend Tracts, the Relators are not entitled to a single dollar of compensation.

MetroParks' position is not surprising considering its willingness to blatantly disregard this Court's Writ in the *Coles* mandamus action and this Court's order that MetroParks appropriate the *Coles* relators' property it took more than nine years ago. To date, despite the fact that it was ordered over one year ago by this Court to do so, MetroParks has still not instituted an appropriation proceeding against any of the *Coles* relators.

ARGUMENT

Relators are entitled to a Writ of Mandamus requiring MetroParks to commence appropriation proceedings in order to determine just compensation to Relators for the Property taken. A Writ of Mandamus is the only appropriate remedy under Ohio law to compel MetroParks to perform its statutory and constitutional duties.

Principles of res judicata require the issuance of a Writ of Mandamus ordering MetroParks to initiate appropriation proceedings as to all Relators. The *Key Trust* litigation established that the Railroad Lease is limited to the Merry and Townsend Tracts and that the MetroParks lacks any fee interest in the Relators' Property, as this Court recognized in the *Coles* mandamus action. The Relators own property not within the Merry and Townsend Tracts. As recognized by this Court in the *Coles* decision, the *Key Trust* decisions are res judicata. Since Relators own property not in the Merry and Townsend Tracts, MetroParks condemned their property more than nine years ago. Consequently, MetroParks must now initiate appropriation proceedings to provide just compensation to the Relators as mandated by the United States and Ohio Constitutions.

In addition, since the MetroParks has shown a blatant disregard for this Court's Writ in *Coles*, the Relators ask that this Court's Writ order MetroParks to initiate appropriation proceedings within sixty (60) days from the issuance of the Writ and to specifically inform the Commissioners and officers of MetroParks that their failure to comply with the Writ shall subject them to criminal contempt.

To the extent that there are contested facts concerning the scope of the Merry and Townsend Tracts as against Relators' Property, the Court should issue an Alternative Writ setting the matter for the submission of evidence and briefs pursuant to S. Ct. Prac. R. X, Section 6 on the very limited issue of whether any of the Relators' Property falls within either the Merry or the Townsend Tracts.

A. MetroParks has a Clear Duty to Commence Appropriation Proceedings to Compensate Relators for the Property Taken to Construct the Recreational Trail

The federal and Ohio Constitutions prohibit the taking of private property for public use without just compensation. *See* U.S. Const., Amend V. and Amend. XIV; Ohio Const., Art. I, Section 19. Physical occupation of land by state agencies or public use constitutes a taking of property for which compensation must be provided. *See State ex rel. Elsass v. Shelby City, Bd. of Comm'rs* (2001), 92 Ohio St.3d 529.

The construction of a recreational trail over property owned by Relators constitutes a physical invasion of their property and a taking of private property for public use. *See Coles*, 2007-Ohio-6057, at ¶ 22 ("This case involves a classic appropriation claim alleging an actual physical taking of relators' real property."). *See also Masley v. Lorain* (1976), 48 Ohio St. 2d 334, 336:

> Any direct encroachment upon land, which subjects it to a public use that excludes or restricts the dominion and control of the owner over it, is a "taking" in the constitutional sense.

The Ohio Revised Code requires public officials to bring an appropriation action prior to taking any private property. *See* R.C. §§ 163.01-163.62. MetroParks has not complied with its statutory duty, because it has seized and occupied Relators' Property without just compensation.

B. A Writ of Mandamus is Appropriate to Require MetroParks to Commence Appropriation Proceedings

The Writ of Mandamus is available in Ohio to compel public officials to perform an action which the law specifically requires as a duty resulting from the public office. R.C. § 2737.01. Ohio law does not permit a direct "inverse condemnation" action by a landowner to obtain compensation for the taking of his or her property; therefore, a property owner's remedy for an unconstitutional taking of his or her property is to petition for a writ of mandamus to compel the public officials to commence appropriation proceedings. This Court in *Coles* recognized, not only that mandamus is the appropriate action to compel public officials to determine and pay just compensation for the taking of private property, but also that mandamus is the appropriate action to remedy *this particular* taking by Erie MetroParks. *See Coles*, 2007 Ohio-6057, at ¶ 21 ("Mandamus is the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged.") (internal quotations and citations omitted).

C. Relators Have a Clear Legal Right to Mandamus Relief

As this Court held in *Coles*, the courts in the *Key Trust* Litigation limited the scope of the Railroad Lease to the land within the Merry and Townsend Tracts. Relators are not seeking to overturn or undermine or relitigate that judgment, but instead simply to vindicate the Relators' rights established by it. The Merry and Townsend deeds are a matter of record, as are the Relators' deeds with Buffalo Prairie or Key Trust. Just as with the *Coles* relators, these documents conclusively establish that Relators own property not within the Merry and Townsend

Tracts. These documents can be laid against each other to determine precisely what property of Relators has been taken by Respondents for the recreational trail which currently occupies land outside the scope of the Railroad Lease as determined in the *Key Trust* and *Coles* decisions.

Because Relators own property beyond the boundaries of the Merry and Townsend Tracts, which has been seized and occupied by MetroParks for the recreational trail, Relators have an absolute right to just compensation under the United States and Ohio Constitutions, and MetroParks has an undeniable statutory duty to commence appropriation proceedings to provide such compensation.

D. Res Judicata Bars Respondents from Challenging the Decision in *Key Trust* that the MetroParks' Ownership Interest in the Property in Question was Limited to the Merry and Townsend Tracts and that It Had to Pay Just Compensation for All Land It Appropriated Outside Those Two Tracts

Under the principle of res judicata, "a valid final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *See Coles*, 2007-Ohio-6057, at ¶ 35. In this case, Relators, who obtained title to their Property through the exact same process as the *Coles* relators and who achieved the same beneficial determination of their property rights in the *Key Trust* Litigation, are entitled to the same outcome of their claims as was the result in the *Coles* mandamus action.

Like the relators in *Coles,* the Relators here were defendants in the *Key Trust* Litigation, asserting ownership to property upon which MetroParks built a recreational trail. In addition, like the majority of the *Coles* relators, eleven of the twelve Relators herein obtained their interest in their Property from Buffalo Prairie, Ltd., a corporation organized to convey portions of the Key Trust land by quitclaim deed to adjacent property owners. And like *Coles* relators Edwin Coles and Buffalo Prairie, Ltd., Relators Richard Rinella and Carol Rinella received their interest

in their Property directly from Key Trust. Finally, the Relators' property at issue in *Key Trust* is the same property about which it petitions this Court to order MetroParks to initiate appropriation proceedings.

Accordingly, no question exists that as a matter of clear application of the principles of res judicata, the Relators are entitled to just compensation from MetroParks for the appropriation of their Property. The outcome of this mandamus proceeding should be the same as the outcome of the *Coles* proceeding: this Court must issue a Writ of Mandamus compelling Respondents to commence appropriation proceedings to pay just compensation to Relators for the unconstitutional taking of their property.

Because of the Respondents' blatant disregard for this Court's Writ in *Coles*, the Relators respectfully request that this Court's Writ require MetroParks to initiate appropriation proceedings as to all Relators within sixty (60) days of the issuance of the Writ. In addition, the Relators respectfully request that the Writ inform the MetroParks' Commissioners and officers that their failure to comply with the Writ shall subject them to criminal contempt. Since, to date, MetroParks has not obeyed this Court's Writ in *Coles*, these additional steps are necessary to prevent continued denial of the Relators' constitutional right to just compensation.

E. To the Extent There are Disputed Facts Regarding the Scope of the Merry and Townsend Tracts as Related to the Relators' Property, the Court Should Issue an Alternative Writ of Mandamus

Relators' entitlement to a Writ of Mandamus is clear based on their deeds, the *Key Trust* judgments and this Court's decision in *Coles*, which limited the MetroParks' ownership interest to canal corridor within the Merry and Townsend Tracts. Pursuant to these decisions, MetroParks is precluded from asserting that the scope of their ownership interest extends beyond the metes and bounds of the Merry and Townsend Tracts. However, to the extent that MetroParks asserts that the Merry and Townsend Tracts cover property claimed by Relators, and

the Court is unable to resolve that dispute from the face of the deeds themselves, the contested facts concerning the scope of the Merry and Townsend Tracts should be decided by issuing an alternative writ of mandamus.

As relevant here, S. Ct. Prac. R. X, Section 6, provides:

> When an alternative writ is issued, the Supreme Court will issue a schedule for the presentation of evidence and the filing and service of briefs or other pleadings.

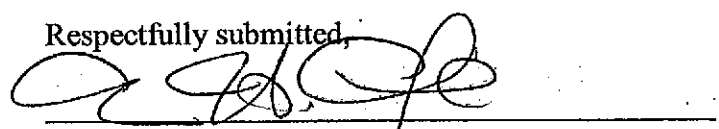
The Court has issued alternative writs for the submission of evidence and briefs in proceedings when there is a disputed question of fact whether a taking has occurred.

CONCLUSION

For the foregoing reasons, the Court should issue a Writ of Mandamus to Respondents, requiring the Respondents to initiate appropriation proceedings as to all Relators within sixty (60) days of the issuance of the Writ.

Dated: January 5, 2009

Respectfully submitted,



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Attorneys for Relators

APPENDIX OF EXHIBITS TO RELATORS' MEMORANDUM IN SUPPORT OF THEIR COMPLAINT FOR WRIT OF MANDAMUS

Relators' Exhibit Number	Description of Exhibit
A (A-1 through A-12)	Deeds between Relators and Buffalo Prairie, Ltd. or Key Trust Company
B	Decision in *State ex rel. Coles v. Granville* (2007), 116 Ohio St.3d 231, 2007-Ohio-6057
C	Decision and Judgment Entry in *Board of Park Commissioners, Erie MetroParks v. Key Trust Co. of Ohio, et al.* (6th Dist. 2001), 2001-Ohio-2888
D	Decision and Judgment Entry in *Board of Park Commissioners, Erie MetroParks v. Key Trust Co. of Ohio, et al.* (6th Dist. 2002), 2002-Ohio-4827
E	Deed from Ebeneser Merry to Milan Canal Company (Dated April 21, 1838)
F	Deed from Kneeland Townsend to Milan Canal Company (Dated October 29, 1832)
G	Deed from Key Trust Company of Ohio, National Association, as Trustee of the Verna Lockwood Williams Trusts to Buffalo Prairie (Dated April 11, 2000)

Exhibit A-1

WPU Jeffery Pengel, Atty

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Rita M. Beverick, the Grantee,** whose tax mailing address will be 10619 River Road, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, her heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and her separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of APRIL, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

STATE OF OHIO)
) SS.
~~ERIE~~ COUNTY)
HURON

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

EXHIBIT
A-1

MICROFILMED

RN 200005182 ERIE COUNTY OHIO RECORDER Page 1 of 3
John W. Schaeffer 3P
RECORDING FEES 18.00
TLF Date 04/27/2000 Time 10:55:09

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the *grantor* has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: $ 4.40
EXEMPT: $
R.E. TRANSFER: $ 13.20

JUDE T. HAMMOND
Erie County Auditor

by

ERIE COUNTY OHIO RECORDER
RN 200005182 Page 2 of 3

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer 3/14/05

Parcel 4
Rita Beverick

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 295.48 feet to the southeasterly corner of a parcel owned by Edwin & Lisa Coles (DV 519 PG 775); Thence northerly along the easterly line of Coles by the following courses and distances: North 36°13'47" West, 313.83 feet; Thence North 02° 00'13" East, 340.00 feet; Thence North 87°59'47" West, 200.00 feet; Thence North 49°59'47" West, 52.33 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 49°59'47" West continuing along the easterly line of Coles a distance of 150.08 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the right, having a radius of 1004.93 feet, a delta of 23°32'59", a chord bearing North 50°00'54" East, a chord distance of 410.15 feet, an arc length of 413.05 feet to a point;

(3) Thence North 61°47'24" East continuing along said westerly line a distance of 121.10 feet to a point on the westerly line of a parcel owned by Dale Hohler 9DV 570 PG 571);

(4) Thence South 02°00'13" West along the westerly line of Hohler a distance of 173.58 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence South 61°47'24" West along said easterly line a distance of 33.75 feet to a point;

(6) Thence southerly continuing along said easterly line, along an arc of a curve to the left, having a radius of 854.93 feet, a delta of 23°51'33", a chord bearing South 49°51'37" West, a chord distance of 353.45 feet, an arc length of 356.01 feet to the point of beginning, containing 1.5908 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE, PS

Exhibit A-2

pr
Jeffrey Regal
8/8/8

Quit-Claim Deed

RN 200005179
ERIE COUNTY OHIO RECORDER
John W. Schaeffer
RECORDING FEES 22.00
TLF Date 04/27/2000 Time 10:52:07
Page 1 of 4

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Patricia A. Charville, Trustee U/A Patricia A. Charville, dated September 28, 1994 as to an undivided ½ interest and Patricia A. Charville, Mark R. Charville and David A. Charville as Successor Trustees U/A Leon R. Charville dated September 28, 1994 as to an undivided ½ interest, the Grantees**, whose tax mailing address will be 11615 River Road, Milan, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their successors and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26th day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Lance A. Warne

Gerald Nickel

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M. Coles, Secretary

STATE OF OHIO)
) ss.
ERIE COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & McDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

EXHIBIT
A-2

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26th day of April, 2000.

Robin L. B. Nickoli
NOTARY PUBLIC
ROBIN L. B. NICKOLI
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 21.70
EXEMPT: $
REL TRANSFER: $ 65.10
JUDE T. HAMMOND
Erie County Auditor
by

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

EXHIBIT A

Patricia Charville

ERIE COUNTY OHIO RECORDER
RN 200005179 Page 3 of 4

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Ward Tract and K. Townsend Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of the NYC & ST.LOUIS Railroad with the centerline of the Wheeling & Lake Erie Railroad;

(1) Thence North 89°40'20" East along the centerline of the NYC & ST. Louis Railroad a distance of 135.63 feet to a point on the easterly line of the Old Milan Canal;

(2) Thence South 42°10'20" West along the easterly line of the Old Milan Canal a distance of 1203.79 feet to a point;

(3) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 2009.87 feet, a delta of 09°05'00", a chord bearing South 46°42'50" West, a chord distance of 318.30 feet, an arc length of 318.63 feet to a point;

(4) Thence South 51°16'02" West continuing along said easterly line a distance of 178.24 feet to a point;

(5) Thence southerly continuing along said easterly line, along an arc of a curve to the left, having a radius of 1332.40 feet, a delta of 13°39'00", a chord bearing South 44°26'32" West, a chord distance of 316.68 feet, an arc length of 317.43 feet to a point;

(6) Thence South 37°37'02" West continuing along said easterly line a distance of 148.22 feet to a point;

(7) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 3919.73 feet, a delta of 02°34'42", a chord bearing South 38°54'23" West, a chord distance of 176.37 feet, an arc length of 176.38 feet to a point on the North line of a parcel owned by Howard & Sandra Leber (DV 537 PG 61);

(8) Thence North 53°03'58" West along the North line of Leber a distance of 150.25 feet to a point on the westerly line of the Old Milan Canal;

(9) Thence northerly along the westerly line of the Old Milan Canal, along an arc of a curve to the left, having a radius of 3769.73 feet, a delta of 02°42'29", a chord bearing North 38°58'17" East, a chord distance of 178.16 feet, an arc length of 178.18 feet to a point;

(10) Thence North 37°37'02" East continuing along said westerly line a distance of 148.22 feet to a point;

(11) Thence northerly continuing along said westerly line, along an arc of a curve to the right, having a radius of 1482.40 feet, a delta of 13°39'00', a chord bearing North 44°26'32" East, a chord distance of 352.33 feet, an arc length of 353.16 feet to a point;

(12) Thence North 51°16'02" East continuing along said westerly line a distance of 178.24 feet to a point;

(13) Thence northerly continuing along said westerly line, along an arc of a curve to the left, having a radius of 1859.87 feet, a delta of 09°05'00', a chord bearing North 46°42'50" East, a chord distance of 294.54 feet, an arc length of 294.85 feet to a point;

(14) Thence North 42°10'20" East continuing along said westerly line a distance of 1066.34 feet to a point on the centerline of the NYC & ST. Louis Railroad;

(15) Thence North 89°40'20" East along said centerline a distance of 67.82 feet to the point of beginning, containing 7.8569 acres, more or less, of which 6.9577 acres are in the Ward Tract and 0.8992 acre is in the K. Townsend Tract but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Prof. Surveyor No. 5667 in January 2000, taken from existing deed records and track maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/11/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Exhibit A-3

with Affing Renewal Attny

Quit-Claim Deed

RN 200005180 ERIE COUNTY OHIO RECORDER Page 1 of 2
John W. Schaeffer 3P
RECORDING FEE: 19.00
TLF Date 04/27/2000 Time 10:53:17

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Douglas Hildebrand, the Grantee**, whose tax mailing address will be 1610 Campbell St., Sandusky Ohio 44870 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, his heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and his separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur..

