



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

TELE: (614) 644-3020 FAX: (614) 644-3184

MAILING ADDRESS:

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

December 30, 2004

Todd Solodar, Esq.  
Law Group - Litigation  
Air Products and Chemicals, Inc.  
7201 Hamilton Boulevard  
Allentown, PA 18195-1501

RECEIVED  
JAN 04 2005  
OHIO EPA/CDO

**Re: Former Arcair Facility, Lancaster, Fairfield County, OH  
Director's Final Findings and Orders**

Dear Todd:

Attached you will find the journalized version of the Director's Final Findings and Orders for the former Arcair Facility. As was explained to you by e-mail message, the Findings and Orders were entered in the Director's Journal on December 28, 2004 so that is the effective date.

I believe the first deliverables under the Findings and Orders are the submittal of a work plan for the shutdown of the ground water remediation system (see paragraph A of Section VI, Orders) which is to be provided to Ohio EPA within 60 days of the effective date and the remittance of a check for past costs in accordance with paragraph A of Section XIII, Reimbursement of Costs.

If you have any questions about the implementation of the Findings and Orders, please feel free to get in touch with me at (614) 644-3037. Once again, thank you for your assistance in bringing this matter to a successful conclusion. Please give my regards to David Keehn.

Sincerely,

Catherine A. Stroup  
Senior Staff Attorney

Attachment

cc: Mike Ebner, DERR, CDO (w/o attach.)  
Mark Rickrich, DERR, CO (w/o attach.)

Bob Taft, Governor  
Jennette Bradley, Lieutenant Governor  
Christopher Jones, Director



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Columbus, OH 43216-1049

December 30, 2004

Tobin Mann  
Thornton Industries  
P.O. Box 2609  
Lancaster, OH 43130

RECEIVED

JAN 04 2005

OHIO EPA/CDO

**Re: Former Arcair Facility, Lancaster, Fairfield County, OH  
Director's Final Findings and Orders**

Attached you will find the journalized version of the Director's Final Findings and Orders for the former Arcair Facility in Lancaster, Ohio. As was explained to you by e-mail message, the Findings and Orders were entered in the Director's Journal on **December 28, 2004** so that is the effective date.

Under Section VII, Site Access and Land Use, Thornton & Roshon is required to implement a Use Restriction Agreement or Environmental Covenant substantively like that attached to the Findings and Orders within 60 days of the effective date. As you and I discussed recently, there is very recent legislation which affects how we implement this provision. Ohio EPA is currently working on a new template for environmental covenants and I expect that we should have a new document finalized within the next two weeks. I will provide that document to you as soon as it is available.

Thank you for your cooperation in resolving this matter. Please feel free to get in touch with me at (614) 644-3037 if you have any questions. I will be in touch soon about the environmental covenant.

Sincerely,

Catherine A. Stroup  
Senior Staff Attorney

Attachment

cc: Mike Ebner, DERR, CDO (w/o attach.)  
Mark Rickrich, DERR, CO (w/o attach.)

Bob Taft, Governor  
Jennette Bradley, Lieutenant Governor  
Christopher Jones, Director

OHIO E.P.A.

DEC 28 2004

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

AIR PRODUCTS AND CHEMICALS, INC.  
7201 Hamilton Boulevard  
Allentown, Pennsylvania 18195-1501

THORNTON & ROSHON PROPERTIES, INC.  
3010 Columbus-Lancaster Road  
Lancaster, Ohio 43130

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Respondents

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Sections 6111.03, 3734.20, 3734.13, and 3745.01 of the Ohio Revised Code. Respondents do not admit any of the jurisdictional bases of these Orders as recited herein; however, Respondents will not contest the jurisdiction of the Ohio EPA to enter these Orders or for purposes of the enforcement hereof.

II. STATEMENT OF PURPOSE

In entering into these Orders, the mutual objective of the Ohio EPA and the Respondents is to cease operation of the ground water recovery system, perform ground water monitoring, and implement the agreed upon use restriction agreement at the former Arcair Company facility in

I certify this to be a true and accurate copy of the original document as filed in the records of the Ohio Environmental Protection Agency.  
*[Signature]* Date 10-28-04

Lancaster, Ohio. Adequate site characterization and remedy selection have been completed as a result of Final Findings and Orders that were entered into by Air Products and Chemicals, Inc. ("Air Products") on December 3, 1990, and a Modification to Director's Final Findings and Orders entered into on January 3, 1995. The parties acknowledge that Thornton & Roshon Properties, Inc. has not been a party to these Final Findings and Orders, or to any other actions or arrangements between Ohio EPA and Air Products.

### **III. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondents, to the extent provided herein, acknowledging that some portions of these Orders apply to one or the other of the Respondents. No change in ownership or corporate status relating to Respondents will in any way alter Respondents' obligations under these Orders.

