



OHIO E.P.A.

APR 12 2005

USE RESTRICTION AGREEMENT

ENTERED IN THE PUBLIC RECORDS JOURNAL

This Use Restriction Agreement ("Agreement") is entered into by Thornton & Roshon Properties, Inc., having offices at 3010 Columbus-Lancaster Road, Lancaster, Fairfield County, Ohio and the Ohio Environmental Protection Agency ("Ohio EPA"). This Agreement concerns an approximately 15.85 acre tract of real property (Parcel# 01400900) owned by Thornton & Roshon Properties, Inc. ("Owner") and located at 3010 Columbus-Lancaster Road, Lancaster, Fairfield County, Ohio.

Background

This agreement concerns property which was formerly occupied by the Arcair Company (Arcair). The Arcair Company used the property for the manufacture of electrodes, cutting and welding tools, and accessories beginning in 1961. Arcair was a subsidiary of Air Products and Chemicals, Inc. (Air Products) from 1969 until 1987. After a series of transfers, the Owner purchased the property in 1993 after the previous owner had defaulted on its loan. Beginning in 1990, Air Products has operated two recovery wells and a treatment system at the property to address ground water contamination.

For purposes of this Agreement, the Subject Property is defined in Exhibit A, which includes legal descriptions of Tract 1 (2.231 acres) and Tract 2 (7.336 acres), attached hereto and incorporated by reference herein.

Now therefore, Owner and Ohio EPA (the "Parties") agree to the following:

1. Intention of the Parties. This Agreement touches and concerns the Subject Property in that it is intended to limit the use of the Subject Property and restrict certain activities from occurring on the Subject Property. It is also the intent of the Parties that the covenants, terms, conditions and restrictions of this Agreement be binding upon, and inure to the benefit of, the Parties and continue as a servitude running in perpetuity with the Subject Property, until such time as this Agreement may be modified or terminated as provided for below. It is the further intention of the Parties that the land use restriction described herein be enforceable at law or in equity by Ohio EPA against Owner for as long as Owner shall own the Subject Property, and against any Transferee, as defined herein.
2. Use Restrictions. As part of the remedial action agreed to by Ohio EPA and in consideration for the Director of Ohio EPA's forbearance to require unrestricted land use for the Subject Property, Owner agrees to impose and comply with the following restrictions:
  - a. Prohibition Against Ground water Extraction from Upper Aquifer. Ground water in the upper aquifer underlying the Subject Property shall not be extracted or used for any purpose, potable or otherwise, except for

I certify this to be a true and correct copy of the original document filed in the records of the Ohio Environmental Protection Agency.

*Jonathan Jackson* 4-12-05

investigation, monitoring or remediation of the groundwater, or in conjunction with construction activities or maintenance of subsurface utilities.

- b. Use of Ground water in the Lower Aquifer. New wells may be installed in the lower aquifer underlying the Subject Property only after providing notice to and receiving approval from Ohio EPA, which shall not be unreasonably withheld.
- c. Monitoring Systems. Until Termination and Satisfaction of the Final Findings and Orders dated Dec. 28, 2004, the Subject Property shall not be used in a manner that damages the integrity of any monitoring systems at the Subject Property.

3. Running with the Land. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Owner and the State of Ohio and their successors in interest and assigns and any Transferee, and shall run with the land, subject to termination and modification as described below. The term "Transferee," as used in this Agreement, shall mean any future owner of any interest in the Subject Property, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

4. Modification and Termination of the Agreement. The Owner or a Transferee may request modification or termination of this Agreement by submitting a written petition to the Director of Ohio EPA. Modification means any changes to the Agreement, including the use restrictions outlined in Section 2 above, or the elimination of one or more use restrictions when there is at least one use restriction remaining. Termination means the elimination of all use restrictions in Section 2 and all other obligations under this Agreement. The Director of Ohio EPA will evaluate a request for modification or termination of the Agreement based on a demonstration by the Owner or Transferee that the proposed modification or termination of this Agreement will not pose a risk to public health or safety or the environment. The Director of Ohio EPA shall make every effort to respond to any request for modification or termination of the Agreement within ninety (90) days of receipt of such written request. The approval of a petition for modification or termination shall not be unreasonably withheld.

The Director of Ohio EPA may request modification or termination of this Agreement in the event that the Director determines that risks posed by the Subject Property have substantially changed subsequent to the execution of this Agreement. Nothing in this Agreement shall restrict the Director from exercising any authority under applicable law in order to protect public health or safety or the environment.