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

STATE OF OHIO)
) ss.
~~ERIE COUNTY~~)
HURON

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

EXHIBIT
A-3

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 319.202 and 322.02 of the Revised Code.
FEE: $ 8.40
EXEMPT: $
R.E. TRANSFER: $ 25.20
JUDE T. HAMMOND
Erie County Auditor
by

ERIE COUNTY OHIO RECORDER
RN 200005180 Page 2 of 3

EXHIBIT
A

Doug Hildebrand

Being situated in the State of Ohio, County of Erie, Milan Township, Section No. 2, Ward Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of Mason Road with the centerline of the Wheeling & Lake Erie Railroad;

(1) Thence South 48°40'10" East along the centerline of Mason Road a distance of 100.01 feet to a point on the easterly line of the Old Milan Canal;

(2) Thence South 42°10'20" West along the easterly line of the Old Milan Canal a distance of 810.12 feet to the centerline of the New York Central & St. Louis Railroad;

(3) Thence South 89°40'20" West along said centerline a distance of 203.46 feet to a point on the westerly line of the Old Milan Canal;

(4) Thence North 42°10'20" East continuing along said westerly line a distance of 945.37 feet to a point on the centerline of Mason Road;

(5) Thence South 48°40'10" East along said centerline a distance of 50.01 feet to the point of beginning, containing 3.0226 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE/PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/16/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Exhibit A-4

w/u.
Jeffery Ringel, Atty

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005183, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Dale A. Hohler and Ellen H. Hohler, husband and wife, the Grantees**, whose tax mailing address will be 10607 River Road, Huron, Ohio 44839, does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

RN 200005183 Page 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 3P
RECORDING FEES: 18.00
TLF Date 04/27/2000 Time 10:56:00

STATE OF OHIO)
) ss.
~~ERIE~~ **COUNTY**)
HURON

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

EXHIBIT
tabbies
A-4

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001.

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: $ 1.20
EXEMPT: $
R.E. TRANSFER: $ 3.60
JUDE T. HAMMOND
Erie County Auditor
by

ERIE COUNTY OHIO RECORDER
RN 200005183 Page 2 of 3

EXHIBIT
A

Parcel 5
Dale Hohler

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 345.48 feet to the southeasterly corner of a parcel owned by James & Rita Beverick (DV 484 PG 704); Thence northerly along the easterly line of Beverick by the following courses and distances: North 36°13'47" West, 295.31 feet; Thence North 02°00'13" East, 609.05 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 02°00'13" East continuing along the easterly line of Beverick a distance of 173.58 feet to a point on the westerly line of the Old Milan Canl;

(2) Thence North 61°47'24" East along said westerly line a distance of 141.24 feet to a point on the westerly line of a parcel owned by Russell & Mary Conway (BV 135 PG 532);

(3) Thence South 11°47'13" West along the westerly line of Conway a distance of 132.95 feet to a point;

(4) Thence South 02°00'13" West continuing along the said westerly line a distance of 55.72 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence South 61°47'24" West along said easterly line a distance of 115.10 feet to the point of beginning, containing 0.4269 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/16/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

ERIE COUNTY OHIO RECORDER

Exhibit A-5

Quit-Claim Deed

RN 20000 5173 Page 1 of 4
ERIE COUNTY OHIO RECORDER
John W. Schaffer
RECORDING FEE:
TIF NO. ...

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Theresa R. Johnston, the Grantee,** whose tax mailing address will be 10501 River Road, Huron, Ohio 44839, does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, her heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and her separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

EXHIBIT
A-5

And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Parcel 8
Albert & Theresa Johnston

Erie County Engineer
Date: 3/16/00

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53° 46'13" East continuing along the centerline of River Road a distance of 681.86 feet to the southeasterly corner of a parcel owned by Alan & Nancy Anderson (BV 439 PG 638); Thence northerly along the easterly line of Anderson by the following courses and distances: North 29°22'47" West, 293.10 feet; Thence North 12°14'47" West, 416.81 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 12°14'47" West continuing along the easterly line of Anderson a distance of 42.62 feet to a point;

(2) Thence North 05°39'47" West continuing along the easterly line of Anderson a distance of 118.05 feet to a point on the westerly line of the Old Milan Canal;

(3) Thence North 61°47'24" East along said westerly line a distance of 216.34 feet to a point on the westerly line of a parcel owned by River Bend Development (DV 519 PG 775);

(4) Thence South 09°35'47" East along the westerly line of River Bend parcel a distance of 117.98 feet to a point;

(5) Thence South 09°02'47" East continuing along said westerly line a distance of 40.44 feet to a point on the easterly line of the Old Milan Canal;

(6) Thence South 61°47'24" West along said right-of-way line a distance of 222.40 feet to the point of beginning, containing 0.7626 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

ERIE COUNTY OHIO RECORDER
RN 200005186

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE, PS

EXHIBIT
A

And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/14/00

Parcel 9
River Bend Development

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53°46'13" East continuing along the centerline of River Road a distance of 741.86 feet to the southeasterly corner of a parcel owned by Albert & Theresa Johnston (DV 491 PG 73; Thence northerly along the easterly line of Johnston by the following courses and distances: North 29°22'47" West, 293.10 feet; Thence North 53°46'13" East, 150.00 feet; Thence North 09°02'47" West, 393.23 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 09°02'47" West contining along the easterly line of Johnston, a distance of 40.44 feet to a point;

(2) Thence North 09°35'47" West continuing along the easterly line of Johnston a distance of 117.98 feet to a point on the westerly line of the Old Milan Canal:

(3) Thence North 61°47'24" East along said westerly line a distance of 162.68 feet to a point on the westerly line of a parcel owned by Eliot F. Fischer & Kimberly Reid-Fischer (BV 443 PG 23);

(4) Thence South 09°35'47" East along the westerly line of Fischer parcel a distance of 89.06 feet to a point;

(5) Thence South 02°31'13" West continuing along said westerly line a distance of 76.32 feet to a point on the easterly line of the Old Milan Canal;

(6) Thence South 61°47'24" West along said easterly line a distance of 146.18 feet to the point of beginning, containing 0.5477 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr. PE, PS

EXHIBIT A"

STATE OF OHIO)
) SS.
ERIE COUNTY)
Huron

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & McDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

Exhibit A-6

D. Jeffery Karas atty.

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173 ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **John F. Landoll and/or Virginia A. Landoll U/A John F. Landoll and/or Virginia A. Landoll, Co-Trustees Landoll Family Revocable Living Trust dated July 24, 1998, the Grantees,** whose tax mailing address will be 12515 River Road, Milan, Ohio 44846 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their successors and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their successors and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson

Richard H. Johnson

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

RN 200005176 Page 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer
RECORDING FEE: 18.00
TLF Date 04/27/2000 Time 10:47:54

STATE OF OHIO)
) **ss.**
ERIE COUNTY)
Huron

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

EXHIBIT
A-6

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

NOTARY PUBLIC
DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 6.20
EXEMPT: $ —
R.E. TRANSFER: $ 18.60
JUDE T. HAMMOND
Erie County Auditor
by

ERIE COUNTY OHIO RECORDER
RN 200005176 Page 2 of 3

m-3

Landoll Parcel

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Sublot No. 10 and being more definitely described as follows:

Commencing at the intersection of the South line of Sublot 10, with the centerline of the Wheeling & Lake Erie Railroad;

(1) Thence South 89°47'40" West along the North line of a parcel owned by Warren Jones (DV 308 PG 247), said line also being the South line of Sublot 10 a distance of 52.01 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence North 15°47'40" East along the westerly line of said Canal a distance of 648.03 feet to a point on the South line of a parcel owned by Gerald & Robin Nickoli (BV 153 PG 60);

(3) Thence North 88°15'00" East along the South line of said Nickoli parcel a distance of 157.32 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence South 15°47'40" West along said easterly line a distance of 652.44 feet to a point on the South line of Sublot 10;

(5) Thence South 89°47'40" West along the South line of Sublot 10 a distance of 104.03 feet to the point of beginning, containing 2.2391 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in February 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr. PE/PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/16/00

STATE OF OHIO
DANIEL E. HARTUNG, JR. S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

ERIE COUNTY OHIO RECORDER
RN 200005176 Page 3 of 3

Exhibit A-7

Jeffery Paul Gilly

Quit-Claim Deed

RN 200005173 Page 1 of 5
ERIE COUNTY OHIO RECORDER 5P
John W. Schaeffer 26.00
RECORDING FEE:
TLP Date 04/27/2000 Time 11:05:42

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Michael P. Meyer, the Grantee**, whose tax mailing address will be 10719 River Road, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, his heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and his separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

STATE OF OHIO)
) **ss.**
~~ERIE~~ COUNTY)
Huron

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company

EXHIBIT
A-7

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 319.202 and 322.02 of the Revised Code.
FEE: $ 4.50
EXEMPT: $
R.E. TRANSFER: $ 13.50
JUDE T. HAMMOND
Erie County Auditor
by

EXHIBIT
A

Parcel 20
Mike Meyer

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 715.90 feet to the northeasterly corner of a parcel owned by Charles & Betty Hahn (DV 517 PG 536); Thence North 54°51'13" West along the northerly line of Hahn a distance of 287.05 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 54°51'13" West along the northerly line of HAHN a distance of 150.20 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 04°17'46", a chord bearing North 35°59'57" East, a chord distance of 234.87 feet, an arc length of 234.93 feet to a point on the southerly line of a parcel owned by Alice Fowler (DV 464 PG 202);

(3) Thence South 55°26'13" East along the southerly line of Fowler a distance of 150.01 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 04°07'35", a chord bearing South 35°56'49" West, a chord distance of 236.40 feet, an arc length of 236.45 feet to the point of beginning, containing 0.8116 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE/PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/21/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

ERIE COUNTY OHIO RECORDER
RN 200005189 Page 3 of 3

Parcel 19
Charles & Betty Hahn

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 615.90 feet to the northeasterly corner of a parcel owned by Henry Seibert (DV 403 PG 805); Thence North 54°51'13" West along the northerly line of Seibert a distance of 297.51 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 54°51'13" West along the northerly line of SEIBERT a distance of 150.51 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 01°49'54", a chord bearing North 39°03'47" East, a chord distance of 100.16 feet, an arc length of 100.16 feet to a point on the southerly line of a parcel owned by Mike Meyer (BV 080 PG 648);

(3) Thence South 54°51'13" East along the southerly line of Meyer a distance of 150.20 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 01°44'51", a chord bearing South 38°53'02" West, a chord distance of 100.14 feet, an arc length of 100.14 feet to the point of beginning containing 0.3449 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/21/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Parcel 18
Henry Seibert

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 481.90 feet to the northeasterly corner of a parcel owned by Gary & Virginia Steiner (DV 505 PG 80); Thence North 54°51'13" West along the northerly line of Steiner a distance of 316.33 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 54°51'13" West along the northerly line of Steiner a distance of 151.17 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said right-of-way line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 02°27'45", a chord bearing North 41°12'37" East, a chord distance of 134.65 feet, an arc length of 134.66 feet to a point on the southerly line of a parcel owned by Charles & Betty Hahn (DV 517 PG 536);

(3) Thence South 54°51'13" East along the southerly line of Hahn a distance of 150.51 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 02°20'56", a chord bearing South 40°55'55" West, a chord distance of 134.58 feet, an arc length of 134.59 feet to the point of beginning, containing 0.4636 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/16/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

copy: Jeffery Rengel, Atty

Quit-Claim Deed

RN 200005190
ERIE COUNTY OHIO RECORDER
John W. Schaeffer
RECORDING FEE: 18.00
TLF Date 04/27/2000 Time 11:07:05
Page 1 of 3

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Alice F. Fowler, the Grantee,** whose tax mailing address will be 9903-A River Road, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, her heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio.

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and her separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

STATE OF OHIO)
) **ss.**
~~ERIE~~ **COUNTY**)
HURON

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 1.20
EXEMPT: $
R.E. TRANSFER: $ 3.60
JUDE T. HAMMOND
Erie County Auditor
by

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/28/00

Parcel 21
Alice Fowler

Being situated in the State of Ohio, County of Erie, Milan Township Section 2, J. Forbes Tract and being more definitely described as follows:
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 955.25 feet to the northeasterly corner of a parcel owned by Mike Meyer (BV 080 PG 648); Thence North 55°26'13" West along the northerly line of Meyer a distance of 166.07 feet to the Southeast corner of Sublot 11 in Clarence & Minnie Bailey's Subdivision No. 2 (PV 16 PG 1); Thence North 55°26'13" West along the southerly line of said Sublot 11 a distance of 108.30 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 55°26'13" West along the southerly line of said Sublot 11 a distance of 150.01 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 01°39'40", a chord bearing North 33°01'14" East, a chord distance of 90.83 feet, an arc length of 90.83 feet to a point;

(3) Thence northerly continuing along said westerly line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 00°47'02", a chord bearing North 31°47'53" East, a chord distance of 23.56 feet, an arc length of 23.56 feet to a point on the northerly line of Sublot 11 in said Bailey's Subdivision;

(4) Thence South 57°06'13" East along the northerly line of Sublot 11 a distance of 150.05 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 00°39'53", a chord bearing South 31°51'28" West, a chord distance of 21.71 feet, an arc length of 21.72 feet to a point;

(6) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 01°41'37", a chord bearing South 33°02'13" West, a chord distance of 97.04 feet, an arc length of 97.05 feet to the point of beginning, containing 0.4014 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE, PS

Exhibit A-8

WPU
D. Jeffery Rengel, Atty

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS that Buffalo Prairie, Ltd., an Ohio limited liability company, as Grantor and for valuable consideration paid, do grant, bargain and convey to Gerold O. E. Nickoli and Robin L. B. Nickoli, as custodian for Autumn M. Nickoli and Jared J. B. Nickoli under the Ohio Transfers to Minors Act, as Grantees, and whose tax mailing address shall be 12501 River Road, Milan Ohio, 44846 the following described premises:

See Exhibit "A", attached hereto and made a part hereof.

Prior title recorded in Volume RN200005173 ~~page~~ ____ of Erie County, Ohio Deed Records.

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

Except: zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay.

To have and to hold said premises with all privileges and appurtenances thereunto belonging, to the said Grantees, and their heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

Witness my hand this 26 day of April, 2000.

RN 200005177 Page 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 3P
RECORDING FEE: 18.00
TLF Date 04/27/2000 Time 10:48:59

WITNESSES:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

Lisa A. Coles
Lisa A. Coles, President

Edwin M. Coles, Secretary

STATE OF OHIO)
)ss:
COUNTY OF ~~ERIE~~ HURON)

BEFORE ME, a Notary Public in and for the State of Ohio, did personally appear the above named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company, who did swear and state that they did sign the foregoing instrument on the 26 day of April, 2000.

NOTARY PUBLIC
DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

my commission expires:

DEED PREPARED WITHOUT BENEFIT OF SURVEY; PREPARED USING LEGAL DESCRIPTION GIVEN BY TITLE COMPANY.

This instrument prepared by:
D. Jeffery Rengel
421 Jackson Street
Sandusky, Ohio 44870
419-627-0400

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 22.30
EXEMPT: $ —
R.E. TRANSFER: $ 66.90
JUDE T. HAMMOND
Erie County Auditor
by _____

EXHIBIT
A-8

MICROFILMED

EXHIBIT A

Milan Canal Parcel across Nickoli Property

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Sublots 10 & 11 and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the North line of Section 1; Thence South 89°13'00" West along the North line of Section 1 a distance of 1744.69 feet to its intersection with the East line of the Old Milan Canal and the point of beginning;

(1) Thence southeasterly along said East line, along an arc of a curve to the left, having a radius of 860.00 feet, a delta of 10°20'36" a chord bearing South 43°02'02" East, a chord distance of 155.04 feet, an arc length of 155.25 feet to a point;

(2) Thence South 48°12'20" East continuing along said East line a distance of 250.40 feet to a point;

(3) Thence southeasterly along said East line, along an arc of a curve to the right, having a radius of 1060.00 feet, a delta of 64°00' 00", a chord bearing South 16°12'20" East, a chord distance of 1123.43 feet, an arc length of 1184.03 feet to a point;

(4) Thence South 15°47'40" West continuing along said East line a distance of 750.17 feet to a point on the North line of a parcel owned by John & Virginia Landoll (DV 386 PG 27);

(5) Thence South 88°15'00" West along the North line of Landoll, a distance of 157.30 feet to a point on the West line of the Old Milan Canal;

(6) Thence North 15°47'40" East along said West line a distance of 797.57 feet to a point;

(7) Thence northwesterly along said West line, along an arc of a curve to the left, having a radius of 910.00 feet, a delta of 64°00' 00", a chord bearing North 16°12'20" West, a chord distance of 964.45 feet, an arc length of 1016.48 feet to a point;

(8) Thence North 48°12'20" West continuing along said West line a distance of 250.40 feet to a point;

(9) Thence northwesterly along said West line, along an arc of a curve to the right, having a radius of 1010.00 feet, a delta of 16°32' 04", a chord bearing North 39°56'18" West, a chord distance of 290.46 feet, an arc length of 291.47 feet to a point on the North line of Section 1;

(10) Thence North 89°13'00" East along the North line of Section 1 a distance of 180.63 feet to the point of beginning, containing 8.0865 acres, more of less, of which 3.5800 acres are in Sublot10 and 4.5065 acres are in Sublot 11, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel B. Hartung Jr., Professional Surveyor No. 5667 in October 1984. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.