The Respondents shall provide a copy of these Orders to all contractors, subcontractors and consultants retained to conduct or monitor any portion of the work performed pursuant to these Orders. Respondents shall ensure that any contractors, subcontractors and consultants hired to perform work pursuant to these Orders comply with the provisions of these Orders.

The signatories to these Orders certify that they are fully authorized to execute and legally bind the Party they represent.

### **IV. DEFINITIONS**

Whenever the terms listed below are used in these Orders or in any attachments to these Orders, the following definitions apply:

- a. "Days" shall mean calendar days, including weekends and holidays.
- b. "Document" means any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports and any and all documentary evidence. "Document" shall be

construed broadly to promote the effective sharing of information and views between Respondents and the Ohio EPA concerning the work performed.

- c. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- d. "Ohio EPA" means Ohio Environmental Protection Agency and its designated representatives.
- e. "Parties" means Respondents and Ohio EPA.
- f. "Respondents" means Air Products and Chemicals, Inc. (Air Products) and Thornton & Roshon Properties, Inc. (Thornton & Roshon), and their parent corporations, successors, and assigns.
- g. "Response Costs" means all costs, including but not limited to payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the work, or otherwise implementing or enforcing these Orders.
- h. "Section" means a portion of these Orders identified by a roman numeral.
- i. "Work" means all activities Respondents are required to perform under these Orders.

## V. FINDINGS OF FACT

The Director of the Ohio EPA has determined the following findings of fact. By entering into these Orders, the Respondents do not admit to nor acquiesce in the findings of fact and conclusions of law set forth below.

- A. Arcair Company, a Delaware Corporation, owned and operated a facility located at 3010 Columbus-Lancaster Road, Lancaster, Ohio ("Facility") from 1969 to 1993. Operations began at the Facility in 1961 under a prior owner/operator and consisted of the manufacture

of electrodes, cutting and welding tools, and accessories.

- B. Air Products has represented to Ohio EPA that Arcair Company was an independent subsidiary of Air Products and Chemicals, Inc. of Allentown, Pennsylvania ("Air Products") from January 14, 1969 to June 30, 1987 when Air Products sold Arcair Company to Stoodly Deloro Stellite, Inc. of San Diego, California. Stoodly Deloro Stellite, Inc. was itself acquired during December of 1988 by Thermadyne Industries, Inc., a subsidiary of Thermadyne Holdings Corporation ("Thermadyne") of St. Louis, Missouri.
- C. Air Products has represented to Ohio EPA that pursuant to the June 30, 1987 Stock Purchase Agreement by which Stoodly Deloro Stellite, Inc. acquired Arcair Company from Air Products, Air Products agreed to retain certain designated responsibilities with respect to six specific contaminants (cadmium, copper, methylene chloride, methyl ethyl ketone, zinc, and 1,1,1-trichloroethane) that might be found at four identified areas of the Facility. Air Products had been conducting a general investigation on a voluntary basis to determine the scope and extent of contaminants that may have emanated from the Facility.
- D. In early 1990, the Facility was leased and then purchased by Lifeline Shelters, Inc. through Bradley G. Peters, Inc., its parent company. Arcair indemnified Lifeline Shelters, Inc. for all environmental liabilities. Thornton & Roshon Properties, Inc. purchased the property after Lifeline Shelters defaulted on its loan in 1993. Thornton & Roshon Properties, Inc. is the current owner of the property where the Arcair Company formerly operated.
- E. The Director of the Ohio EPA entered into Final Findings and Orders, pursuant to Chapters 3734. and 3745. and Section 6111.03 of the Ohio Revised Code ("ORC"), with Air Products on December 3, 1990 (the "1990 Consent Order"). The Director and Air Products also entered into a Modification of the 1990 Consent Order (the "1995 Modification") on January 3, 1995, pursuant to the same statutory authority. Air Products does not admit or acquiesce

in any of Ohio EPA's jurisdictional bases or findings of fact or conclusions of law set forth in the 1990 Consent Order nor does Air Products admit or acquiesce in any jurisdictional basis, findings of fact, or conclusions of law contained in the 1995 Modification.