This Agreement may only be modified or terminated by a written instrument duly executed by the Director of Ohio EPA and the Owner or the Transferee of the

Subject Property or portion of the Subject Property, as applicable. Within thirty (30) days of executing a modification or termination of this Agreement, the Owner or Transferee shall record such modification or termination with the Fairfield County Recorder's Office, and shall provide a true copy of the recorded modification or termination to Ohio EPA.

5. Enforcement. Compliance with this Agreement may be enforced by a legal or equitable action brought in a court of competent jurisdiction by either Party to this Agreement. The use restrictions contained in Section 2 of this Agreement may be enforced by the Owner, the Director of Ohio EPA or his representative and any other party with legal standing by bringing a legal or equitable action in a court of competent jurisdiction. Failure to timely enforce compliance with this Agreement or the use restrictions contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance.
6. Restatement of Use Restriction upon Conveyance. Each instrument hereafter conveying any interest in the Subject Property or any portion of the Subject Property shall contain a restatement of or reference to the use restrictions contained in Section 2 of this Agreement, and provide the recorded location of this Agreement. The restatement shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A USE RESTRICTION AGREEMENT, DATED \_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_\_, PAGE \_\_\_\_\_,] IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF OHIO.

7. Authority. Owner hereby covenants and warrants to and with the State of Ohio the following: that the Owner is lawfully seized in fee simple of the Subject Property; that the Owner has a good and lawful right and power to sell and convey it or any interest therein; that the Owner has identified and notified all other parties that hold any interest (e.g., encumbrance) in the Subject Property; that the use restrictions contained herein are compatible with such interests held by all other parties; and that the Owner will forever defend the title and quiet possession of the Subject Property.

Prior Instrument Reference: Vol. 626, Page 127.

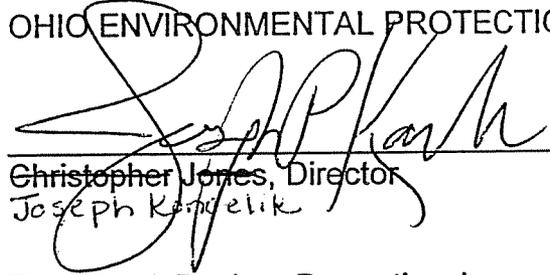
8. Severability. If any provision of this Agreement is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

- 9. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.
- 10. Effective Date. The effective date of this Agreement shall be the date upon which both the Owner and Ohio EPA have signed the Agreement.

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

IT IS SO AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
 Christopher Jones, Director  
 Joseph Kencelik

4/8/05  
 Date

Thornton & Roshon Properties, Inc.

G. Thomas Thornton, President  
 Signature of Owner

George Thomas Thornton President  
 Printed Name and Title

03/11/05  
 Date

State of Ohio :  
 :  
 County of Fairfield :  
 :  
 SS

Before me, a notary public, in and for said county and state, personally appeared G. Thomas Thornton, a duly authorized representative of Thornton & Roshon Properties, who acknowledged to me that he/she did execute the foregoing instrument on behalf of Thornton & Roshon Properties, Inc.

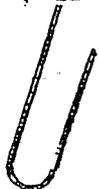
IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 11<sup>th</sup> day of March, 2005

  
 Notary Public  
 TOBY D. MANN  
 ATTORNEY AT LAW  
 NOTARY PUBLIC-STATE OF OHIO  
 LICENSE COMMISSION

Former Arcair Facility  
Page 5

This instrument prepared by:  
Catherine Stroup  
Ohio EPA  
122 S. Front Street  
Columbus, OH 43215

G:\ORDERS\ArcairURfinalDraft.doc



Tract #1

**TOBIN-MCFARLAND SURVEYING INC.**  
111 West Wheeling Street  
Lancaster, Ohio 43130

*Description of 2.231 acres*

Situated in the State of Ohio, County of Fairfield, Township of Greenfield, Township 15, Range 19, Section 28.