Daniel B. Hartung Jr., PE/PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/20/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Exhibit A-9

wpr
Jeffery
Pringle, etc

F

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Billy R. Rasnick and Donna J. Rasnick, husband and wife, the Grantees,** whose tax mailing address will be 9903-D River Road, Huron, Ohio 44839, does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M. Coles, Secretary

STATE OF OHIO)
) ss.
~~ERIE~~ **COUNTY**)
Huron

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

EXHIBIT
A-9

RN 200005193 Page 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer
RECORDING FEE: 18.00
TLF Date 04/27/2000 Time 11:09:29
3P

MICROFILMED

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code
FEE: $ 7.00
EXEMPT: $
R.E. TRANSFER: $ 3.00
JUDE T. HAMMOND
Erie County Auditor
by

ERIE COUNTY OHIO RECORDER
RN 200005193

Parcel 24
Billy & Donna Rasnick

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 955.25 feet to the northeasterly corner of a parcel owned by Mike Meyer (BV 080 PG 648); Thence North 55°26'13" West along the northerly line of Meyer a distance of 166.07 feet to a point marking the Southeast corner of Sublot 11 in Clarence & Minnie Bailey's Subdivision No. 2 (PV 16 PG 1); Thence North 32°53'47" East along the easterly line of said Sublots 11,12,13 & 14 a distance of 301.90 feet to the Northeast corner of said Sublot 14; Thence North 57°06'13" West along the North line of Sublot 14 a distance of 121.42 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 57°06'13" West along the northerly line of Sublot 14 a distance of 151.19 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 02°01'07", a chord bearing North 24°23'11" East, a chord distance of 60.67 feet, an arc length of 60.67 feet to a point on the North line of Sublot 15 in said Bailey Sudivision;

(3) Thence South 57°06'13" East along the northerly line of Sublot 15 a distance of 151.92 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 01°51'13", a chord bearing South 25°04'23 West, a chord distance of 60.56 feet, an arc length of 60.56 feet to the point of beginning, containing 0.2087 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.

Daniel E. Hartung Jr., PE/PS

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

David Williams

Erie County Engineer
Date: 3/16/00

ERIE COUNTY OHIO RECORDER
RN 200005193 page 3 of 7

Exhibit A-10

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Maria Sperling, the Grantee**, whose tax mailing address will be 9903-E River Road, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, her heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and her separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M. Coles, Secretary

EXHIBIT
A-10

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 1.00
EXEMPT: $
R.E. TRANSFER: $ 3.00
JUDE T. HAMMOND
Erie County Auditor
by

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

Parcel 25
Maria Sperling

Exhibit A

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 955.25 feet to the northeasterly corner of a parcel owned by Mike Meyer (BV 080 PG 648); Thence North 55°26'13" West along the northerly line of Meyer a distance of 166.07 feet to a point marking the Southeast corner of Sublot 11 in Clarence & Minnie Bailey's Subdivision No. 2 (PV 16 PG 1); Thence North 32°53'47" East along the easterly line of said Sublots 11,12,13,14 & 15 a distance of 361.90 feet to the Northeast corner of said Sublot 15; Thence North 57°06'13" West along the North line of Sublot 15 a distance of 129.66 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 57°06'13" West along the northerly line of Sublot 15 a distance of 151.92 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 03°23'33", a chord bearing North 21°40'51" East, a chord distance of 101.95 feet, an arc length of 101.96 feet to a point on the southerly line of a 20 ft Lane in said Bailey Subdivision;

(3) Thence South 57°06'13" East along the southerly line of said 20 ft. Lane a distance of 153.57 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 03°06'40", a chord bearing South 22°35'26" West, a chord distance of 101.64 feet, an arc length of 101.65 feet to the point of beginning containing 0.3505 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE, PS

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/16/00

ERIE COUNTY OHIO RECORDER

Exhibit A-11

Quit-Claim Deed

RN 200005188 Page 1 of 9
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 9P
RECORDING FEE: 42.00
TLF Date 04/27/2000 Time 11:02:52

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN200005173, ~~Page~~ _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars ($10.00) received to its full satisfaction of **Gary R. Steiner and Virginia M. Steiner, husband and wife, the Grantees,** whose tax mailing address will be 403 Tecumseh Place, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of APRIL, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

Gail M. Gray

Richard H. Johnson
RICHARD H. JOHNSON

BUFFALO PRAIRIE, LTD.

By: Lisa A. Coles
Lisa A. Coles, President

By: _____
Edwin M.. Coles, Secretary

STATE OF OHIO)
) ss.
~~ERIE~~ COUNTY)
HURON

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44857

EXHIBIT
tabbies
A-11

MICROFILMED

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

NOTARY PUBLIC

DAVID W. MOFFIT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 76.80
EXEMPT: $
R.E. TRANSFER: $ 50.40
JUDE T. HAMMOND
Erie County Auditor
by

"EXHIBIT A"

Parcel 11
Jerry & Carole Nottke

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53° 46'13" East continuing along the centerline of River Road a distance of 1360.82 feet to the southeasterly corner of a parcel owned by Eliot F. Fischer & Kimberly Reid-Fischer (BV 443 PG 23); Thence northerly along the easterly line of Fischer by the following courses and distances: North 65°34'47" West,198.20 feet; Thence North 24°42'47" West, 155.60 feet; Thence North 48°26'47" West, 217.20 feet; Thence North 02°31'13" East, 95.90 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 02°31'13" East continuing along the easterly line of Fischer a distance of 174.50 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence North 61°47'24" East along said westerly line a distance of 294.92 feet to a point on the westerly line of a parcel owned by Gilbert & Nancy Hoffman (DV 547 PG 834);

(3) Thence South 36°13'47" East along the westerly line of Hoffman a distance of 151.48 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence South 61°47'24" West along said easterly line a distance of 405.23 feet to the point of beginning, containing 1.2055, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/16/00

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer 3/16/00
Date

Parcel 12
Gilbert & Nancy Hoffman

Being situated in the State of Ohio, County ~~Erie, Milan Township~~, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53° 46'13" East continuing along the centerline of River Road a distance of 1710.07 feet to the southeasterly corner of a parcel owned by Jerry & Carole Nottke (DV 547 PG 822); Thence North 36°13'47" West along the easterly line of Nottke a distance of 555.77 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 36°13'47" West along the northerly extension of easterly line of Nottke a distance of 151.48 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence North 61°47'24" East along said westerly line a distance of 183.54 feet to its intersection with the northerly extension of the westerly line of a parcel owned by Larry & Carmel Hoffman (DV 547 PG 838);

(3) Thence South 36°13'47" East along said extension a distance of 151.48 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 2964.80 feet, a delta of 00°00'47", a chord bearing South 61°47'00" West, a chord distance of 0.68 feet, and arc length of 0.68 feet to a point;

(5) Thence South 61°47'24" West continuing along said easterly line a distance of 182.86 feet to the point of beginning, containing 0.6320 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE, PS

ERIE COUNTY OHIO RECORDER

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/24/00

ERIE COUNTY OHIO RECORDER
RN 200005188 Page 5 of 9

Parcel 13
Larry & Carmel Hoffman

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53° 46'13" East continuing along the centerline of River Road a distance of 2041.82 feet to the southeasterly corner of a parcel owned by Gilbert & Nancy Hoffman (DV 547 PG 834); Thence northerly along the easterly line of Hoffman by the following courses and distances: North 36°13'47" West, 150.00 feet; Thence South 53°46'13" West, 150.00 feet; Thence North 36°13'47" West, 380.16 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 36°13'47" West along the northerly extension of the easterly line of Hoffman a distance of 151.48 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence North 61°47'24" East along said westerly line a distance of 20.45 feet to a point;

(3) Thence northeasterly continuing along said westerly line, along an arc of a curve to the left, having a radius of 2814.80 feet, a delta of 05°43'12", a chord bearing North 58°55'48" East, a chord distance of 280.89 feet, an arc length of 281.01 feet to its intersection with the northerly extension of the westerly line of a parcel owned by Gilbert Hoffman,etal (DV 247 PG 640);

(4) Thence South 36°13'47" East along said extension a distance of 150.12 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 2964.80 feet, a delta of 05°49'23", a chord bearing South 58°51'55" West, a chord distance of 301.19 feet, an arc length of 301.32 feet to the point of beginning, containing 1.0379, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE/PS

Parcel 14
Gilbert Hoffman, Etal

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53°46'13" East continuing along the centerline of River Road a distance of 2191.82 feet to the southeasterly corner of a parcel owned by Larry & Carmen Hoffman (DV 547 PG 838; Thence North 36°13'47" West along the easterly line of Hoffman a distance of 503.41 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 36°13'47" West along the northerly extension of the easterly line of Hoffman a distance of 150.12 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northeasterly along said westerly line, along an arc of a curve to the left, having a radius of 2814.80 feet, a delta of 01°04'48", a chord bearing North 55°31'48" East, a chord distance of 53.06 feet, an arc length of 53.06 feet to a point;

(3) Thence North 54°59'24" East continuing along said westerly line a distance of 536.77 feet to a point;

(4) Thence northeasterly continuing along said westerly line, along an arc of a curve to the left, having a radius of 1382.40 feet, a delta of 08°41'06", a chord bearing North 50°38'51" East, a chord distance of 209.34 feet, an arc length of 209.54 feet to a point on the westerly line of the J. Forbes Tract;

(5) Thence South 02°43'13" East along the West line of J. Forbes Tract a distance of 170.70 feet to a point on the easterly line of the Old Milan Canal;

(6) Thence South 71°15'13" East along said easterly line a distance of 19.94 feet to a point;

(7) Thence southwesterly continuing along said easterly line, along an arc of a curve to the left, having a radius of 1532.40 feet, a delta of 04°50'31", a chord bearing South 52°34'09" West, a chord distance of 129.46 feet, an arc length of 129.50 feet to a point;

(8) Thence South 54°59'24" West continuing along said easterly line a distance of 536.77 feet to a point;

Parcel 15
Thomas Mormino

ERIE COUNTY OHIO RECORDER
Page 7 of 9
RN 200005188

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 306.90 feet to the northeasterly corner of a parcel owned by Gilbert Hoffman (DV247 PG 640); Thence North 54°51'13" West along the northerly line of Hoffman a distance of 154.00 feet to a point; Thence North 71°15'13" West continuing along said northerly line a distance of 222.68 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 71°15'13" West continuing along the northerly line of Hoffman a distance of 19.94 feet to a point on the easterly line of the Abbott Tract;

(2) Thence North 02°43'13" West along said easterly line a distance of 95.58 feet to its intersection with the southerly line of a parcel owned by Violet Mormino (DV 483 PG 383);

(3) Thence South 54°51'13" East along said southerly line of Mormino a distance of 94.77 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said right-of-way line, along an arc of a curve to the right, having a radius of 1532.40 feet, a delta of 02°41'13", a chord bearing South 48°48'17" West, a chord distance of 71.86 feet, an arc length of 71.86 feet to the point of beginning, containing 0.0967 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: _____

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 326.90 feet to the northeasterly corner of a parcel owned by Thomas Mormino (DV 472 PG 726); Thence North 54°51'13" West along the northerly line of Mormino a distance of 154.00 feet to a point; Thence North 60°50'15" West continuing along said northerly line a distance of 125.00 feet to a point; Thence North 54°51'13" West continuing along said northerly line a distance of 71.55 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 54°51'13" West continuing along the northerly line of Mormino a distance of 94.77 feet to a point on the easterly line of the Abbott Tract;

(2) Thence North 02°43'13" West along said easterly line a distance of 67.14 feet to its intersection with the southerly line of a parcel owned by Gary & Virginia Steiner (DV 505 PG 80);

(3) Thence South 54°51'13" East along said southerly line of Steiner a distance of 146.57 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said right-of-way line, along an arc of a curve to the right, having a radius of 1532.40 feet, a delta of 02°01'15", a chord bearing South 46°27'02" West, a chord distance of 54.05 feet, an arc length of 54.05 feet to the point of beginning, containing 0.1470 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr., PE,PS

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer
Date: 3/11/00

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Parcel 17
Gary & Virginia Steiner

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 366.90 feet to the northeasterly corner of a parcel owned by Violet Mormino (DV 483 PG 383); Thence North 54°51'13" West along the northerly line of Mormino a distance of 337.70 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 54°51'13" West along the northerly line of Mormino a distance of 146.57 feet to a point on the easterly line of the Abbott Tract;

(2) Thence North 02°43'13" West along said easterly line a distance of 7.98 feet to a point on the westerly line of the Old Milan Canal;

(3) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 1382.40 feet, a delta of 03°18'54", a chord bearing North 44°38'51" East, a chord distance of 79.97 feet, an arc length of 79.98 feet to a point;

(4) Thence continuing northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 00°32'55", a chord bearing North 42°42'57" East, a chord distance of 30.00 feet, an arc length of 30.00 feet to its intersection with the southerly line of a parcel owned by Henry Seibert (DV 403 PG 805);

(5) Thence South 54°51'13" East along the southerly line of Seibert a distance of 151.17 feet to a point on the easterly line of the Old Milan Canal;

(6) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 00°53'01", a chord bearing South 42°32'54" West, a chord distance of 50.63 feet, an arc length of 50.63 feet to a point;

(7) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 1532.40 feet, a delta of 02°27'00", a chord bearing South 44°12'54" West, a chord distance of 65.52 feet, an arc length of 65.53 feet to the point of beginning, containing 0.3999 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr. PE, PS

EXHIBIT
A

APPROVED as per Erie County requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verification for Accuracy made.

Erie County Engineer
Date: 3/16/00

ERIE COUNTY OHIO RECORDER

Exhibit A-12

KNOW ALL PERSONS BY THESE PRESENTS

RN 200004166 Page 1 of 4
ERIE COUNTY OHIO RECORDER
John W. Schaeffer
RECORDING FEE: 40.00

THAT Key Trust Company of Ohio, N.A. Trustee of the Testamentary Trust of Verna Lockwood Williams, the grantor, who claims title by or through instrument, recorded in Volume 80 , Page 453 , County Recorder's Office, Erie County Probate Court Nos. 3147 and 8504 and Leases Volume 17 Page 307 for the consideration of ten dollars ($10.00) received to full satisfaction of the Grantees, Richard Rinella and Carol Rinella, husband and wife , whose TAX MAILING ADDRESS will be 9903 F River Road, Huron OH 44839

has ***GIVEN, GRANTED, REMISED, RELEASED AND FOREVER QUIT-CLAIMED*** and does by these presents absolutely give, grant, remise, release and forever quit-claim unto the said grantees Richard Rinella and Carol Rinella, husband and wife, their heirs and assigns forever, all such right and title as Key Trust Company of Ohio, N.A. Trustee of the Testamentary Trust of Verna Lockwood Williams, the said grantor, has or ought to have in and to the following described piece or parcel of land, situated in the Township of Milan, County of Erie and State of Ohio:

Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at a railroad spike, set, marking the intersection of the centerline of Franklin Flats Road 30ft (Riverview Drive) with the centerline of the Wheeling & Lake Erie Railroad (100ft); Thence South 08° 02' 58" West along the centerline of said railroad a distance of 325.65 feet to a point of curve; Thence southwesterly continuing along the centerline of said railroad, along an arc of a curve to the right, having a radius of 1772.04 feet, a delta of 02° 25'3 5",a chord bearing South 09° 15' 46" West, a chord distance of 75.04 feet, an arc length of 75.05 feet to its intersection with the westerly extension of the northerly line of a parcel owned by Richard and Carol Rinella (DV 536 PG 97), and the point of beginning;

(1) Thence South 54° 28' 00" East along said extension a distance of 109.75 feet to a point on the easterly line of the Old Milan Canal;

(2) Thence southwesterly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 03° 29' 02", a chord bearing South 13° 38' 26" West, a chord distance of 113.81 feet, an arc length of 113.83 feet to a point on the southerly line of said Rinella parcel;

(3) Thence North 60° 48' 00" West along the westerly extension of the South line of Rinella a distance of 154.88 feet to a point on the westerly line of the Old Milan Canal;

(4) Thence northeasterly along said westerly right-of-way line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 04° 27' 02", a chord bearing North 11° 55' 25" East, a chord distance of 133.90 feet, an arc length of 133.93 feet to its intersection with the westerly extension of the northerly line of said Rinella parcel;

(5) Thence South 54° 28' 00" East along said extension a distance of 55.37 feet to the point of beginning, containing 0.4262 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

EXHIBIT
A-12

MICROFILMED

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in July 1999. The bearings were assumed only for the purpose of indicating angles.

TO HAVE AND TO HOLD the premises aforesaid, with the appurtenances thereunto belonging to the said Grantees Richard Rinella and Carol Rinella, husband and wife, their heirs and assigns, so that neither the said grantor Key Trust Company of Ohio, National Association, Trustee of the Testamentary Trust of Verna Lockwood Williams, nor their heirs, nor any other persons claiming title through or under them, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

IN WITNESS WHEREOF, I have hereunto set my hand, the 24th day of February, in the year of our Lord two thousand.

Signed and acknowledged in presence of:

KEY TRUST COMPANY OF OHIO, NATIONAL ASSOCIATION

Lee Matia, Assistant Vice President

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY) Before me, a Notary Public in and for said County and State, personally appeared the above named Lee Matia, Assistant Vice President of Key Trust Company of Ohio, National Association, Trustee of the Testamentary Trust of Verna Lockwood Williams, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal at Cleveland, Ohio, this 24th day of February, 2000.