- F. Since August 1990, Air Products has operated two recovery wells and a treatment system on the former Arcair Company property. A third recovery well was added to the treatment system in July 1992.
- G. In accordance with the 1990 Consent Order, Air Products completed an investigation to evaluate the effectiveness of the ground water recovery system, and reported its findings in a March 1994 report titled, "Remedial System Evaluation." This report indicated that the current ground water recovery system effectively intercepts and controls ground water contamination beneath the former Arcair Facility.
- H. Also in accordance with the 1990 Consent Order, Air Products completed a characterization of ground water contamination associated with the southern plume, including the area around the former Triangle Lake, and reported its findings in an April, 1993 report titled, "Triangle Lake Area Investigation." This report defines the extent of ground water contamination and the hydrogeology of the former Triangle Lake area.
- I. Primary chemicals of concern (COCs) identified in ground water at the Facility and the former Triangle Lake area include: 1,1,1-trichloroethane (1,1,1-TCA) 1,1-dichloroethane (1,1-DCA), 1,1-dichloroethene (1,1-DCE), trichloroethene (TCE), and tetrachloroethene (PERC).
- J. Under the 1995 Modification, Air Products further characterized contaminated soils at potential source areas in the vicinity of the Facility in May, 1995. Results are presented in the document titled: Arcair Facility, Source Characterization, Air Products. The former drum storage area along the concrete apron north of the main facility is the most probable

source of volatile organic compounds (VOCs) detected in the vadose zone and ground water beneath the Facility. Based on this sampling, soil contaminant concentrations ranged as follows:

1,1,1 trichloroethane	BDL to 22.9 ppm
1,1 dichloroethane	BDL to 0.509 ppm
trichloroethene	BDL to 0.105 ppm
1,1 dichloroethene	BDL to 0.337 ppm
tetrachloroethene	BDL to 0.845 ppm
ethylbenzene	BDL to 2.14 ppm
xylene	BDL to 6.23 ppm

BDL = below detection limits  
ppm = parts per million

- K. In January 1996, Air Products completed human health and ecological risk assessments. Results are presented in the document titled: Human Health Risk Assessment and Ecological Risk Assessment Reports for the Former Arcair Company Site. Ohio EPA approved the report in February 1996. The human health risk assessment determined that soil contamination, as the only complete exposure pathway, does not pose an unacceptable risk to human health for both non-carcinogenic and carcinogenic compounds. The ecological assessment determined that site contaminants do not pose significant ecological risks to primary or secondary consumers and aquatic communities of the fire pond and adjacent stream.
- L. Additional ground water fate and transport modeling was completed by Air Products. Results were presented in two documents titled: Arcair Facility Fate and Transport Modeling (September 1995), and Addendum to the Arcair Facility Fate and Transport Modeling (January 1996). Ohio EPA approved these reports in February 1996.
- M. Based on the results of the human health and ecological risk assessments and the fate and transport modeling, remaining soil contamination does not pose an unacceptable risk to human health and the environment. Therefore, soil remediation of the identified source

areas will not be necessary.

- N. In December 1996, Air Products completed a final feasibility study for potential ground water remedies of the former Triangle Lake area. Results are presented in the document titled: Off-site Groundwater Remediation Feasibility Study (December 1996). Ohio EPA approved the report in December 1996. Air Products screened and evaluated various remediation technologies against Ohio EPA's remedy selection criteria. Detailed analysis of appropriate technologies indicated three potentially applicable remedial options for the former Triangle Lake Area plume: 1) monitoring only/natural attenuation; 2) air sparging; and 3) pump and treat. Air Products preferred the monitoring only/natural attenuation option.
- O. In 1995, the two Triangle Lake ponds were filled in with soil as part of ongoing construction and development activities in the area.
- P. As part of the 1996 feasibility study, Air Products installed and sampled a ground water monitoring network composed of nine wells in the former Triangle Lake area. Sample results indicate that plume concentrations south of Lithopolis Road have decreased and plume expansion is not apparent. The data support the conclusion that natural attenuation of the off-site plume is occurring. Ohio EPA concurs with the selection of monitoring only/natural attenuation as the interim remedial action.
- Q. In August 2002, Air Products submitted a report titled Alternative Concentration Limits for Ground Water which presents alternative cleanup levels for ground water at the Facility. Ohio EPA reviewed and approved this report in August 2002.
- R. In July 2003, Air Products sampled eighteen ground water monitoring wells and two private wells at the Facility and in the former Triangle Lake area. Results are presented in the document titled Former Arcair Facility, Lancaster, Ohio, Ground Water Sampling Report