Being part of the 15.845 acre tract described in deed volume 626, page 127, and being more fully described as follows:

Beginning at a 8 inch diameter steel post marking the southeast corner of the northeast quarter of section 28;

thence South 00 degrees 09' 45" East a distance of 42.05 feet to a 5/8 inch rebar set on the northerly right of way line of U.S. 33, said point being the southeast corner of the aforementioned 15.845 acre tract;

thence North 84 degrees 45' 10" West, with said right of way line, a distance of 17.24 feet to a 5/8 inch rebar set;

thence South 44 degrees 42' 45" West, continuing with said right of way line, a distance of 34.61 feet to a 5/8 inch rebar previously set;

thence North 73 degrees 17' 51" West, continuing with said right of way line, a distance of 227.82 feet to a 5/8 inch rebar previously set on the south line of the northeast quarter of section 28;

thence South 89 degrees 26' 13" West, following the south line of the northeast quarter of section 28, a distance of 82.77 feet to a point;

thence North 57 degrees 38' 15" West a distance of 114.59 feet to a 3/4 inch iron pipe found on the northerly right of way line of U.S. 33, said point being the southwest corner of the aforementioned 15.845 acre tract;

thence North 00 degrees 17' 51" East a distance of 286.00 feet to a 5/8 inch rebar set on the west line of said 15.845 acre tract;

thence South 51 degrees 59' 50" East a distance of 312.66 feet to a mine spike set;

thence South 88 degrees 30' 09" East a distance of 190.95 feet to a 5/8 inch rebar set on the east line of section 28 and said 15.845 acre tract;

thence South 00 degrees 09' 45" East a distance of 149.43 feet to the point of beginning, containing 2.231 acres and being subject to all legal easements, rights of way and restrictions of record.

Bearings are based on an assumed meridian and are used to denote angles only. Rebars set are 5/8 by 36 inches and have a yellow plastic identification cap stamped "Tobin-McFarland". For additional information see plat of survey made in conjunction with and considered an integral part of this description.

This description is based on a survey made in November 1997 by Tobin-McFarland Surveying, Inc. and was prepared by Thomas E. Tobin, Registered Professional Surveyor No. 6363.



*Thomas E. Tobin*

Thomas E. Tobin, P.S.  
November 3, 1997



Tract #2

**TOBIN-MCFARLAND SURVEYING INC.**  
111 West Wheeling Street  
Lancaster, Ohio 43130

*Description of 7.336 acres*

Situated in the State of Ohio, County of Fairfield, Township of Greenfield, Township 15, Range 19, Section 28.

Being part of the 15.845 acre tract described in deed volume 626, page 127, and being more fully described as follows:

Beginning at a 5/8 inch rebar set on the east line of the aforementioned 15.845 acre tract, said point also being on the east line of section 28 and is located North 00 degrees 09' 45" West a distance of 149.43 feet from the southeast corner of the northeast quarter of section 28;

thence North 88 degrees 30' 09" West a distance of 190.95 feet to a mine spike set; thence North 51 degrees 59' 50" West a distance of 312.66 feet to a 5/8 inch rebar set on the west line of said 15.845 acre tract;

thence North 00 degrees 17' 51" East, with the west line of said 15.845 acre tract, a distance of 371.31 feet to a point in a stream, said point bears North 90 degrees 00' 00" East a distance of 20.00 feet from a 5/8 inch rebar previously set;

thence North 00 degrees 09' 38" West, continuing with the west line of said 15.845 acre tract, a distance of 223.83 feet to a 5/8 inch rebar set;

thence North 89 degrees 59' 50" East a distance of 433.60 feet to a 5/8 inch rebar set on the east line of section 28 and said 15.845 acre tract;

thence South 00 degrees 11' 22" East, with the east line of said 15.845 acre tract and section line, a distance of 223.83 feet to a 3/4 inch iron pipe found;

thence South 00 degrees 09' 45" East a distance of 568.83 feet to the point of beginning, containing 7.336 acres and being subject to all legal easements, rights of way, and restrictions of record.

Bearings are based on an assumed meridian and are used to denote angles only. Rebars set are 5/8 by 36 inches and have a yellow plastic identification cap stamped "Tobin-McFarland". For additional information see plat of survey made in conjunction with and considered an integral part of this description.

This description is based on a survey made in November 1997 by Tobin-McFarland Surveying, Inc. and was prepared by Thomas E. Tobin, Registered Professional Surveyor No. 6363.