Notary Public

LINDA G. MANDRYK
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires June 11, 2000

This instrument prepared by: *Carpenter, Paffenbarger & Meyerhoefer, Norwalk, Ohio*
Paul F. Meyerhoefer, Attorney at Law

April 4, 2000
Jude T. Hammond

TRANSFER NOT NECESSARY

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $
EXEMPT: $ ✓
R.E. TRANSFER: $
JUDE T. HAMMOND
Erie County Auditor
by

MILAN CANAL ACROSS RINELLA PARCEL

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at a railroad spike, set, marking the intersection of the centerline of Franklin Flats Road 30ft (Riverview Drive) with the centerline of the Wheeling & Lake Erie Railroad (100ft); Thence South 08°02'58" West along the centerline of said railroad a distance of 325.65 feet to a point of curve; Thence southwesterly continuing along the centerline of said railroad, along an arc of a curve to the right, having a radius of 1772.04 feet, a delta of 02°25'35", a chord bearing South 09°15'46" West, a chord distance of 75.04 feet, an arc length of 75.05 feet to its intersection with the westerly extension of the northerly line of a parcel owned by Richard & Carol Rinella (DV 536 PG 97), and the point of beginning;

(1) Thence South 54°28'00" East along said extension a distance of 109.75 feet to a point on the easterly line the Old Milan Canal;

(2) Thence southwesterly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 03°29'02", a chord bearing South 13°38'26" West, a chord distance of 113.81 feet, an arc length of 113.83 feet to a point on the southerly line of said Rinella parcel;

(3) Thence North 60°48'00" West along the westerly extension of the South line of Rinella a distance of 154.88 feet to a point on the westerly line of the Old Milan Canal;

(4) Thence northeasterly along said westerly right-of-way line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 04°27'22", a chord bearing North 11°55'25" East, a chord distance of 133.90 feet, an arc length of 133.93 feet to its intersection with the westerly extension of the northerly line of said Rinella parcel;

(5) Thence South 54°28'00" East along said extension a distance of 55.37 feet to the point of beginning, containing 0.4262 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in July 1999. The bearings were assumed only for the purpose of indicating angles.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED PROFESSIONAL LAND SURVEYOR

Daniel E. Hartung Jr., PE, PS

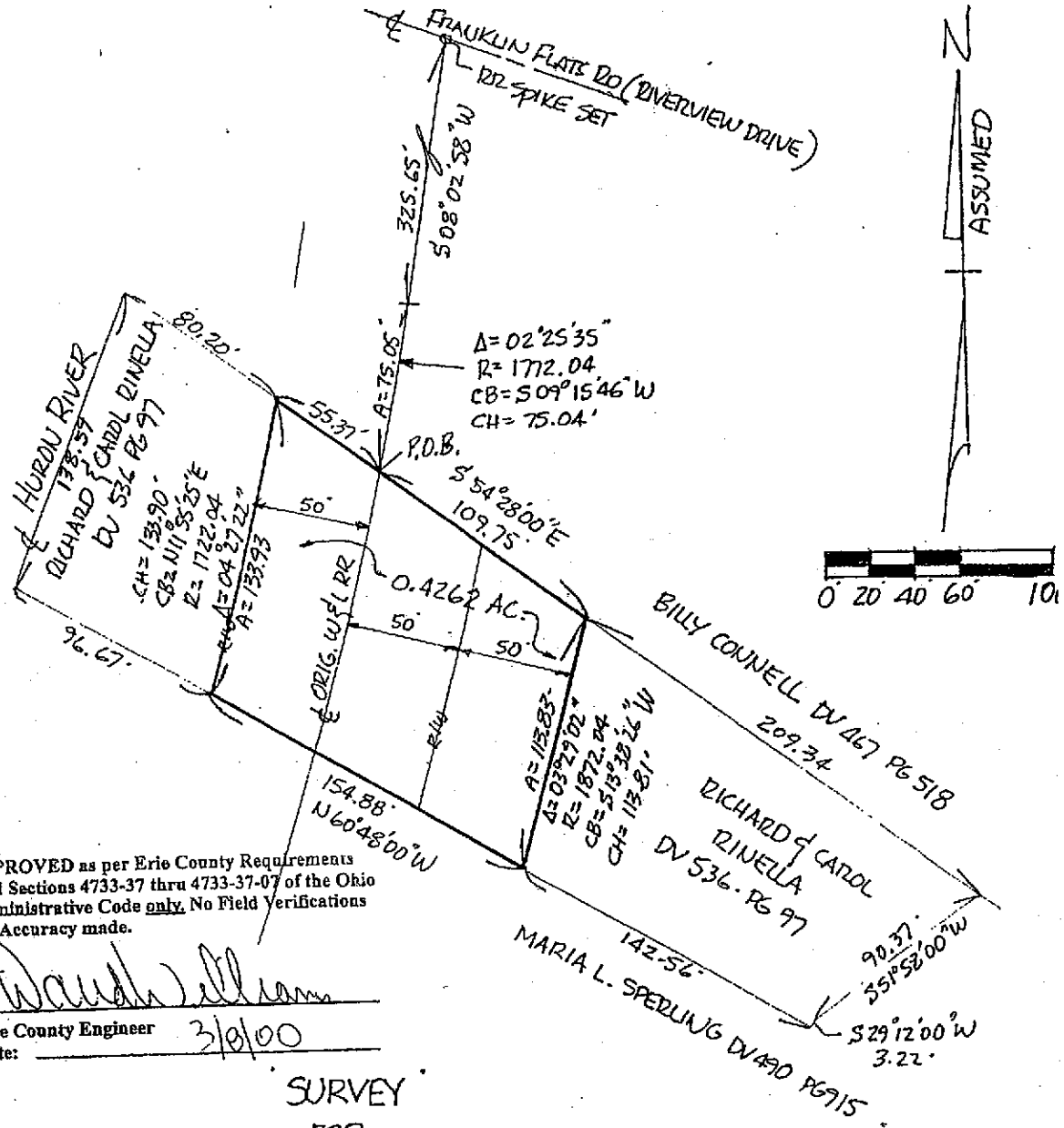
APPROVED as per Erie County Subdivision
And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Erie County Engineer 3/9/00

HARTUNG & ASSOCIATES
ENGINEERS & SURVEYORS

P.O. BOX 426, 421 WILLIAMS ST., HURON, OH 44839-0426
(419) 433-4321 • FAX (419) 433-7879

DANIEL E. HARTUNG JR., PE, PS



PPROVED as per Erie County Requirements
nd Sections 4733-37 thru 4733-37-07 of the Ohio
dministrative Code only. No Field Verifications
or Accuracy made.

Erie County Engineer
Date: 3/8/00

SURVEY
FOR
RICHARD & CAROL RINELLA

PART J. FORBES TRACT — SECTION 2
MILAN TOWNSHIP — ERIE COUNTY, OHIO
DECEMBER 1999 — SCALE 1"=60'

I HEREBY CERTIFY THE WITHIN TO BE A TRUE REPRESENTATION OF A SURVEY MADE BY ME.

STATE OF OHIO
DANIEL E. HARTUNG, JR.
S-5667
REGISTERED
PROFESSIONAL LAND SURVEYOR

Exhibit B

THE STATE EX REL. COLES ET AL. *v.* GRANVILLE, DIR.-SECY., ET AL.

[Cite as *State ex rel. Coles v. Granville*, 116 Ohio St.3d 231, 2007-Ohio-6057.]

Mandamus – Appropriation – Writ of mandamus will lie to compel board of park commissioners to commence appropriation proceedings for real property taken by board from private property owners – R.C. 1545.11 authorizes all boards of park commissioners to appropriate property regardless of when park district was created — Dismissal of action because one party is not real party in interest is not dismissal on the merits for purposes of res judicata.

(No. 2006-1259 — Submitted September 11, 2007 — Decided November 20, 2007.)

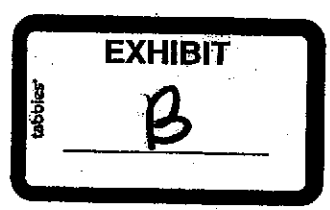
IN MANDAMUS.

Per Curiam.

{¶ 1} This is an original action for a writ of mandamus to compel a park district's board of commissioners to commence appropriation proceedings for property allegedly seized and occupied by the district. Because relators have established that by constructing and using a recreational trail the board has taken the property, we grant a writ of mandamus to compel the board to begin an appropriation proceeding to compensate relators for the taking.

The Canal Company and the Railroad Lease

{¶ 2} In 1827, the General Assembly chartered the Milan Canal Company ("the canal company") to construct and operate a canal from Milan, Ohio, to the Huron River. Noncontiguous tracts of land from Ebeneser Merry and Kneeland Townsend were acquired by the canal company as part of the canal corridor. In 1881, the canal company entered into a 99-year lease with the



Wheeling & Lake Erie Railway Company for a 150-foot-wide right of way to construct and operate a railroad. The lease was renewed in 1980 for another 99 years.

{¶ 3} The canal company was dissolved in 1904, and its property interests devolved to a testamentary trust and its trustee, Key Trust Company of Ohio. Rail traffic on the leased property ceased in the 1980s, and portions of the rail line were paved. In 1995, the lessee's successor quitclaimed its interests to respondent Board of Commissioners of Erie MetroParks, a park district created pursuant to R.C. 1545.01 et seq. The board acquired the property to build a recreational trail.

Coles v. Wheeling & Lake Erie Ry. Co., Erie C.P. No. 97-CV-296

{¶ 4} In 1986, relators Edwin and Lisa Coles obtained a portion of the property upon which Erie MetroParks intended to build the recreational trail. In the deed, however, the sellers excepted "a 66 foot wide parcel [of approximately .80 acres] now or formerly owned by" one of the successors in interest to the lessee of the railroad lease.

{¶ 5} In 1997, the Coleses filed an action in the Erie County Court of Common Pleas for a judgment declaring that they have title to the property generally specified in the 1986 deed, including the 66-foot-wide parcel. Erie MetroParks filed a motion to dismiss the Coleses' action on grounds that because the parcel was specifically excepted from the deed, the Coleses were not real parties in interest. The common pleas court granted the motion and dismissed the case. No appeal was taken from the 1998 judgment.

The *Key Trust* Litigation

{¶ 6} In 1999, the Erie MetroParks Board of Commissioners initiated a declaratory-judgment action in the Erie County Court of Common Pleas against Key Trust. While the case was pending, Key Trust conveyed the property formerly owned by the canal company to relators the Coleses and Buffalo Prairie,

Ltd., a limited liability company of which Edwin Coles is the president. The deed designated the parcels conveyed as "Farm Property/Milan Canal Parcel" and "House Lot/Milan Canal Parcel." The Coleses and Buffalo Prairie then conveyed sections of this property to the other relators — Isolated Ventures, Ltd., another limited liability company of which Edwin Coles serves as president, Vincent Otrusina,[1] Robert C. Bickley, and Warren R. Jones.

{¶ 7} In 2000, the board of park commissioners filed an amended complaint for declaratory relief, which added those relators and other property owners who may have received Key Trust's interests in the former canal company property. The board sought a judgment declaring that the railroad lease is in full force and effect, that the board is the lessee of the property, that the defendants' rights are subject to the board's rights under the lease, that the board is entitled to the sole and exclusive occupancy of the property, and that the lease permits the board to improve and use the property as a recreational trail. The board alleged that it was improving the property for use as a recreational trail and that Key Trust had attempted to terminate the lease.

{¶ 8} The defendant property owners submitted an answer and a counterclaim. In reply, the board claimed that it has the right to possess the land formerly actively used by the railroad not only through the railroad lease but through property it acquired by the quitclaim deed from the original lessee.

{¶ 9} In November 2000, the common pleas court entered a judgment finding that the canal company— predecessor in title to Key Trust and relators — had acquired its real property interests solely from the Merry and Townsend deeds, that the canal property "consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel

1. Otrusina later died, and the executor of his estate is a relator in this case.

Farms, Ltd., just north of Mason Road, in Section 2, Milan Township, Erie County, Ohio," and that the only property owned by the canal company at the time the railroad lease was executed "lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1." The court nevertheless concluded that the lease had been breached by a predecessor in interest to the board of park commissioners for nonpayment of rent and abandonment of the railroad use, which rendered the lease void.

{¶ 10} On appeal, the court of appeals affirmed the judgment of the trial court insofar as it found that the railroad lease was limited to the land obtained by the canal company from Merry and Townsend. *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A.* (2001), 145 Ohio App.3d 782, 787-788, 764 N.E.2d 509. The court of appeals further held that the trial court had erred by concluding that the board's predecessor in interest had breached the railroad lease. Id. at 790, 764 N.E.2d 509. The court of appeals reversed that portion of the trial court's judgment invalidating the lease and remanded the cause for further proceedings. Id. at 791, 764 N.E.2d 509. We did not accept a discretionary appeal from the court of appeals judgment. *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A.* (2002), 94 Ohio St.3d 1431, 761 N.E.2d 47.

{¶ 11} On remand, the common pleas court held that the lessee had not abandoned the leased property, that the lease is in full force and effect, that the board of park commissioners is the current lessee and the holder of the lessee's rights under the lease, that the board is entitled to the sole occupancy and use of the leased property, that the rights of the defendants — including relators — are subject to the board's rights under the lease, and that the lease permitted the board to improve and use the leased property as a parkway or recreational trail. The trial court further concluded that the extent of the leased property was limited to the Merry and Townsend tracts conveyed to the canal company:

{¶ 12} "[The extent of the leased property is] [a]ll those lands within a one hundred fifty (150) foot wide corridor conveyed to the Milan Canal Company by Kneeland Townsend and Ebeneser Merry by instruments dated May 10, 1838 and April 21, 1838, respectively * * *, which lands have a northerly boundary at Lock No. 1 of the old Milan Canal, which lock was located immediately north of Mason Road on lands now owned by Wikel Farms, Ltd. at or near the intersection of the Milan Canal with the Huron River, and extending southerly to the Canal's turning basin in the City of Milan, Ohio."

{¶ 13} In an appeal from the trial court's judgment on remand, the defendants, including a majority of relators, asserted that the portion of the judgment describing the leased property as extending from north of Mason Road south to the canal basin in Milan differed from the previous description, which restricted the leased property to the Merry and Townsend parcels. The court of appeals rejected this contention by holding that the judgment on remand did not contradict the finding in the previous judgment entries "that the leased property encompassed only land obtained from Townsend and Merry." *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio*, Erie App. Nos. E-02-009 and E-02-011, 2002-Ohio-4827, ¶ 22. The court of appeals affirmed the trial court's judgment.

Actions of the Board of Park Commissioners
and the Location of Relators' Property

{¶ 14} Shortly after the Coleses received their farm and home parcels from Key Trust in 1999, they received a letter from respondent Jonathan R. Granville, the director-secretary of Erie MetroParks. Granville stated that the board was interested in acquiring the Coleses' ownership interests in the canal and railroad corridor. In 2000, the board adopted two resolutions to authorize the acquisition of fee-simple title to the property by instituting appropriation proceedings.

{¶ 15} The Coleses' home parcel and the Otrusina estate's property lie north of Mason Road. The Coleses' farm parcel and relators' remaining properties are south of Mason Road. None of relators' property is within the boundaries of the Merry or Townsend tracts.

{¶ 16} The board of park commissioners built a recreational trail over the former railroad line, which relators assert is part of their property.

Federal Litigation

{¶ 17} In 2003, relators and Wikel Farms, Ltd. filed a civil-rights action in federal district court under Sections 1983, 1985(2), and 1985(3), Title 42, U.S.Code, against the board and its director-secretary for violations of their rights under the Fifth and Fourteenth Amendments to the United States Constitution. See *Coles v. Granville* (Jan. 24, 2005), N.D.Ohio No. 3:03 CV 7595, 2005 WL 139137. Relators alleged that in developing the recreational trail, respondents asserted entitlement to property beyond that found to be covered by the railroad lease in the *Key Trust* cases. The federal district court dismissed the case and determined that as a federal court, it was barred from reviewing the state court's finding that the property was covered by the lease. Id. at * 4. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed, holding that relators' causes of action for unconstitutional takings were not ripe for federal review when relators had not brought a state action in mandamus to compel appropriation proceedings. *Coles v. Granville* (C.A.6, 2006), 448 F.3d 853.

Mandamus Case

{¶ 18} Shortly after the Sixth Circuit's decision in *Coles*, 448 F.3d 853, relators filed this action for a writ of mandamus to compel the board of park commissioners and its director-secretary to either (1) commence an appropriation proceeding to compensate relators for the board's taking of their property or (2) relinquish the seized property and direct the park district not to file an eminent-domain action to appropriate relators' property. This court granted an alternative

writ on relators' appropriation claim and dismissed relators' alternate claim to compel respondents to relinquish the property. 113 Ohio St.3d 1485, 2007-Ohio-1986, 865 N.E.2d 910. See, e.g., *State ex rel. Grendell v. Davidson* (1999), 86 Ohio St.3d 629, 634, 716 N.E.2d 704 ("if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction"). Relators' alternate mandamus claim suggested that the real objects sought were a declaratory judgment — that park districts established after April 16, 1920, lack the power to acquire property by appropriation — and a prohibitory injunction to prevent the board of park commissioners from continuing to occupy relators' property and from filing an appropriation action.

{¶ 19} The parties have now presented evidence and briefs on relators' remaining mandamus claim concerning appropriation. Because they have also filed a notice stipulating to the dismissal of the claim against the director-secretary under Civ.R. 41(A)(1)(b), the claim now solely concerns the board of park commissioners.

Motions to Take Judicial Notice

{¶ 20} On the same date that their evidence was due, the parties filed motions for the court to take judicial notice of certain filings in the *Key Trust* litigation, including the common pleas court and court of appeals judgments, which are attached to their motions. Because the parties agree that the submitted documents should be part of the court's record in this original action, we grant the motions. Cf. *Stutzka v. McCarville* (C.A.8, 2005), 420 F.3d 757, 761, fn. 2 (court takes judicial notice of judicial opinions and public records on motion to enlarge record on appeal); *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.* (C.A.2, 1992), 969 F.2d 1384, 1388, quoting *Kramer v. Time Warner, Inc.* (C.A.2, 1991), 937 F.2d 767, 774 ("A court may take judicial notice of a document filed in

another court 'not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings' ").