- (July 2003). Analytical results for 1,1-DCE in ground water exceeded an alternative concentration limit (ACL) established for 1,1-DCE in August 2002.
- S. In November 2004, Air Products submitted an amendment to the August 2002 document titled Alternative Concentration Limits for Ground Water, which included a revision of the ACLs for several COCs, including 1,1-DCE. Ohio EPA reviewed and approved this document in November 2004. Based on the approved ACL revisions, the July 2003 analytical results for 1,1-DCE in groundwater do not exceed any of the ACLs for 1,1-DCE, nor do any other COCs exceed any of the ACLs.
- T. After release to the soil, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, TCE, PERC, ethylbenzene, and xylene became "industrial wastes" and/or "other wastes" as defined in ORC 6111.01(C) and (D), and/or "hazardous wastes" as defined in ORC 3734.01(J), and/or "hazardous substances" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 USC 9601 et seq.
- U. The Arcair property, which includes the main building, parking lots, fire pond, and undeveloped land, located at 3010 Columbus-Lancaster Road is a "facility," as that term is defined in ORC Section 3734.01(N).
- V. The migration and threatened migration of these industrial wastes and/or other wastes, into the soil, ground water, and/or surface water at or from the Facility, constitutes a discharge or industrial and/or other wastes into "waters of the state," as that term is defined in ORC Section 6111.01(H). The unpermitted discharge of industrial waste, other wastes and/or hazardous wastes and substances into "waters of the state" is prohibited by ORC 6111.04.
- W. The release or disposal of industrial waste and/or hazardous waste and/or hazardous substances from the Facility may constitute a threat to public health and safety or is causing or contributing to or threatening to cause or contribute to air or water pollution or soil

contamination within the meaning of ORC 3734.20(B).

- X. Arcair Company (now merged into Tweco Products, Inc., a subsidiary of Thermadyne), together with Thornton & Roshon are or have been an "owner" or "operator" within the meaning of Section 107(A) of CERCLA, of a "facility" as that term is defined in Section 101(9) of CERCLA, and a "person," as defined in Section 101(21) of CERCLA and ORC Sections 3734.01(G) and 6111.01(I).
- Y. The Director finds the issuance of these Orders furthers the intent of the General Assembly, and that the actions required by these Orders are reasonable and will prevent and abate pollution of the environment for the health, safety, welfare, and property of the people of the state of Ohio.
- Z. The Director has given consideration to, and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and on evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purpose of ORC Chapters 3734 and 6111.
- AA. The Respondents have agreed to undertake only those actions required of them by the terms and conditions of these Orders.

## VI. ORDERS

The following work shall be completed by Respondent Air Products, and Thornton & Roshon shall have no responsibility to participate in or complete any of the following work except to provide site access:

- A. Within sixty (60) days of the effective date of these Orders, a work plan shall be submitted for the shutdown of the existing ground water remediation system at the Facility. The work plan shall provide details on how the remediation system will be maintained should it be

necessary to resume operation of the system. The work plan shall be implemented within thirty (30) days of approval by Ohio EPA.

- B. Within sixty (60) days of the effective date of these Orders, a work plan shall be submitted for the ground water monitoring activities at the Facility. The workplan shall describe eight (8) consecutive quarters of sampling, and that if an exceedence of an ACL occurs during the eighth quarter of monitoring that one additional quarter of monitoring shall be conducted. The work plan shall be implemented within thirty (30) days of approval by Ohio EPA.
- C. Within ninety (90) days following the effective date of these Orders and each ninety (90) days thereafter until such schedule is modified in writing or terminated by Ohio EPA, quarterly progress reports shall be submitted to the Ohio EPA. At a minimum, the reports will contain the following information:
  - 1. A description of any work performed during the reporting period;
  - 2. A summary of any ground water monitoring activities conducted during the reporting period. The laboratory analytical results of any ground water monitoring activities, including the laboratory analytical data reports, shall be included with these reports;
  - 3. A summary of all contacts with representatives of the local community, public interest groups, or government agencies during the reporting period;
  - 4. A summary of all problems or potential problems encountered;
  - 5. A summary all actions taken to rectify problems;
  - 6. A description of any changes in personnel and/or contact information;
  - 7. A description of the projected work for the next reporting period; and
  - 8. Copies of daily reports, inspection reports, sampling data, etc.
- D. If the results of the quarterly ground water monitoring activities show that any ACLs are being exceeded at any of the ground water monitoring wells at the Facility, written notification of such exceedances shall be provided to Ohio EPA within fifteen (15) days of

- Air Products obtaining the laboratory analytical results showing such exceedances.
- E. If after eight (8) or nine (9) (if there is an exceedance in the eighth quarter) quarters of monitoring, there are no exceedances of any ACLs at any of the ground water monitoring wells during two or more consecutive quarterly ground water sampling events, then Air Products shall have fully completed the work specified in this Section VI and shall have no further obligations with respect to ground water monitoring or remediation.
- F. If during the eight (8) quarters of monitoring there is an exceedance of any ACLs during two or more consecutive quarterly ground water sampling events, at any of the ground water monitoring wells, then Air Products shall develop a contingent remedy plan to attempt to achieve the ACLs for Ohio EPA approval. While the actual implementation of the contingent remedy plan is outside the scope of these Orders, Ohio EPA reserves its rights to pursue enforcement of the contingent remedy plan against responsible parties.