*Thomas E. Tobin*

Thomas E. Tobin, P.S.  
November 3, 1997

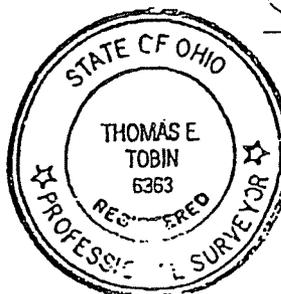
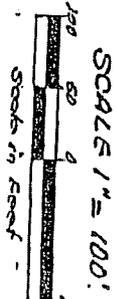
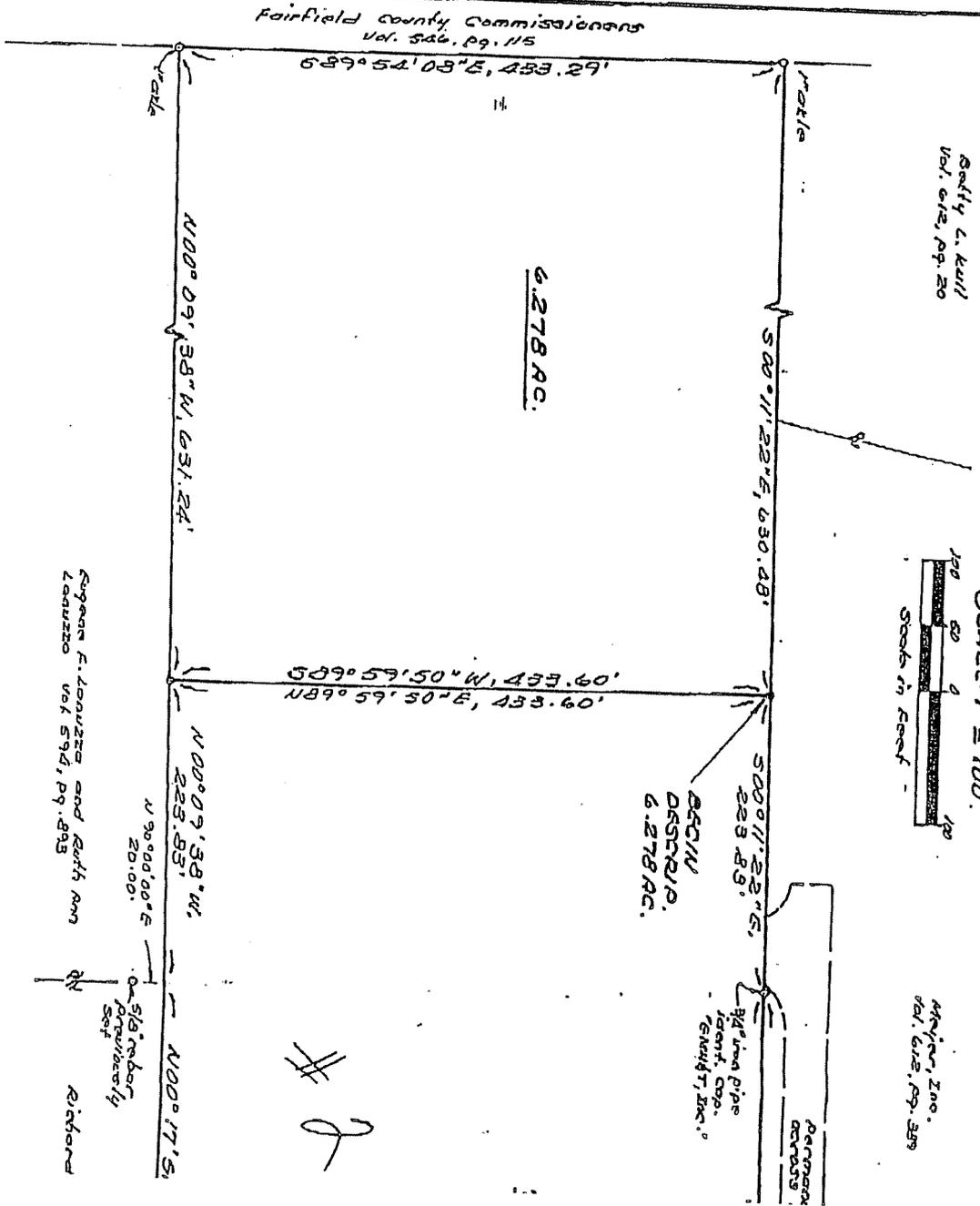


Exhibit A  
 Use Restriction Agreement  
 Former Arcair Facility

- LEGEND
- o 3/8" x 30" rebar set with identification cap stamped "Robin-transformation"
  - o 100 pin or pipe found on site by us previously, type and size as shown.
  - Δ mine spike set.



Suzann F. Louwage and Ruth Ann Louwage Vol. 594, Pg. 893

Richard

PLAT OF SURVEY  
 STATE OF OHIO, COUNTY OF FAIR  
 TOWNSHIP OF GREENFIELD, TOWN  
 RANGE 19, SECTION 28.  
 Ref. Deed Vol. 626, Pg. 127 Town of Es  
 Properties, Inc., 15.845 Acres.

Thomas S. Robin, Registered Professional