Mandamus as a Remedy to
Compel Appropriation Proceedings

{¶ 21} "The United States and Ohio Constitutions guarantee that private property shall not be taken for public use without just compensation." *State ex rel. Shemo v. Mayfield Hts.* (2002), 95 Ohio St.3d 59, 63, 765 N.E.2d 345, judgment modified in part on other grounds, 96 Ohio St.3d 379, 2002-Ohio-4905, 775 N.E.2d 493; Fifth and Fourteenth Amendments to the United States Constitution; Section 19, Article I, Ohio Constitution. "Mandamus is the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged." *Shemo*, 95 Ohio St.3d at 63, 765 N.E.2d 345; see, also, *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 2005-Ohio-2163, 826 N.E.2d 832, ¶ 11.

{¶ 22} This case involves a classic appropriation claim alleging an actual physical taking of relators' real property. See *Lingle v. Chevron U.S.A., Inc.* (2005), 544 U.S. 528, 537, 125 S.Ct. 2074, 161 L.Ed.2d 876 ("The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property"); *State ex rel. OTR v. Columbus* (1996), 76 Ohio St.3d 203, 206, 667 N.E.2d 8 ("the actual physical taking of real property" is a sufficient interference with a property right to constitute a compensable taking).

Authority of Board of Park Commissioners
to Appropriate Real Property

{¶ 23} In their alternate mandamus claim, relators argued in part that the board of park commissioners lacks authority to acquire property by appropriation because the Erie MetroParks District was established after April 16, 1920. Although we dismissed that alternate claim because it sought relief in the nature

of a declaratory judgment and prohibitory injunction, an analysis of this argument is warranted because if it is correct, relators' appropriation claim must fail.

{¶ 24} R.C. 1545.11 authorizes boards of park commissioners to acquire real property by appropriation, specifies that appropriation proceedings shall be conducted in the manner set forth in the general appropriation provisions of R.C. 163.01 to 163.22, and concludes with a sentence providing, "This section applies to districts created prior to April 16, 1920." Relators contended in their alternate mandamus claim that because the Erie MetroParks District was established *after* April 16, 1920, the board lacks authority to appropriate property.

{¶ 25} R.C. 1545.11, however, authorizes all boards of park commissioners to appropriate property, regardless of the date of any park district's creation. As noted by the attorney general, the legislative history of R.C. 1545.11 supports this holding:

{¶ 26} "From this legislative history, it is apparent that the last sentence of what is now R.C. 1545.11 was originally added to G.C. 2976-7 in 1920 to ensure that park districts created prior to the 1920 effective date of H.B. No. 387 enjoyed the broader powers conferred upon boards of park commissioners thereunder. This statutory provision was, of course, necessitated by the historic presumption applied by the courts of this state that the legislature intends statutes enacted by it to operate prospectively rather than retroactively. It is apparent, therefore, that the change in language in 1953 which set forth the specific date of April 16, 1920, in no way altered the operation of this final provision as one which included districts created both before and after that date. Thus, I am of the opinion that the terms of R.C. 1545.11 authorize boards of park commissioners created both before and after April 16, 1920, to acquire lands as specified therein." (Citations omitted.) 1978 Ohio Atty.Gen.Ops. No. 78-045; see, also, 1983 Ohio Atty.Gen.Ops. No. 83-020, syllabus ("R.C. 1545.11 applies to all park districts, regardless of the date of their creation").

{¶ 27} A court of appeals reached a similar conclusion in *Clark Cty. Bd. of Park Commrs. v. Dunkle*, Clark App. No. 2002 CA 93, 2003-Ohio-5400, ¶ 15:

{¶ 28} "In our opinion, it is much more sensible to interpret the final sentence of R.C. 1545.11 to express a desire to make the provisions set forth therein retroactive than to create an arbitrary distinction that would give some park districts, but not others, the power to acquire lands through appropriation. We see no principled reason for such disparate treatment, and there is no evidence of such an intention in the legislative history. Moreover, insofar as R.C. 1545.11 encompasses the acquisition of land by gift or purchase as well as by eminent domain, the [property owners'] interpretation of the provision would deprive park districts created after April 16, 1920 of virtually all means of acquiring land."

{¶ 29} Therefore, the board of park commissioners is authorized under R.C. 1545.11 to appropriate property for the construction and use of a recreational trail, and a mandamus claim to compel the board to commence an appropriation proceeding is viable as long as relators establish an involuntary taking of their property by the board.

Pending Civil Action Does Not Bar Mandamus Action

{¶ 30} On the same date that relators filed this mandamus action, they filed a civil action for trespass and slander of title against the board of park commissioners and its director-secretary in the Erie County Court of Common Pleas. In that case, relators allege that the board trespassed on their property and made slanderous claims of title to the property. Relators sought damages and a permanent injunction.

{¶ 31} The board suggests that relators' civil suit bars their entitlement to the requested writ of mandamus. This suggestion is erroneous.

{¶ 32} As noted previously, we have consistently held that mandamus is the appropriate action to compel public authorities to commence appropriation proceedings for an involuntary taking of private property. *State ex rel. Preschool*

Dev., Ltd. v. Springboro, 99 Ohio St.3d 347, 2003-Ohio-3999, 792 N.E.2d 721, ¶ 12. The pending civil action does not afford a complete remedy to relators because it cannot compel the board of public commissioners to commence appropriation proceedings for the property relators claim has been taken by the board. Cf. *State ex rel. Fattlar v. Boyle* (1998), 83 Ohio St.3d 123, 125, 698 N.E.2d 987 (prior declaratory judgment action did not bar mandamus action when it would not provide a complete remedy to relator).

{¶ 33} Therefore, the pending civil action does not bar relators' mandamus claim.

Mandamus to Compel Appropriation Proceeding for Property South of Mason Road: Res Judicata Effect of *Key Trust* Litigation

{¶ 34} Relators and respondents both claim that the *Key Trust* litigation is res judicata and establishes their interest in the property south of Mason Road in the canal corridor.

{¶ 35} "Under the doctrine of res judicata, '[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.' " *State ex rel. Denton v. Bedinghaus*, 98 Ohio St.3d 298, 2003-Ohio-861, 784 N.E.2d 99, ¶ 14, quoting *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 653 N.E.2d 226, syllabus.

{¶ 36} In general, res judicata bars all claims that were or *might have been* litigated in the first lawsuit. *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, 2005-Ohio-1509, 824 N.E.2d 1000, ¶ 14. The parties rely on this general rule to support their claim that the *Key Trust* declaratory judgment barred all claims that could have been, but were not litigated in those cases.

{¶ 37} Unlike other judgments, however, "a declaratory judgment determines only what it actually decides and does not preclude other claims that might have been advanced." *Shemo*, 95 Ohio St.3d at 69, 765 N.E.2d 345; 1

Restatement of the Law 2d, Judgments (1982) 337, Section 33, Comment *c*. Consequently, "[f]or a previous declaratory judgment, res judicata precludes only claims that were *actually decided*." (Emphasis sic.) *State ex rel. Trafalgar Corp. v. Miami Cty. Bd. of Commrs.*, 104 Ohio St.3d 350, 2004-Ohio-6406, 819 N.E.2d 1040, ¶ 22.

{¶ 38} The board of park commissioners asserts that the trial court in the first *Key Trust* judgment decided that the lease covered the entire three-mile canal corridor from Milan to the area near Lock No. 1 and Mason Road and that res judicata bars relators from now contesting this conclusion. The board relies on the following language from the common pleas court's first judgment entry:

{¶ 39} "Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County."

{¶ 40} But as relators persuasively contend, the board takes this sentence out of context and ignores the trial court and court of appeals judgments in *Key Trust* that followed the original judgment.

{¶ 41} The entire paragraph from which the quoted sentence appears emphasizes that the leased property consists solely of the Merry and Townsend tracts:

{¶ 42} "The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands *then owned by the Milan Canal Company* within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. *The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which*

lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County." (Emphasis added.)

{¶ 43} Evidently, most of the relators were concerned enough about the inclusion of the last sentence in the common pleas court's judgment and comparable language in that court's judgment on remand to assert on appeal that the trial court had improperly reformed the railroad lease by expanding the leased property beyond the Merry and Townsend tracts. On each occasion, however, the court of appeals emphasized that any boundary reference contained in the trial court's judgments — like the reference to a 150-foot-wide canal corridor — was merely a general description that was subject to the specific holding that the leased property consisted of only the Merry and Townsend tracts.

{¶ 44} For example, in the first *Key Trust* appeal, the court of appeals rejected the arguments challenging the property description by holding that the actual metes and bounds were those of the Merry and Townsend properties:

{¶ 45} "Although the metes and bounds description contained in the 1881 lease describes a one-hundred-fifty-foot corridor for the full length of the canal, the lease limits the conveyance to property 'owned by' the canal company. The trial record shows that the Milan Canal Company acquired property only from Townsend and Merry. The trial court ruled that this property alone was the subject of the lease. Consequently, the court never modified the 1881 lease. Since there was no reformation of the lease, appellants' arguments concerning an improper reformation of the contract are without merit. * * *

{¶ 46} "The same holds true for [the property owners'] manifest-weight argument * * *. The only competent, credible evidence presented at trial was that

the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such property was unsupported by the evidence." *Erie Metroparks*, 145 Ohio App.3d at 787-788, 764 N.E.2d 509.

{¶ 47} Similarly, in the second appeal, the court of appeals rejected relators' claim that the trial court's lease-property description on remand exceeded the boundaries of the Merry and Townsend parcels by deeming it significant that both trial court entries emphasized that the leased property encompassed only land obtained from Townsend and Merry. *Erie Metroparks*, 2002-Ohio-4827, at ¶ 19, 22.

{¶ 48} Under these circumstances, the *Key Trust* litigation conclusively determined that the property subject to the board's interests under the railroad lease lay within the boundaries of the Merry and Townsend parcels; it did not determine — as the board contends — that those boundaries extended beyond those parcels. Res judicata is "not a shield to protect the blameworthy." *Davis v. Wal-Mart Stores, Inc.* (2001), 93 Ohio St.3d 488, 491, 756 N.E.2d 657. A contrary ruling would condone the board's hypertechnical reading of the trial court's entry language in *Key Trust* and ignore both the ultimate emphasis in that litigation at both the trial and appellate courts on the interests of the board being limited to the Merry and Townsend parcels as well as the uncontroverted evidence that none of relators' property is within either of those parcels.

{¶ 49} Therefore, relators have established that the board's construction and use of a recreational trail over their property south of Mason Road resulted in a physical invasion of their property and constitute an involuntary taking entitling them to the requested appropriation proceeding.

Mandamus to Compel Appropriation Proceeding
for Property North of Mason Road:
Res Judicata Effect of the Coleses' Prior Declaratory-Judgment Action

{¶ 50} For the portions of relators' property that lie north of Mason Road, the board claims that the common pleas court's 1998 dismissal of the Coleses' declaratory-judgment action prevented the Coleses from relitigating their claimed ownership of the property. The dismissal, which preceded the *Key Trust* litigation, was based on the court's holding that the Coleses were not real parties in interest.

{¶ 51} The board's claim lacks merit. In general, the dismissal of an action because one of the parties is not a real party in interest or does not have standing is not a dismissal on the merits for purposes of res judicata. See, e.g., *Stewart v. K&S Co., Inc.* (Utah 1979), 591 P.2d 433, 434 ("the dismissal of an action because one of the parties is not the real party in interest is not a dismissal on the merits so as to bar a subsequent action"); 18A Wright, Miller & Cooper, Federal Practice and Procedure (2002) 189, Section 4438 ("Dismissal on the ground that the plaintiff is not the real party in interest should not preclude a later action by the real party in interest"); *A-1 Nursing Care of Cleveland, Inc. v. Florence Nightingale Nursing, Inc.* (1994), 97 Ohio App.3d 623, 627, 647 N.E.2d 222 (dismissal for lack of standing "terminates the action other than on the merits and affords proper parties the opportunity to refile without fear of the effects of *res judicata*"); *Asher v. Cincinnati* (Dec. 23, 1999), Hamilton App. No. C-990345, 2000 WL 955617 (dismissal for lack of standing is not on the merits for purposes of res judicata).

{¶ 52} Moreover, despite the somewhat contradictory nature of the evidence, the description of the parcel of land that is referred to in relators' complaint as the Coleses' home parcel, which is located north of Mason Road, corresponds to the deed description of the property conveyed by Key Trust to the Coleses in 1999, which was *after* the 1998 dismissal that the board cites in support of its res judicata claim. Res judicata does not preclude a party previously dismissed for lack of standing as a real party in interest from becoming

a real party in interest through transactions occurring after the dismissal. *Wead v. Lutz*, 161 Ohio App.3d 580, 2005-Ohio-2921, 831 N.E.2d 482, ¶ 35-37.

{¶ 53} Therefore, the dismissal of the Coleses' previous declaratory-judgment action does not prevent their mandamus claim.

Mandamus to Compel Appropriation Proceeding for Property North of Mason Road: Res Judicata Effect of the *Key Trust* Litigation

{¶ 54} Relators, the Coleses and the Otrusina estate, assert that for their property north of Mason Road, the *Key Trust* litigation prevents the board from attempting to relitigate their claimed ownership of the property.

{¶ 55} Although the focus of the *Key Trust* cases was on the leased property, the board raised, and the court considered, whether the board owned any of the pertinent canal corridor property in fee in addition to its interests under the railroad lease. In its reply to the counterclaim filed in *Key Trust*, the board expressly claimed that it had a right to possess the land formerly used by the railroad through property it acquired by a quitclaim deed from a successor to the lessee, instead of simply through the lease itself. In the trial court's first judgment, the court specifically noted that one of the issues before it was whether the board of park commissioners had "acquired any ownership interest in the property at issue by virtue of a quitclaim deed from the Wheeling Railroad." The court ultimately resolved this issue in favor of the defendants, including relators, by holding that the board had no property interest in the land north of Lock No. 1. That judgment was not modified by the subsequent *Key Trust* proceedings.

{¶ 56} The board does not really dispute this; instead, it claims that the dismissal of the Coleses' earlier case preceded the *Key Trust* cases and thus barred the Coleses' claim to the property. But as previously discussed, that claim lacks merit.

{¶ 57} Even if the *Key Trust* cases did not resolve the board's alleged ownership in this northern portion of the property, and assuming, as the board

claims, that its ownership derives from an 1882 deed from Oscar Meeker to Wheeling & Lake Erie Rail Road Company, the board's predecessor in interest, the deed itself did not transfer any property rights to the railroad company because Oscar Meeker did not hold title to the property when it was allegedly conveyed.. Although relators raised Meeker's inability to pass title in their initial merit brief, the board did not rebut relators' argument.

{¶ 58} Therefore, in regard to the portion of relators' property north of Mason Road, the board's construction and use of a recreational trail also effected an involuntary taking.

Conclusion

{¶ 59} Relators have established that by employing their private property for public use as a recreational trail, the board of park commissioners has taken their property. Accordingly, we grant a writ of mandamus to compel the board to commence an appropriation proceeding to compensate them for that taking. All other issues raised by the parties — the proper construction of the Meeker deed, the possible abandonment of any railroad easement, and whether the recreational trail constituted a significantly different use than the railroad so as to require compensation — need not be addressed because they are rendered moot by our decision. See, e.g., *State ex rel. Essig v. Blackwell*, 103 Ohio St.3d 481, 2004-Ohio-5586, 817 N.E.2d 5, ¶ 33.

Writ granted.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, LANZINGER, and CUPP, JJ., concur.

O'DONNELL, J., not participating.

Brooks & Logan Co., L.P.A., and J. Anthony Logan; Ackerson, Kauffman Fex, P.C., and Nels J. Ackerson, for relators.

Tomino & Latchney, L.L.C., and John D. Latchney, for respondents.

Exhibit C

[Cite as *Erie Metroparks Bd. of Park Comms. v. Key Trust Co.*, 2001-Ohio-2888.]

IN THE COURT OF APPEALS OF ERIE COUNTY

Board of Park Commissioners, Erie Metroparks

Appellee/ Cross-Appellant

v.

Key Trust Company of Ohio, NA Trustee of the Testamentary Trust of Verna Lockwood Williams, et al.

Appellants/ Cross-Appellees

Court of Appeals No. E-00-068

Trial Court No. 99CV442

DECISION AND JUDGMENT ENTRY

Decided: September 14, 2001

* * * * *

Abraham Lieberman and Dennis M. O'Toole, for appellee/cross-appellant.

D. Jeffery Rengel, Thomas R. Lucas, Anthony Logan and Peggy Kirk Hall, for appellants/cross-appellees.

* * * * *

SHERCK, J.

{¶1} This is an appeal from a declaratory judgment issued by the Erie County Court of Common Pleas in a property dispute. Because the trial court's determination concerning the scope of the lease in question was proper, we affirm that portion of the court's decision. However, with respect to the court's determination that a prior breach of the terms of the lease rendered it void, we reverse.

{¶2} In 1827, the Ohio General Assembly chartered the Milan Canal Company to construct and operate a canal from Milan, Ohio, to Lake Erie. In due course, the canal company acquired land and dug a canal between Milan and "Lock 1," located where the navigable portion of the Huron River intersected the canal.