#### **VII. SITE ACCESS AND LAND USE**

Thornton & Roshon shall provide access to any areas within the Facility where Work is to be performed pursuant to the terms of these Orders. This access shall be provided to designated personnel of Air Products and its contractors and to Ohio EPA site coordinator and shall be required by Thornton & Roshon from any future owners. Within sixty (60) days of the effective date of these Orders, Thornton & Roshon shall implement a Use Restriction Agreement or Environmental Covenant substantively like that attached to these Orders. Thornton & Roshon shall also provide Ohio EPA with a copy of the executed Use Restriction Agreement/Environmental Covenant, demonstrating that it has been properly recorded with the Fairfield County (Ohio) Recorder's Office.

#### **VIII. PROJECT COORDINATORS**

Air Products, Thornton & Roshon, and Ohio EPA designate the following persons as the respective Project Coordinators for implementation of these Orders:

For Air Products:

Gerald P. Thompson, or his successor  
Air Products and Chemicals, Inc.  
7201 Hamilton Boulevard  
Allentown, PA 18195-1501

For Thornton:

G. Thomas Thornton, President, or his successor  
Thornton & Roshon Properties, Inc.  
3010 Columbus-Lancaster Road  
Lancaster, OH 43130

For Ohio EPA:

Michael Ebner, or his successor  
Division of Emergency and Remedial Response (DERR)  
Ohio EPA, Central District Office  
3232 Alum Creek Drive  
Columbus, OH 43207

Designation of a party's Project Coordinator may be changed by written notice to the other parties. To the maximum extent possible, communication between Parties concerning the execution of the terms and conditions of these Orders shall be made between the Project Coordinators. Each Project Coordinator shall be responsible for assuring all communications are appropriately disseminated by their respective parties. Site work and other activities in execution of these Orders may proceed in the absence of the Project Coordinators.

#### **IX. RESOLUTION OF DISPUTES**

The Project Coordinators shall whenever possible operate by consensus. In the event there is a disapproval of a report or work plan or disagreement about the conduct of the work performed under these Orders, the Project Coordinators shall negotiate in good faith for five (5) days to resolve the differences. In the event the Project Coordinators do not reach consensus, each Project Coordinator shall reduce his position to written form within five (5) days of the end of the five (5) day period for negotiations. The written positions shall be exchanged immediately and

appropriately disseminated among the respective parties.

Following exchange of the written positions the parties shall in good faith attempt to resolve the dispute for five (5) days. During this period the Respondents shall have the opportunity to discuss resolution of the dispute with Ohio EPA, DERR Manager. After five (5) days the matter will be referred to the Ohio EPA, DERR Manager for decision. The decision of the DERR Manager is final.

The pendency of any disputes under this Section shall not affect Air Product's responsibilities for timely performance of the work required by these Orders or Thorton & Roshon's responsibility for providing site access; provided, however, that the time period for completion of work affected by such dispute shall be extended for a period of time not to exceed the time required to resolve in good faith any dispute in accordance with the procedures specified herein. All elements of the work required by these Orders which are not affected by the dispute shall continue in accordance with the approved schedule.

#### **X. NOTICES**

Any notice required by these Orders shall be sent in writing to the appropriate Project Coordinator at the address specified herein or as changed from time to time by the respective parties pursuant to notice hereunder.

#### **XI. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim of action or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders for any liability arising out of or relating to the operation of the Facility.

#### **XII. OTHER APPLICABLE LAWS**

All work required to be taken pursuant to these Orders shall comply with the requirements of applicable local, state, and federal law and regulations and shall be consistent with the National Contingency Plan ("NCP") 40 CFR Part 300, as amended. Nothing in these Orders shall be

construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to any person's operation of its Facility. The Ohio EPA and Respondents reserve all rights and privileges except as specified herein.

### **XIII. REIMBURSEMENT OF COSTS**

Response costs shall be addressed as follows:

- A. Air Products agrees that the total of all past Ohio EPA Response Costs, having been incurred between December 3, 1990 and November 23, 2004, total \$104,516.44, and are not inconsistent with the National Contingency Plan (NCP). Within 60 days of the effective date of these Orders, Air Products agrees to remit payment of 75% of the total of all past response costs to Ohio EPA. Air Products also agrees to remit payment to Ohio EPA for all remaining (25%) unpaid past Response Costs, within either 60 days of the resolution of Ohio EPA's outstanding claim in Thermodyne's existing bankruptcy proceedings, or one calendar year from the effective date of this order, whichever comes first. Any monies received by Ohio EPA as a result of a settlement in the Thermodyne bankruptcy proceedings will be applied toward the total amount of Ohio EPA's past and future Response Costs and, upon Air Products' completion of the work specified in Section VI, Ohio EPA shall remit to Air Products the difference, if any, between the sum of the total Response Costs paid by Air Products and the monies received from the Thermodyne bankruptcy on the one hand and the amount of Ohio EPA's total Response Costs on the other.
- B. With respect to future Response Costs incurred beginning on November 24, 2004, Ohio EPA will submit to Air Products on an annual basis, an itemized invoice of its Response Costs for the previous year. Within 60 days of receipt of such itemized invoice, Air Products shall remit payment to Ohio EPA pursuant to this section, as follows:
  - a) Payment shall be made by check payable to "Treasurer, State of Ohio" and shall

be forwarded to:

Ohio EPA - Fiscal Office  
ATTN: Fiscal Officer  
P.O. Box 1049  
122 South Front Street  
Columbus, Ohio 43216-0149

b) A copy of the transmittal letter and check shall also be sent to:

Ohio EPA - DERR Fiscal  
ATTN: Steve Snyder; DERR Fiscal Officer, or his successor  
P.O. Box 1049  
122 South Front Street  
Columbus, Ohio 43216-0149

c) A copy of the transmittal letter and check shall also be sent to:

Michael Ebner, Project Coordinator, or his successor  
Division of Emergency and Remedial Response (DERR)  
Ohio EPA, Central District Office  
3232 Alum Creek Drive  
Columbus, OH 43207

#### **XIV. UNAVOIDABLE DELAY**

Air Products shall cause all work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondents, which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Air Products. Increased cost of compliance shall not be considered an event beyond the control of Air Products.

Air Products shall notify Ohio EPA in writing within five (5) days after becoming aware of an event which Air Products contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Air Products to minimize the delay, and the timetable under which these measures will be implemented. Air Products shall have the burden of demonstrating that the event constitutes an

unavoidable delay.

If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Air Products in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Design and Remedial Action, and/or enforce the terms of these Orders in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Air Products in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

Air Products may invoke the procedures in Section IX, Resolution of Disputes, to dispute matters in this section.

#### **XV. EFFECTIVE DATE AND MODIFICATION**

The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of the Ohio EPA. The Director shall sign after the Respondents. Upon the effective date of these Orders, the 1990 Consent Order and the 1995 Modification shall be terminated. Air Products' obligation to pay past oversight and response costs incurred by Ohio EPA under the 1990 Consent Order and the 1995 Modification shall be incorporated into these Orders in Section XIII, Reimbursement of Costs.

These Orders may be amended by mutual agreement of Ohio EPA and the Respondents; provided, that to the extent that any provision of the Orders affects only one of the Respondents, then the agreement of the other Respondent shall not be required for the amendment of such provision. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by the last party. If circumstances arise where modification of the time schedules specified in Section VI, Orders, is necessary, Air Products shall make those circumstances known to Ohio EPA in writing. Modification of the time schedules may be granted at the sole discretion of the Director. Minor modifications may be made by mutual agreement of

the Project Coordinators. Such minor modifications shall be memorialized in an exchange of letters by the Project Coordinators.

#### **XVI. RELEASE AND COVENANT NOT TO SUE**

Upon termination of these Orders pursuant to Section XVIII, and reimbursement to Ohio EPA as provided in Section XIII, Ohio EPA covenants not to sue the Respondents for costs incurred by Ohio EPA associated with the conduct and completion of the activities called for in these Orders and the Respondents shall be released from obligations embodied in these Orders with the exception of any ongoing maintenance, monitoring, and reporting requirements imposed upon Air Products and subject to Section VI, above.

#### **XVII. ADMISSIONS**

Nothing in these Orders is intended by the parties to be, nor shall it be, an admission of facts or law, by the Respondents for any purpose and the Respondents specifically do not admit that the conditions at the Facility present a threat to public health, welfare, or the environment. Participation in these Orders by the Respondents is not intended by the parties to be, and shall not be, an admission of fact or opinion.

#### **XVIII. TERMINATION AND SATISFACTION**

The provisions of these Orders shall be deemed satisfied and terminated upon payment of all Response Costs, as specified in Section XIII and incurred by Ohio EPA, and upon completion of the work specified at Section VI by Air Products.

#### **XIX. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from (1) seeking legal or equitable relief to enforce the terms of these Orders including penalties against any potentially responsible parties for noncompliance or claims for natural resources damages; or (2) completing any work described in these Orders. Ohio EPA reserves the right to take any enforcement action, recover costs, or seek damages for injury to natural resources pursuant to any available legal

authority for past, present, or future violations of ORC Chapters 3734 or 6111, conditions at the Facility, or releases of hazardous substances.

#### XX. SIGNATORIES

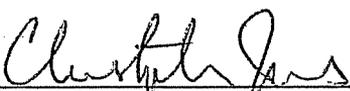
Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

#### XXI. WAIVER

In order to resolve the disputed claims in lieu of further enforcement action by Ohio EPA for only the Respondents' respective obligations addressed in these Orders, the Respondents agree that these Orders are lawful, that the schedule provided for compliance herein is reasonable and Respondents agree to comply with these Orders with respect to their respective obligations herein.