{¶3} In 1881, the Milan Canal Company leased a one hundred fifty foot wide corridor through its property to the Wheeling and Lake Erie Rail Road Company, upon which to construct and operate a railroad. The lease was for ninety-nine years, renewable "forever." The lease required an annual rental fee of $50 and also provided that,

> {¶4} "*** on the failure of said Lessee *** to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for Six months to pay said annual rental of ($50) Fifty Dollars to the said Lessor after the same became due and payable these presents shall become void and the said real estate shall revert to the said Lessor the Milan Canal Company ***."

{¶5} It is undisputed that during the next one hundred years the railroad, in one corporate guise or another,[1] maintained and operated a line on the leased corridor. In 1979, the railroad's lease was renewed for another ninety-nine years. In 1995, the Wheeling and Lake Erie Railway Company sold the lease to appellee/cross-appellant, Board of Commissioners, Erie Metroparks ("appellee"). Appellee intended to convert the property to a recreational hiking/bicycling trail.

{¶6} In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Stephen Lockwood's interests

in the property eventually devolved to the testamentary trust of Verna Lockwood Williams and its trustee, Key Trust Company of Ohio. Following the purchase of the railroad's lease interest by appellee, a dispute arose between the trust and appellee concerning the continued validity of the lease.

{¶7} On September 30, 1999, appellee initiated a declaratory judgment action against the Lockwood Williams trust. Appellee sought a declaration that the 1881 lease remains in effect, that the property may be properly used for a recreational trail, and that the scope of the lease be determined. The trust answered appellee's complaint, denying the validity of the lease and counterclaiming for a quiet title.

{¶8} During the pendency of this case, the Lockwood Williams trust sold its interest in the disputed land to appellant/cross-appellee Buffalo Prairie, Ltd. Buffalo Prairie, in turn, began to convey portions of the land at issue to adjacent property owners. With this development, appellee amended its complaint to include not only the Lockwood Williams trust, but Buffalo Prairie and thirty-two named adjacent property owners ("appellants").[2]

{¶9} This matter then proceeded to a bench trial. At the trial, appellants presented evidence that at the time appellee acquired its interest in the property, the railroad had been several years delinquent in paying its rent. Appellants also presented evidence that rail traffic on the line had ceased in the mid-1980s and that the track and the railroad infrastructure had

been allowed to deteriorate since then. Indeed, the railroad had years previously filed a notice of route abandonment with the former Interstate Commerce Commission. Appellants argued that this behavior constituted a failure to maintain the property, an abandonment of the property for "railway purposes" and a default in rent. Appellants asserted that such multiple breaches of the lease caused the lease to become "void". The real estate should, therefore, "revert" to appellants as successors of the Milan Canal Company.

{¶10} Appellee responded with testimony that both the railroad and appellee attempted to remedy the rent default, but that the Lockwood Williams trust had rejected the tender. As far as abandonment was concerned, appellee pointed out that "abandonment" is governed by Ohio property law, not federal transportation policy. Moreover, it was undisputed that neither the trust, nor anyone else, had made a demand for rent or performance of any other term of the lease. Appellee argued that under the common law of leases, such a demand is essential before any default may be declared.

{¶11} Alternatively, appellee argued that even if it was determined that the 1881 lease was void, not all of the appellants were entitled to a quiet title. This is so, according to appellee, because the Milan Canal Company did not have clear title to the full length of the canal. The 1881 lease described a one hundred fifty foot corridor along the full length of the canal, but

conveyed only that portion "owned by said Milan Canal Company." At trial, evidence showed that, in the disputed area, the canal company was deeded land only from Kneeland Townsend and Ebeneser Merry. Since the canal company could lease to the railroad only so much as it owned, appellants asserted that the land at issue should be confined to that portion once owned by Townsend and Merry -- a section of land substantially less than which appellants claim.

{¶12} At the conclusion of the trial, the court found that the railroad had materially breached the terms of the lease by failing to promptly pay rent and that it had abandoned the property for purposes of operating a railroad. By the court's interpretation, the lease then became void on its own terms. Consequently, the railroad's conveyance to appellee was ineffective.

{¶13} Concerning the scope of the lease, the court found that the canal company obtained land only from Townsend and Merry and, consequently, set the boundaries of the land derived from the canal company as extending from the canal basin in Milan to "Lock 1" where the canal joins the Huron River.

{¶14} From this judgment, appellants now bring this appeal, setting forth the following six assignments of error:

{¶15} "I. THE TRIAL COURT ERRED WHEN IT ALLOWED EVIDENCE REFUTING LESSOR-APPELLANTS' TITLE TO THE LEASED PROPERTY IN A DECLARATORY JUDGMENT ACTION SEEKING TO DETERMINE LEASE VALIDITY.

{¶16} "II. THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING APPELLEE TO TRY CLAIMS NOT RAISED IN ITS AMENDED COMPLAINT OVER APPELLANTS' OBJECTIONS.

{¶17} "III. THE TRIAL COURT ERRED IN REFORMING THE LEASE PROPERTY DESCRIPTION WHERE INTENT OF THE PARTIES IS PRESUMED TO RESIDE IN THE LEASE LANGUAGE AND THE COURT FOUND THE LEASE UNAMBIGUOUS.

{¶18} "IV. THE TRIAL COURT CORRECTLY DECIDED THAT THE LEASE WAS BREACHED BEFORE ASSIGNMENT OF LESSEE'S INTEREST TO PLAINTIFF-APPELLEE RESULTING IN REVERSION TO LESSOR-APPELLANT BUT ERRED WHEN IT THEN REFORMED THE LEASED PROPERTY WITHOUT CLEAR AND CONVINCING EVIDENCE OF INTENT AND MUTUAL MISTAKE OF FACT BY BOTH ORIGINAL SIGNATORIES TO THE LEASE.

{¶19} "V. THE TRIAL COURT ERRED, AS A MATTER OF LAW, WHEN IT REFORMED THE LEASED PROPERTY WITHOUT EVIDENCE OF THE ORIGINAL PARTIES' CONDUCT, COURSE OF DEALINGS BETWEEN THEM AND METHOD OF HANDLING THE TRANSACTION IN QUESTION.

{¶20} "VI. THE JUDGMENT OF THE TRIAL COURT REGARDING THE PROPERTY DESCRIPTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶21} Appellees cross-appeal with the following seven assignments of error:

{¶22} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO RULE THAT THE DEFENDANTS ACQUIRED NO INTEREST IN THE PARKWAY FROM KEY TRUST.

{¶23} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO RULE THAT NONE OF THE PARKWAY CONSTITUTES LEASED PROPERTY.

{¶24} "III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN HOLDING THAT THE LEASE AT ISSUE HAD TERMINATED BECAUSE THE LEASED PROPERTY WAS NOT BEING USED FOR THE PURPOSES REQUIRED BY THE LEASE.

{¶25} "IV. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO ADEQUATELY CONSIDER PRINCIPLES OF EQUITY IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED.

{¶26} "V. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO ADEQUATELY CONSIDER THE DOCTRINES OF ESTOPPEL AND WAIVER IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED.

{¶27} "VI. BECAUSE THE LESSORS UNDER THE LEASE HAD NOT DEMANDED PAYMENT OF THE RENT, THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED.

{¶28} "VII. BECAUSE THE LESSORS UNDER THE LEASE HAD NOT DEMANDED PERFORMANCE OF THE LEASE OBLIGATIONS, THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED."

I

{¶29} All of appellants' assignments of error ultimately attack the trial court's decision limiting the leased property to Milan Canal Company lands obtained from Ebeneser Merry and Kneeland Townsend. None of these assignments of error are well-taken.

{¶30} In their third, fourth and fifth assignments of error, appellants claim that the trial court, for various reasons, erred in reforming the lease agreement. The assignments are fallacious in their premise. Reformation of a contract is an equitable remedy whereby a court modifies an instrument which, due to a mutual mistake of the original parties, does not reflect the intent of those parties. Mason v. Swartz (1991), 76 Ohio App.3d 43, 50, citing Greenfield v. Aetna Casualty (1944), 75 Ohio App. 122, 128.

{¶31} Although the metes and bounds description contained in the 1881 lease describes a one hundred fifty foot corridor for the full length of the canal, the lease limits the conveyance to property "owned by" the canal company. The trial record shows that the Milan Canal Company acquired property only from Townsend and Merry. The trial court ruled that this property alone was the subject of the lease. Consequently, the court never modified the

1881 lease. Since there was no reformation of the lease, appellants' arguments concerning an improper reformation of the contract are without merit. Accordingly, appellants' Assignments of Error Nos. III, IV and V are not well-taken.

{¶32} The same holds true for appellants' manifest weight argument contained in their sixth assignment of error. The only competent, credible evidence presented at trial was that the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such property was unsupported by the evidence. See Vogel v. Wells (1991), 57 Ohio St.3d 91, 96. Accordingly, appellants' sixth assignment of error is not well-taken.

{¶33} With respect to appellants' first and second assignments of error, appellants maintain that the trial court should not have permitted appellee's attack on their title since the complaint contained no notice of a claim against appellants' title. Again, appellants mischaracterize the proceedings. Appellee asked for a declaration of rights under the 1881 lease. The lease limited its conveyance to property owned by the canal company. Thus, a determination of what property the canal company owned was in order. The exercise was not an attack on appellants' title; rather, it was necessary to determine the scope of the lease. Accordingly, appellants' first and second assignments of error are not well-taken.

II

{¶34} By way of seven cross-assignments of error, appellee contends that, for one reason or another, the trial court erred when it concluded that the railroad breached the 1881 lease, causing the interest conveyed therein to revert to appellants' predecessor in interest.

{¶35} The trial court concluded that the railroad breached the lease in two ways: (1) "nonpayment of rent for a period of more than six months," and (2) "because the property was abandoned for the purpose of operating a railroad."

{¶36} It is axiomatic in Ohio jurisprudence that the law abhors a forfeiture. Wheatstone Ceramics Corp. v. Turner (1986), 32 Ohio App.3d 21, 23, citing Ensel v. Lumber Ins. Co. of New York (1913), 88 Ohio St. 269, 281. With this axiom in mind, we must examine whether circumstances exist which would warrant the forfeiture of the property rights conveyed in this century old document.

A. Failure to Pay Rent

{¶37} At trial, it was undisputed that, at some point between 1979 and 1995, the railroad failed to render to the Lockwood Williams trust the annual $50 rent payment provided for in the 1881 lease. The evidence at trial would also suggest that at some point, without any demand from the trust, the railroad discovered its omission and attempted to bring its payments current. It was undisputed that, after the lease was transferred to appellee, appellee sent a check to the trust to cure any arrearage. The trust, however, rejected the tender.

{¶38} In its sixth assignment of error, appellee contends that the trust's failure to demand the rent payment negates its ability (or its successor's ability) to declare a forfeiture. Moreover, according to appellee, both the railroad and appellee stood ready and able to cure any default had the trust made such a demand.

{¶39} Appellants respond that the railroad knew it had not paid its rent and this was sufficient notice. Moreover, according to appellants, by the clear terms of the 1881 lease agreement, the contract became automatically void on the failure of the railroad to pay its annual rent more than six months beyond its due date.

{¶40} Contracts incorporate the law applicable at the time of their creation. 11 Williston on Contracts (1999) 203, Section 30.19. The common law of Ohio at the time the 1881 lease was executed was stated in paragraph one of the syllabus of Smith v. Whitbeck (1862), 13 Ohio St. 471, which provided that:

> {¶41} "In order to show a forfeiture of an unexpired term of a leasehold estate, for nonpayment of rent, the lessor must prove demand of payment of the lessee when due."[3]

{¶42} The 1881 lease contained no express waiver of this common law requirement, and the evidence was unrefuted that no demand was made in this instance. Since no forfeiture may be had absent demand, the railroad's lapse in its annual rent payment does not constitute an irreparable breach of the lease. Accordingly, appellee's sixth assignment of error is well-taken.

B. Abandonment

{¶43} In its seventh assignment of error, appellee argues that with respect to a forfeiture on other lease conditions, there should also be imposed a requirement of a demand for performance prior to a breach declaration.

{¶44} Although there is some authority in support of imposing such a requirement, see 1 Restatement of Law, infra, at 495-501, Section 13.1 and comment h, appellee directs us to no Ohio authority which expressly imposes such a requirement. Therefore, we will examine the merits of the purported nonmonetary breach.

{¶45} The lease provision at issue provides that on the failure of the lessee to, "*** maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes ***" the lease shall become void. For a breach of these provisions to occur, the lessee must have (1) ceased the maintenance and operation of the property for public transportation and travel, and (2) abandoned its use for "railway purposes."

{¶46} We are persuaded by the reasoning expressed in Rieger v. Penn Central Corp. (May 21, 1985), Greene App. No. 85-CA-11, unreported, on both issues. Although Rieger dealt with the transfer of a prescriptive easement of a railroad right-of-way to the state for a recreational trail, its logic is applicable to this lease. To us, it is reasonable and, indeed, Rieger holds that the transformation of a railroad right-of-way to a recreational trail is an equivalent and permissible use of such property. Both serve

a public purpose related to public transportation and travel. Id., citing Minnesota Dept. of Wildlife v. State of Minnesota (Minn. 1983), 329 N.W.2d 543, 546-547, certiorari denied (1983), 463 U.S. 1209. Consequently, the proposed use of this property is consistent with the original lease. Moreover, we cannot say that the transitional period between the two uses is so great as to constitute a failure to "maintain and operate" such property for such uses so as to be deemed a breach. This is especially so absent a demand from the lessor for performance.

{¶47} With respect to the abandonment of the property for railroad purposes, again we turn to Rieger which, citing Schneck v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co. (1919), 11 Ohio App. 164, 167, holds that to constitute abandonment of a railroad right-of-way there must be a "*** nonuser together with an intention to abandon." The intent portion must be shown by unequivocal and decisive acts indicative of abandonment. Id.; see, also, Roby v. New York Central (1894), 142 N.Y. 176, 181.

{¶48} In this case, the trial court appears to have found dispositive the fact that the railroad filed a notice of "abandonment" with the former Interstate Commerce Commission. We disagree with this interpretation. While such a regulatory filing may constitute evidence of an intent to abandon for state property law purposes, it is only evidence. Contradictory to this filing was the undisputed evidence that when Norfolk Southern transferred this spur to Wheeling and Lake Erie, Norfolk Southern reserved a

portion of the corridor for the future installation of fiber-optic cable. Moreover, Wheeling's grant to appellee reserves a future right to construct and operate another rail line in the corridor. Both of these acts constitute "railway purposes," and both indicate an intention to pursue future use of the property for such purposes. Far from the "unequivocal and decisive" acts indicative of abandonment necessary to prove an intent to abandon, these reservations are antithetical to such an intent.

{¶49} Since there has been no demonstrated breach of the "purposes" provision of the lease, the trial court erred in determining that the lease at issue was invalid. Accordingly, appellee's first, second and third assignments of error are well-taken. Assignments of Error Nos. IV, V and VII are moot.

{¶50} On consideration whereof, the judgment of the Erie County Court of Common Pleas is reversed, in part. This matter is remanded to said court for further proceedings consistent with this decision. Costs to appellants.

JUDGMENT AFFIRMED, IN PART,
AND REVERSED IN PART.

Peter M. Handwork, J. _____ JUDGE

James R. Sherck, J. _____ JUDGE

Mark L. Pietrykowski, P.J. _____ JUDGE
CONCUR.

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[1]**The Wheeling and Lake Erie Rail Road Company was eventually absorbed by the Norfolk and Western Rail Company which**

was merged into the Norfolk Southern Company. In 1990, the Norfolk Southern assigned its interest in the lease at issue to the Wheeling and Lake Erie Railway Company.

[2]At the same time, Buffalo Prairie initiated a forcible entry and detainer action against appellee in the Erie County Court. The county court, however, dismissed the matter and deferred to this case to determine the proper title to the disputed land.

[3]The 1979 lease renewal did not change the terms of the agreement. The "demand" requirement is in conformity with the common law of most other states, see Bates & Springer Inc. v. Nay (Cuyahoga App.1963), 91 Ohio Law Abs. 425, citing 31 A.L.R.2d 376, and remains today in Ohio landlord tenant relations that are not superseded by statute. Id. See, also, 1 Restatement of the Law 2d, Property (1977) 384, Section 12.1(2)(b).

Exhibit D

[Cite as *Erie Cty. Metroparks Bd. of Park Commrs. v. Key Trust Co. of Ohio*, 2002-Ohio-4827.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Board of Park Commissioners,
Erie Metroparks

Appellee

v.

Key Trust Company of
Ohio, etc., et al.

Defendants

and

Buffalo Prairie, Ltd.,
et al.

Appellants

Court of Appeals Nos. E-02-009
E-02-011

Trial Court No. 99-CV-442

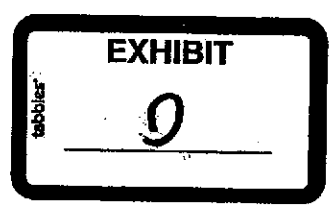
DECISION AND JUDGMENT ENTRY

Decided: September 13, 2002

* * * * *

Abraham Lieberman and Dennis M. O'Toole,
for appellee.

Anthony Logan, D. Jeffery Rengel and Thomas R.
Lucas, for appellants Buffalo Prairie, Ltd.,
et al.; Charles J. Pawlukiewicz, for appellant
Wikel Farms, Ltd.



* * * * *

KNEPPER, J.

{¶1} This is a consolidated appeal from two judgments of the Erie County Court of Common Pleas in a property dispute. The first judgment, entered February 21, 2002, denied the motion to intervene filed by appellant Wikel Farms, Ltd. The second judgment appealed from, entered March 1, 2002 upon remand from this court, determined the validity of the lease in question. On March 29, 2002, this

court sua sponte ordered that the two appeals be consolidated under E-02-009. For the reasons that follow, this court affirms the judgments of the trial court.

{¶2} Appellants Buffalo Prairie, Ltd., et al. set forth the following assignments of error:

{¶3} "1. The trial court's Entry establishing the description of the leased property is directly contrary to this Court's decision in Board of Commissioners v. Key Trust 135 Ohio App.3d 787.

{¶4} "2. The trial court abused its discretion by adopting findings of fact which did not address the issues raised in Defendants' Answer and Counterclaim."

{¶5} Appellant Wikel Farms, Ltd. sets forth the following assignment of error:

{¶6} "The trial court erred and abused its discretion by denying the renewed motion of Wikel Farms, Ltd. to intervene."

{¶7} The background necessary for a thorough understanding of this appeal is as follows. In 1827, the Ohio General Assembly chartered the Milan Canal Company to construct and operate a canal from Milan, Ohio, to Lake Erie. The canal company acquired land from Ebeneser Merry and Kneeland Townsend and dug a canal between Milan and "Lock 1," located where the navigable portion of the Huron River intersected the canal.

{¶8} In 1881, the Milan Canal Company leased a 150-foot wide corridor through its property to the Wheeling and Lake Erie Rail Road Company. The lease was for 99 years, renewable "forever," and called for an annual rent of $50. The lease also provided that "on

the failure of said Lessee *** to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for Six months to pay said annual rental of ($50) Fifty dollars to the said Lessor after the same became due and payable these presents shall become void and the said real estate shall revert to the said Lessor the Milan Canal Company ***."

{¶9} It is undisputed that during the next 100 years, the railroad and its successor railroad companies maintained and operated a line on the leased corridor.[1] In 1979, the lease was renewed for another 99 years. In October 1995, the Wheeling and Lake Erie Railway Company transferred its interest in the leased property to appellee Board of Commissioners, Erie Metroparks ("Metroparks"), which intended to convert the property to a recreational hiking and bicycling trail.

{¶10} In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Lockwood's interest in the property eventually devolved to the testamentary trust of Verna Lockwood Williams and its trustee, Key Trust Company of Ohio. Following the purchase of the railroad's lease interest by Metroparks, a dispute arose between the trust and Metroparks concerning the continuing validity of the lease.

---

[1]The Wheeling and Lake Erie Rail Road Company was eventually absorbed by the Norfolk and Western Rail Company, which was merged into the Norfolk Southern Company. In 1990, the Norfolk Southern assigned its interest in the lease at issue to the Wheeling and Lake Erie Railway Company.

{¶11} On September 30, 1999, Metroparks initiated a declaratory judgment action against the Williams trust. Metroparks sought a declaration that the 1881 lease remains in effect, that the property may be properly used for a recreational trail, and that the scope of the lease be determined. In its answer to the complaint, the trust denied the validity of the lease and counterclaimed for a quiet title.

{¶12} During the pendency of the case in the trial court, the Williams trust sold its interest in the disputed land to appellant Buffalo Prairie, Ltd. Metroparks subsequently amended its complaint to include Buffalo Prairie and 32 named adjacent property owners to whom Buffalo Prairie had conveyed portions of the land at issue.

{¶13} It is undisputed that at the time Metroparks acquired its interest in the property in October 1995, the railroad from which it had purchased the lease had fallen several years behind in paying the rent. In September 1995, the railroad tendered a check for $300 to Key Trust, but the payment was rejected. It was also undisputed that the trust never made a demand for the unpaid rent.

{¶14} The matter proceeded to a bench trial, at the conclusion of which the court found that the railroad had materially breached the terms of the lease by failing to promptly pay the rent and that it had abandoned the property for purposes of operating a railroad, thereby rendering the lease void on its own terms. As a result, the railroad's conveyance to Metroparks was ineffective, the trial

court held. As to the scope of the lease, the trial court found that the land subject to the lease consisted only of those parcels of land between the canal basin in Milan and the point where the canal joins the Huron River that had been conveyed by landowners Ebeneser Merry and Kneeland Townsend.

{¶15} From this judgment, Buffalo Prairie, the lessor, and other landowners filed an appeal and Erie Metroparks, the lessee, filed a cross-appeal. *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A., et al.* (2001), 145 Ohio App.3d 782. Buffalo Prairie's assignments of error attacked the trial court's judgment limiting the leased property only to Milan Canal Company lands obtained from Ebeneser Merry and Kneeland Townsend, claiming that the trial court improperly reformed the lease agreement. This court held that the trial court had not modified the 1881 lease and that the lower court's finding that the lease was limited to property obtained solely from Merry and Townsend was supported by the evidence. By way of its cross-appeal, Erie Metroparks contended that the trial court erred when it concluded that the railroad had breached the 1881 lease due to abandonment and nonpayment of rent. As to those arguments, this court found that the trial court had erred by determining that the lease was invalid since, absent any demand by the trust, the railroad's lapse in its rent payment did not constitute an irreparable breach of the lease. Accordingly, this court reversed the trial court's judgment finding that the lease was invalid and remanded the case for

further proceedings. This court let stand the trial court's finding as to the scope of the leased property.

{¶16} In its February 22, 2002 judgment entry on remand, the trial court ruled that the railroad had not abandoned the leased property and that the lease Metroparks purchased from the railroad is still in full force and effect. Although the issue was not before the trial court on remand, the court also made a finding as to the boundaries of the leased property. In so doing, the trial court found that the land owned by the Milan Canal Company at the time the lease was executed "lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property."

{¶17} In their first assignment of error, appellants Buffalo Prairie, et al. assert that the trial court's judgment entry on remand setting forth the boundaries of the leased property is directly contrary to that court's own finding in its original decision filed on November 7, 2000 and this court's September 14, 2001 decision on the first appeal. Appellants assert that this court and the trial court both found that the only two tracts of land subject to the Milan Canal lease, and therefore subject to the leasehold interests of Erie Metroparks, were two non-contiguous tracts conveyed by Ebeneser Merry and Kneeland Townsend. They further assert, however, that the trial court's judgment entry on remand erroneously describes the land subject to the lease to include a two-mile corridor that the courts previously have determined is not part of the leasehold.

{¶18} This court has carefully examined the trial court's November 7, 2000 judgment entry, our own decision of September 14, 2001, and the trial court's February 22, 2002 judgment entry on remand. Despite appellants' assertion that the trial court's entry on remand was contrary to our September 2001 decision, we find that the descriptions of the leased property are identical in both of the trial court's entries.

{¶19} Significantly, both entries define the property as encompassing only land previously owned by Merry and Townsend. As this court explained in its September 14, 2001 decision: "Although the metes and bounds description contained in the 1881 lease describes a one-hundred-fifty-foot corridor for the full length of the canal, the lease limits the conveyance to property 'owned by' the canal company. The trial record shows that the Milan Canal Company acquired property *only* from Townsend and Merry. The trial court ruled that *this property alone* was the subject of the lease. Consequently, the court never modified the 1881 lease. Since there was no reformation of the lease, appellants' arguments concerning an improper reformation of the contract are without merit. *** [Emphasis added.]

{¶20} "*** The only competent, credible evidence presented at trial was that the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such property was

unsupported by the evidence. ***" *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A.*, supra, at 787-788.

{¶21} Thus, this court affirmed the trial court's original determination that the leased property included only land obtained from Townsend and Merry. On remand, for reasons not apparent to this court, the trial court revisited the issue of the scope of the leased property. This was unnecessary since we had left undisturbed that portion of the November 2000 entry and remanded the case solely on the issue of the validity of the lease.

{¶22} It has been emphasized in all three judgment entries that the leased property encompassed only land obtained from Townsend and Merry. There is no discrepancy as to that issue and the trial court's February 22, 2002 judgment entry did not contradict that finding as set forth in either of the two prior judgments.

{¶23} Accordingly, appellant's first assignment of error is not well-taken.

{¶24} In their second assignment of error, appellants assert that the trial court abused its discretion by adopting findings of fact on remand which did not address the issue of Metroparks' prior claim of adverse possession. In its November 7, 2000 decision, the trial court found that Metroparks did not acquire title to the leased property by adverse possession because it did not begin to occupy the property adversely until it went into default for nonpayment of rent in 1995. Since this court then found that the original lease was still in effect, the issue of adverse possession

was irrelevant on remand, and there was no reason for the trial court to address the matter in its February 2, 2002 judgment entry. This argument is therefore without merit.

{¶25} Appellants also argue that the trial court improperly authorized appellee to pay the rent to the clerk of courts until further notice. Appellants, however, misrepresent the trial court's order. In its February 22, 2002 judgment entry, the trial court stated that appellee had deposited with the clerk of courts the sum of $1,000, representing 13 years' past due rent plus future rent for seven years. The trial court ordered that the deposit should be released to the trust upon the trust's motion advising the court as to whom such rent is to be paid. Further, the trial court instructed appellants to keep appellee advised as to where future rent payments should be directed, and then ordered that if the trust did not notify Metroparks as to where to send the payments and to whom they should be directed, Metroparks should deposit future payments with the clerk of courts until further notice. This is a reasonable and appropriate order in light of the facts and the trial court did not err by so ordering. This argument is without merit.

{¶26} Based on the foregoing, appellants' second assignment of error is not well-taken.

{¶27} Finally, we must consider the appeal from the trial court's denial of the motion to intervene filed by Wikel Farms, Ltd. Wikel Farms, Ltd. contends that the tract of land it owns at

the northern end of the canal is not included in the property covered by the lease and it sought to intervene for the sole purpose of contesting the northern boundary of the leased property.

{¶28} Wikel Farms originally filed a motion to intervene on March 15, 2000, several months after Metroparks initiated its declaratory judgment action. The motion was not ruled on by the trial court prior to its November 7, 2000 decision. Wikel Farms renewed its motion to intervene on February 12, 2002, after this court's decision on the first appeal and while the case was pending in the trial court on remand. On February 21, 2002, the trial court summarily denied the motion to intervene.

{¶29} A trial court's decision on a motion to intervene is reviewed pursuant to an abuse of discretion standard. *Peterman v. Pataskata* (1997), 122 Ohio App.3d 758. Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1984), 5 Ohio St.3d 217, 219. In this case, appellant Wikel Farms wishes to intervene in order to contest one of the boundaries of the leased property. By the time Wikel Farms filed its renewed motion to intervene, however, the trial court's determination as to the scope of the leased property had been affirmed by this court. Accordingly, the trial court's judgment entry denying the motion to intervene was not unreasonable, arbitrary or unconscionable and therefore not an abuse of discretion.

{¶30} Based on the foregoing, this court finds the sole assignment of error of appellant Wikel Farms, Ltd. not well-taken.

{¶31} Upon consideration whereof, the judgments of the Erie County Court of Common Pleas are affirmed. Costs of this appeal are assessed to appellants equally.

JUDGMENTS AFFIRMED.

Peter M. Handwork, J. _____ JUDGE

James R. Sherck, J. _____ JUDGE

Richard W. Knepper, J. _____ JUDGE
CONCUR.

Exhibit E

D

Volume 10 Page 25

Ebenezer Merry To Milan Canal Company

Know all men by these presents that I Ebenezer Merry of Milan Township County of Huron and State of Ohio in consideration that the Milan Canal Company have built a dam in pursuance of a contract made January 1, 1834, across the new channel of the Huron River and further agree to keep said dam and buttments in good repair and rebuild the same when necessary I do hereby give, grant, release and forever quit claim unto said Milan Canal Company

All my rights to occupy the Milan Canal Basin as described in the addition to the Town Plat of Milan Recorded in Huron County Records Volume 10, Pages 41 and 42 Also, the right to the first use of the water to be taken from the pond at the head of the Canal Basin to be used for the purpose of navigating said Canal agreeable to the provisions of the charter of the Milan Canal Company Also, to use said Water to supply a dry dock but for no other purposes whatever and I do further agree and hereby convey unto said Company the following described Land for the use of a dry dock intended as follows. Beginning at the North East corner of In Lot Ninety Two in the addition of the Milan Town Plat, Thence, North 33 degrees East 2 chains 9 links to a stake, Thence, South 8 degrees West 3 chains to a stake, Thence, North 25 degrees West 2 chains 30 links to a stake, Thence, South 18 degrees West 6 chains 22 links to a stake, Thence, Easterly 2 chains to a stake, Thence, South 1 chain to the place of commencement containing one (1) acre and fifty one hundredths (51/100) of an acre be the same more or less Also I do further release said Canal Company from all claim I might have against said Company for damage by flooding my land or in constructing Canal Dam buttments and culverts or such other works as are necessary to convey the waters from said pond or dam to the Canal Basin and to repair or rebuild the same Also to repair or rebuild the mill Mill Dam and buttments The above granted rights and privileges are granted and conveyed unto said Milan Canal Company on the following conditions that said company shall keep said dam and buttments in good repair and rebuild the same when necessary also to keep the said Dam and Gates in such repair as to the first lock or lock No 1 That there will be no unnecessary waste of water or leakage Also as a further condition that if said Company shall neglect or refuse to keep in repair said dam or buttments said Merry his heirs or assigns shall have a right to rebuild or to make all necessary repairs and charge the same to said Company and shall have a right to shut the water from said Canal until said Company shall pay the said Merry his heirs or assigns the amount so expended with the interest thereon Also if said Company shall neglect to pay the expense of repairing or rebuilding as above stated or neglect to use the Canal for navigation for One year the term of One year as described in the Charter of said Company then and in that case all the rights and privileges granted in this instrument shall be null and void so far as respects said Milan Canal Company shall vest in the Town Council of Milan and their successors in office so long as they shall abide by and perform the conditions above expressed, but should said Town Council or their successors in office refuse or neglect to fulfil the conditions above stipulated for the term of Two years then and in that case all privileges above granted are to cease and determine and revert back to myself, my heirs or assigns forever Given under my hand and seal this 21st day of April A D 1838

s/ Ebenezer Merry

Signed Sealed Acknowledged and delivered in presence of

s/ Hiram McMillin |
s/ W S Rose |

State of Ohio, Huron County } Be it known that on this 21st day of April A D 1838 Personally came before the subscriber a Justice of the Peace in and for said County Ebenezer Merry the signer and maker of the above instrument and acknowledged the same to be his act and deed for the uses and purposes therein expressed