The Respondents have consented to the issuance of these Orders, and hereby waive any right they may have to appeal the issuance of these Orders. In the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission or any Court, nothing in these Orders shall preclude the Respondents from intervention and participation in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

#### IT IS SO ORDERED AND AGREED:

  
\_\_\_\_\_  
Christopher Jones, Director  
Ohio Environmental Protection Agency

12-23-04  
\_\_\_\_\_  
Date

IT IS SO AGREED:

AIR PRODUCTS AND CHEMICALS, INC. <sup>TS</sup>

By: *M.P. Brown*

Title: Vice President, General Counsel  
and Secretary

Date: December 14, 2004

IT IS SO AGREED:

THORNTON & ROSHON PROPERTIES, INC.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**IT IS SO AGREED:**

AIR PRODUCTS AND CHEMICALS, INC.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**IT IS SO AGREED:**

THORNTON & ROSHON PROPERTIES, INC.

By: H. Thomas Thornton

Title: President

Date: 12 - 16 - 04

200500014655  
Filed for Record  
FAIRFIELD COUNTY, OH  
GENE SUDD  
06-10-2005 at 01:19 pm  
AGREE DEED \$2.00  
OR Book 1899

**AFFIDAVIT**

COPY

STATE OF OHIO )  
 )  
COUNTY OF FRANKLIN ) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Jackson, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Use Restriction Agreement signed by the Director and entered in the Ohio EPA Director's Journal on April 12, 2005 regarding the property known as the Former Arcair Facility (Parcel #01400900), located at 3010 Columbus-Lancaster Road in Lancaster, Fairfield County, Ohio, and further described in the Use Restriction Agreement.

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

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 12<sup>th</sup> day of APRIL, 2005.

Ronald Vauterpool  
Notary Public  
State of Ohio

Permanent Commission  
No expiration, R.C. 147.03

This instrument prepared by:  
Catherine Stroup, Attorney  
Ohio EPA Legal Office  
P.O. Box 1049  
Columbus, OH 43216-1049

**TRANSFER**  
**NOT NECESSARY**

<sup>DJS</sup>  
JUN 10 2005

Barbara Curtiss  
County Auditor, Fairfield County, Ohio

311 23 174

OHIO E.P.A.

APR 12 2005

USE RESTRICTION AGREEMENT

ENTERED DATE: 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

Witness my hand and official seal of the Ohio Environmental Protection Agency.

*Jon G. 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.

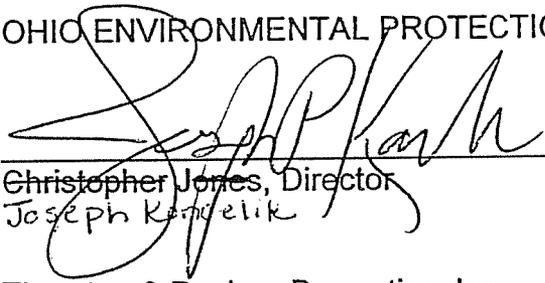
8. Severability. If any provision of this Agreement is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

- 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 Kappelik

4/8/05  
 \_\_\_\_\_  
 Date

Thornton & Roshon Properties, Inc.

G. Thomas Thornton, President  
 \_\_\_\_\_  
 Signature of Owner

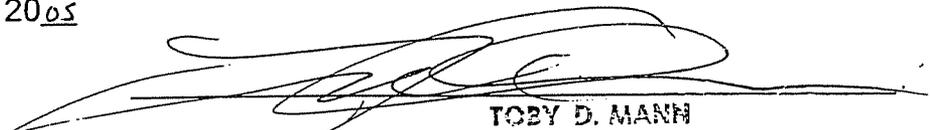
George Thomas Thornton President  
 \_\_\_\_\_  
 Printed Name and Title

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  
 EXPIRES 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;

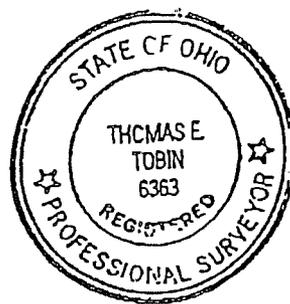
thence South 51 degrees 59' 50" East a distance of 312.66 feet to a mine spike set;

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

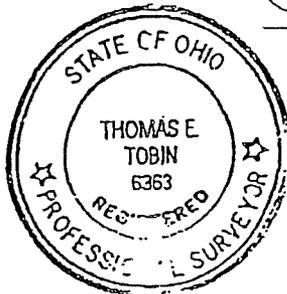
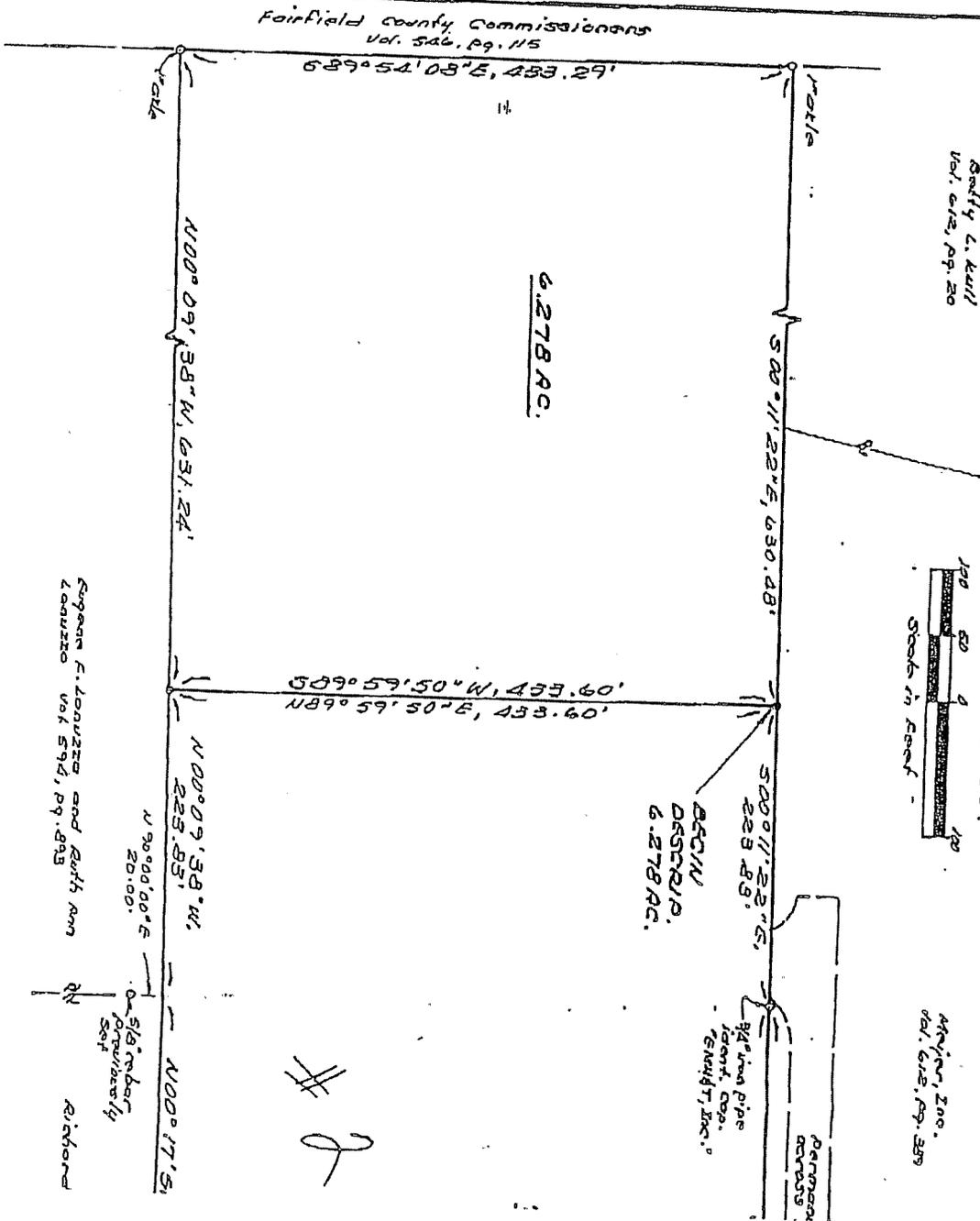


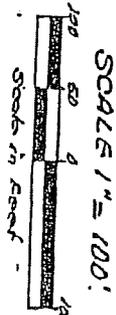
Exhibit A  
 Use Restriction Agreement  
 Former Arcair Facility

- LEGEND**
- 1 5/8" x 3/4" rebar set with identifi. location cap stamped "Robin - Anderson"
  - 2 iron pin or pipe found on site by us previously, type and size as shown.
  - 3 iron spike set.

**PLAT OF SURVEY**  
 STATE OF OHIO, COUNTY OF FAIR  
 TOWNSHIP OF GREENFIELD, TOWN  
 RANGE 19, SECTION 28.  
 Ref. deed Vol. 626, pg. 127 Township & Co  
 Properties, Inc., 15.845 acres.



Stoffy & Kuhl  
 Vol. 612, pg. 20



Meyer, Inc.  
 Vol. 612, pg. 399

Thomas E. Tobin, Registered Professional