Given under my hand at Milan April 21st 1838

s/ Wm S Rose J P

Received and Recorded October 29, 1852
Chas Wilber Recorder

EXHIBIT
D

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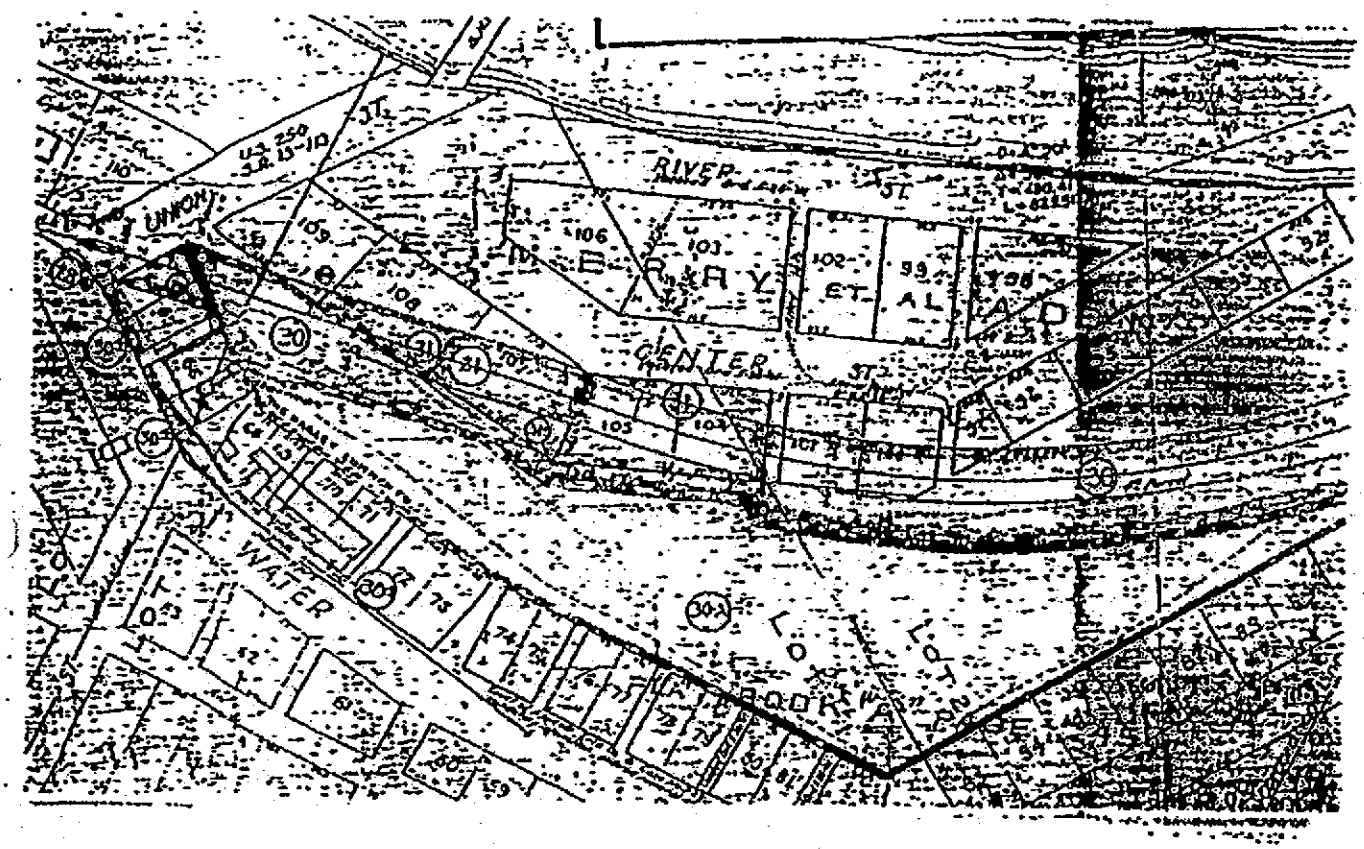
EXHIBIT
E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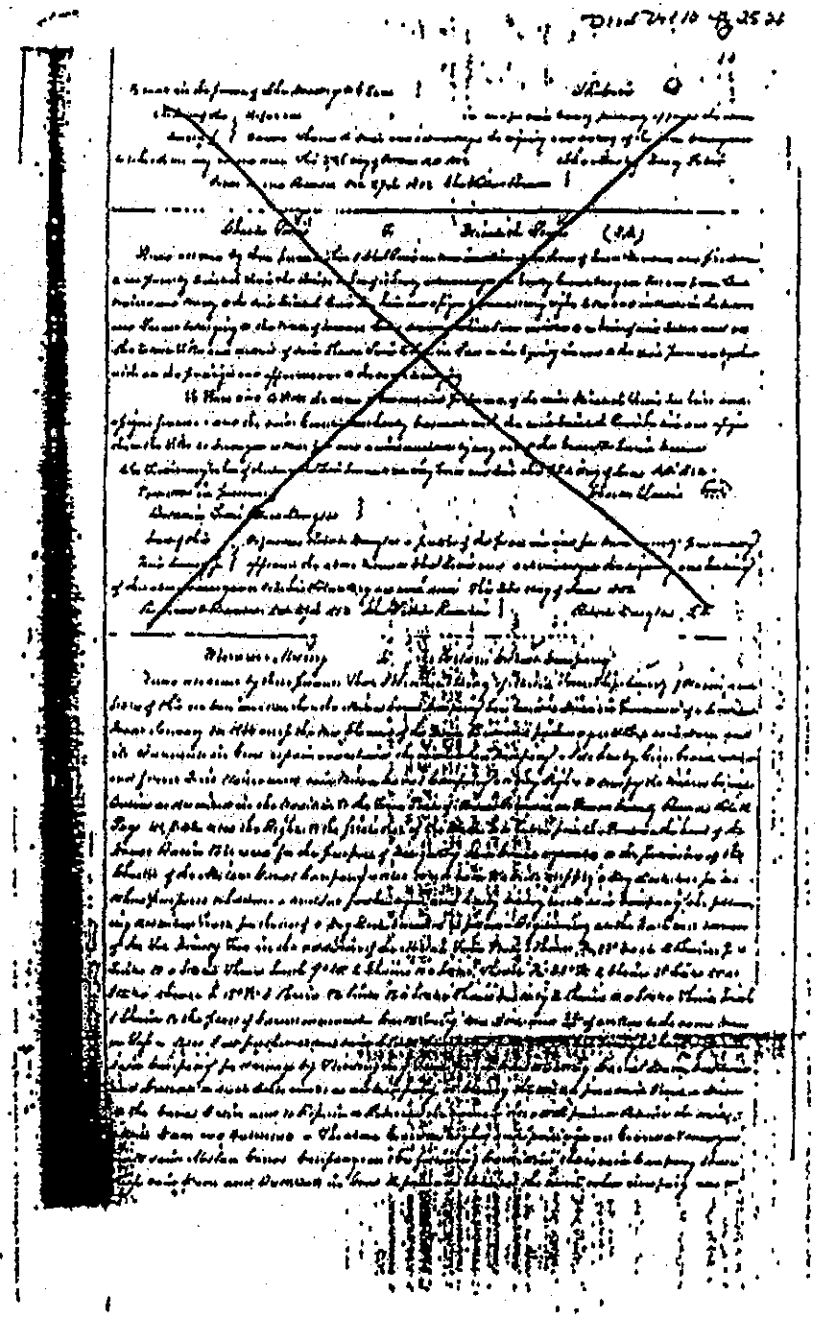

Exhibit F

KNOW ALL MEN BY THESE PRESENTS THAT I KNEELAND TOWNSEND OF MILAN HURON COUNTY OHIO IN CONSIDERATION OF BENEFITS WHICH I MAY RECEIVE AS CONSEQUENCE OF THE LOCATION AND (CONSTRUCTION) OF THE MILAN CANAL ACROSS MY LANDS AND ALSO IN CONSIDERATION OF THREE HUNDRED AND SIXTY THREE DOLLARS TO ME IN HAND PAID BY A RECEIPT FROM THE MILAN CANAL COMPANY FOR THE BALANCE OF MY SUBSCRIPTION OF TEN SHARES OF THE CAPITAL STOCK OF SAID COMPANY. I HAVE AND DO HEREBY AGREE TO RELEASE SAID COMPANY FROM ANY AND ALL DAMAGES WHICH I MAY HAVE SUSTAINED IN CONSEQUENCE OF SAID COMPANY HAVING LOCATED AND CONSTRUCTED SAID CANAL OVER THROUGH OR ACROSS MY LANDS AND ALSO FOR DIGGING THE SOIL ABUTTING OR TAKING ANY TIMBER FOR THE CONSTRUCTION OF SAID CANAL OR LOCKS THEREON. I DO ALSO HEREBY GIVE AND RELEASE TO SAID COMPANY FOR THE USE OF SAID CANAL AND SO LONG ONLY AS THE SAME SHALL ACTUALLY USED AS A MEANS OF TRANSPORTATION FOR COMMERCIAL PURPOSES THE FOLLOWING THE DESCRIBED PIECES OF LAND TO WIT" ON THE WESTERLY ON TOWPATH SIDE OF SAID CANAL A PIECE COMMENCING AT A POINT ON SAID CANAL WHERE THE TOP WATER LINE OF SAID CANAL STRIKES SAID TOWPATH BANK AND FORTY FEET SOUTHERLY FROM THE HOLLOW COIN PART OF THE WESTERLY UPPER CRIB OF LOCK NUMBER ONE OF SAID CANAL BEING ON MY LAND THENCE NORTHERLY TO A LINE POINT IN SAID CANAL FORTY FEET NORTHERLY FROM THE HOLLOW COIN POINT OF THE WESTERLY LOWER CRIB OF SAID LOCK NUMBER ONE AND TO EXTEND BACK WESTERLY ONE HUNDRED FEET DEEP OR WIDE WHICH SAID PIECE OF LAND IS INTENDED FOR THE PURPOSES OF A LOCK HOUSE AND OTHER NECESSARY APPENDAGES OF SAID CANAL ALSO A LIKE PIECE OF LAND ON THE HEEL PATH SIDES OF SAID CANAL EXCEPT THAT THIS LOCK PIECE IS TO EXTEND BACK FROM THE FACE WALL OF THE HEEL PATH SIDES OF SAID CANAL LOCK ONLY FIFTY FEET FOR THE CONVENIENCE OF BALLANCE BEAMS AND OTHER NECESSARY APPENDANGES OF SAID CANAL. THE ANGLES OF SAID PIECES ARE TO BE RIGHT ANGLES AND THE REAR LINES TO BE PARALLEL WITH FACE WALLS OF SAID LOCK- AND I DO HEREBY ALSO RELEASE TO SAID COMPANY THE RIGHT TO TURN INTO SAID CANAL AND USE SO MUCH OF THE WATER ON MY LAND AS MAY BE NECESSARY FOR THE USE OF SAID CANAL AND ALSO A TREMBLE WAY AROUND SAID LOCK- AND I DO HEREBY FURTHER RELEASE TO SAID COMPANY THE RIGHTS OF FLOODING THE LAND EASTERLY OF THE TOWPATH ON THE UPPER LEVEL OF SAID CANAL TO THE HIGH BANK TO THE HEIGHT OF NINE AND ONE HALF FEET ABOVE THE BOTTOM LEVEL OF SAID UPPER LEVEL OF SAID CANAL AND ALSO TO IN LIKE MANNER FLOW ON THE LONG LEVEL NORTHERLY OF SAID LOCK NINE FEET AND ONE HALF FOOT ABOVE THE TOP OF THE LOWER METER SIDE OF SAID LOCK- BUT IT IS HEREBY AGREED BY SAID COMPANY THAT THE FLOW OF WATER ARISING FROM THE VILLAGE CREEK SHALL BE DRAWN OFF BY A CULVERT OR OTHERWISE WITHIN ONE YEAR FROM THE TIME SAID CANAL MAY BE USED AS

EXHIBIT
F

SUCH FOR COMMERCIAL PURPOSES AND THE SAID TOWNSEND FURTHER AGREES THAT SAID COMPANY MAY CONSTRUCT A WATER WASE TO THE CANAL ON HIS LAND AND ALSO CONSTRUCT CULVERTS TO DRAIN THE LAND IF SAID COMPANYTHINKS PROPER- AND TO DO A ALL SUCH WORK AS MAY BE NECESSARY TO KEEP SAID CANAL IN REPAIR- BUT HIS GRANT IS NOT TO BE CONSTRUED AS EXTENDING TO THE RIGHTS OF SOIL BUT BARELY TO THE RIGHTS OF WAY FOR THE PURPOSES AFORESAID AND ONLY SO LONG AS SAID CANAL SHALL BE USED FOR COMMERCIAL PURPOSES- AND IT IS HEREBY UNDERSTOOD THAT SAID COMPANY SHALL REMOVE ALL THEIR TIMBER OFF THE LANDS OF SAID TOWNSEND WITHIN SIX MONTHS FROM THE DATE HEREOF.

IN WITNESS WHEREOF THE PARTIES HAVE HEREUNTO SET THEIR HANDS AND THE SAID TOWNSEND HIS SEAL THIS TENTH DAY OF MAY 1838 AND THE SAID COMPANY ITS SEAL

NOTE THE WORDS "ALL" "AS EXTENDING" INTERLINED BEFORE SIGNING (SEAL IS HERE) MILAN CANAL CO PR GEO. LOCKWOOD AGENT AS AUTHORISED ON THE RECORD OF SAID COMPANY MARCH 24,1848

IT IS UNDERSTOOD BY THE GRANT TO THE COMPANY ABOVE THAT SAID TOWNSEND GRANTS THE EXCLUSIVE USE TO SAID CANAL COMPANY FOR THE PURPOSE AUTHORIZED BY THE ACT INCORPORATING THE MILAN CANAL COMPANY OF THE LAND FOR A TOW PATH OF TEN FEET WIDE ON THE TOP (FIVE FEET ON EACH SIDE OF THE LINE SURVEYED RECORDED & PLATTED ON THE RECORD BOOK OF SAID COMPANY) WITH SLOPES OF BANKS OF TOWPATH AND CANAL OF ONE AND THREE FOURTHS FEET HORIZONTAL ON THE BASE TO ONE FOOT PERPENDICULAR RISE AND THE RIGHT OF WIDTH OF CANAL BOTTOM AS PRESENT BOTTOMS ON EACH LEVEL OF ONE HUNDRED FEET FROM WHERE THE INNER SLOPE OF TOWPATH BENCH STRIKES SAID BOTTOM. AND ALSO THAT NO BRIDGES OR OTHER OBSTRUCTIONS WHATSOEVER ARE TO BE MADE ON THE CANAL ON SAID LAND THAT WILL IN THE LEAST DELAY OR OBSTRUCT THE RAPID MOVEMENT OF VESSELS & OTHER WATER CRAFT ALSO THE RIGHTS OF MAKING TOWPATHS TO THE HIGHEST OF TWO FEET ABOVE THE HIGHEST FRESHETS OF THE HURON RIVER

K. TOWNSEND

GEO. LOCKWOOD AGREED AS ABOVE

RECEIVED AND RECORDED OCT 29TH 1832 _____ RECORDER

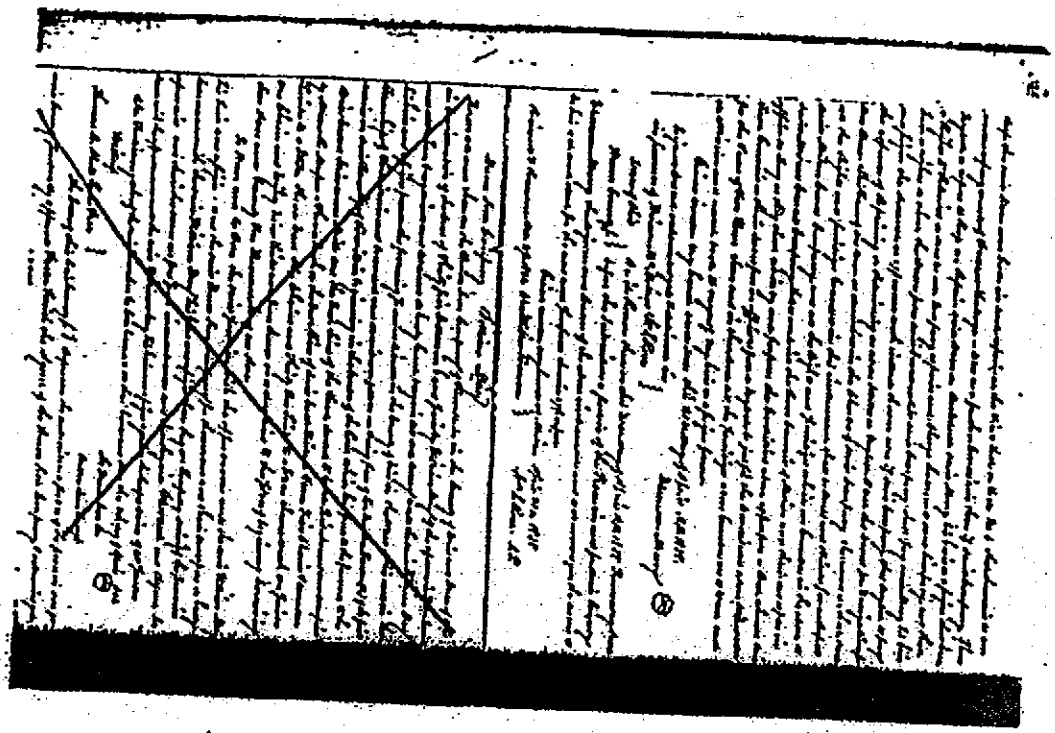

Exhibit G

QUIT CLAIM DEED

Key Trust Company of Ohio, National Association, a national banking organization formed under the laws of the United States, as **Trustee of the Verna Lockwood Williams Trust**, for valuable consideration paid, the receipt of which is hereby acknowledged, grants to **Buffalo Prairie, Ltd.**, an Ohio limited liability company, whose tax mailing address is P.O. Box 449, Milan, Ohio 44846, the following **REAL PROPERTY**: Situated in the County of Erie, in the State of Ohio, and in the Townships of Milan and Huron:

> All of the right, title and interest Grantor holds in the property of the former Milan Canal Company, including but not limited to the canal basin, locks, dry dock and tow path, and further described in the attached Exhibit A, which is incorporated as part of this deed.

Subject to easements, conditions, legal highways, restrictions of record and the lien of unpaid real estate taxes.

Prior Deed Reference: Vol. 78 Page 239

Signed and acknowledged as to grantor's signature in the presence of:

Witness

William M. Wright
Please print name legibly

Witness

Michael J. Thacker
Please print name legibly

Key Trust Company of Ohio, National Association

By: Lee A. Matia

Its: Asst Vice President

RN 200005173 Page 1 of 5
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 5P
RECORDING FEE: 26.00
TLF Date 04/27/2000 Time 10:40:29

STATE OF OHIO,
COUNTY OF CUYAHOGA, ss:

On April 11, 2000, before me, the undersigned, a Notary Public in and for the said state, personally appeared Lee A. Matia, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Assistant Vice President of Key Trust Company of Ohio, National Association, a national

WPU
D. Jeffery Rengel, Atty

EXHIBIT
G

banking organization formed under the laws of the United States, and acknowledged to me that he is authorized to execute this instrument on behalf of said corporation.

Witness my hand and official seal.

Notary Public

MICHAEL J. THACKER, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 ORC

This instrument was prepared by Peggy Kirk Hall, Attorney at Law, Wright & Logan, Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017.

After recording, return to: Buffalo Prairie, Ltd., P.O. Box 449, Milan, OH 44846

EXHIBIT A

Situate in the Townships of Milan and Huron, in said County of Erie and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the Southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Street, in the Village of Milan, in said Erie County, Ohio, and running thence in a Northerly direction to the mouth of the Huron River, in the Village of Huron in said Erie County, and which strip of land is bounded on the West by a line distance fifty feet from and running North parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located and in the process of construction on July 12th, A.D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the East by a line distant One Hundred feet from and running North parallel with the said central line of said railroad as surveyed, located and being constructed as aforesaid, the East and West lines of said strip of land being one hundred and fifty feet apart and running North parallel with each other and with the central line of said railroad as surveyed, located and being constructed as aforesaid from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said Dry dock containing about one and 1/2 acres, and the Canal Basin containing about Five and 45/100 acres of land be the same more or less.

TRANSFER NOT NECESSARY
April 27, 2000
J. T. Hammond

This conveyance has been examined and the grantor has complied with sections 319-202 and 322.02 of the Revised Code.
FEE: $ 185.70
EXEMPT: $
R.E. TRANSFER: $ 557.10
JUDE T. HAMMOND
Erie County Auditor
by