

RECEIVED

JUL 14 1999

OHIO E.P.A.

JUL 12 1999

OHIO EPA/CDO
BEFORE THE

ENTERED DIRECTOR'S JOURNAL
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:

The Stanley Works
3810 SE Naef Road
Milwaukie, OR 97267

Regarding the approx. 22.277 acre property :
known as The Stanley Works (fka Mac Tools):
1429 Old U.S. Route 35 :
Fayette County, OH :

Covenant Not to Sue

Director's Final Findings
and Orders

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

Mr. Ronald C. [Signature] Date 7-12-99

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency ("Director") hereby makes the following Findings and issues the following Orders ("Findings and Orders" or "Covenant").

Findings

1. An original No Further Action Letter ("NFA Letter No. 98NFA027") was submitted to the Ohio EPA Division of Emergency and Remedial Response, Voluntary Action Program ("VAP") on behalf of The Stanley Works (the "Volunteer") on June 8, 1998, by John A. Simon, ("Certified Professional No. CP152" or the "Certified Professional"), a certified professional as defined in ORC Section 3746.01(E) and OAC Rule 3745-300-01(A)(8).
2. NFA Letter No. 98NFA027 describes investigational and/or remedial activities undertaken at the approximately 22.277 acre property located at 1429 Old U.S. Route 35, Washington Court House, Fayette County, Ohio (the "Property"). An exact legal description of the Property is contained in the warranty deed recorded in Volume 25, Page 408 at the Fayette County Recorder's Office and is attached hereto as Attachment 1.
3. Amendments to NFA Letter No. 98NFA027, dated December 9, 1998 and April 29, 1999, were submitted by the Certified Professional to Ohio EPA. NFA Letter No. 98NFA027, Ohio EPA's comments, and Amendments to NFA Letter No.

98NFA027 are collectively referred to hereafter in these Findings and Orders as the "NFA."

4. The Certified Professional has verified by affidavit that the investigational and/or remedial activities undertaken at the Property comply with the standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a Covenant Not to Sue under the VAP, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws.
5. At the time that analyses were performed, DLZ Laboratories ("Certified Laboratory No. CL0014") and ROSS Analytical Services, Inc. ("Certified Laboratory No. CL0021") were certified laboratories as defined in ORC Section 3746.01(D) and OAC Rule 3745-300-01(A)(7), whose services were used in support of the NFA for the Property.
6. According to information provided in the NFA, DLZ Laboratories and ROSS Analytical Services, Inc., performed analyses for which they were certified and qualified, pursuant to ORC Chapter 3746 and OAC Chapter 3745-300, that formed the basis for the issuance of the NFA as determined by the Certified Professional.
7. A land use restriction has been placed on the Property in accordance with OAC Rule 3745-300-13(E)(13), limiting the Property to commercial and industrial land uses and prohibiting the use of ground water from beneath the Property for any purpose or use, potable or otherwise, except for investigation or remediation. A copy of the deed restriction is attached hereto as Attachment 2.
8. On July 12th, 1999, The Stanley Works and Ohio EPA entered into an Operation and Maintenance Agreement ("O&M Agreement"), which includes an approved Operation and Maintenance Plan ("O&M Plan"), that is incorporated by reference as if fully written into these Findings and Orders. The O&M Agreement, including the approved O&M Plan is attached hereto as Attachment 3.
9. Based upon the information contained in the NFA, the following investigational and/or remedial activities were undertaken at the Property:
 - a) Completion of a Phase I Property Assessment, in accordance with OAC Rule 3745-300-06;

- b) Completion of a Phase II Property Assessment, in accordance with OAC Rule 3745-300-07;
 - c) The placement of a deed restriction on the Property that restricts the Property to commercial and industrial uses, and prohibits the use of groundwater from beneath the Property, except for purposes of investigation or remediation, as set forth in the warranty deed recorded in Volume 25, Page 408 at the Fayette County Recorder's Office;
 - d) The use of institutional controls for the Property that are not contained on the Property deed, including a prohibition on the construction of permanent subsurface structures designed for routine human occupancy, and the requirement that unusual subsurface activities at the Property, which result in contact with ground water, be undertaken in compliance with a health and safety plan ("HASp"), on the areas delineated in, and as set forth in, the O&M Agreement;
 - e) The use of engineering controls on the Property, including soil and ground water excavation and treatment and the construction of a fence, on the areas delineated in, and as set forth in, the O&M Agreement; and
 - f) Implementation of an O&M Agreement for the Property, for the engineering controls and institutional controls not contained on the Property deed, to assure completion of all construction, maintenance, monitoring, reporting, record keeping, financial assurance and other requirements as set forth in the O&M Agreement.
10. Based on the information contained in the NFA, and upon the implementation of the O&M Agreement and all other conditions described herein, the Director has determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.

Orders

1. Upon the effective date of these Findings and Orders, and subject to the conditions outlined below, the Ohio EPA hereby releases and covenants not to sue The Stanley Works, the Washington Court House Business Park Limited Liability Company, and their agents, employees, shareholders, officers, directors, successors or assigns, from all civil liability to the State to perform additional investigational and/or remedial activities to address the releases of hazardous

substances or petroleum addressed through the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

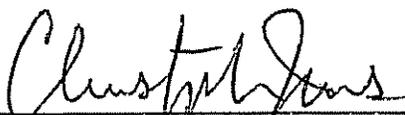
2. The NFA and the Covenant provided in these Findings and Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. A summary of the NFA, and a copy of these Findings and Orders, including Attachments 1, 2 and 3 hereto, shall be filed in the Fayette County Recorder's Office, in the same manner as a deed to the Property.

Conditions of and Limitations on the Covenant

1. This Covenant shall only apply to the approximately 22.277 acre Property described in the NFA, upon which the investigational and/or remedial activities specified in the NFA were conducted.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this Covenant is based, as outlined in Finding Nos. 1 through 10 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) which occur after the submittal of the NFA to Ohio EPA, or
 - (b) on or emanating from the Property, which are not described in the NFA, or
 - (c) for which investigational and/or remedial activities were conducted that were not in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.
4. This Covenant shall not apply to:
 - (a) claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sections 9607 and 9613, as amended; or

- (b) claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or
 - (c) as otherwise specifically provided in ORC Chapter 3746.
5. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC Sections 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from a property where a voluntary action is being or has been conducted under ORC Chapter 3746 and OAC Chapter 3745-300, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
6. Nothing in this Covenant shall be construed to limit and/or waive the Director's authority to revoke this Covenant pursuant to any of the circumstances for revocation of a Covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency

JUL 12 1999

Date

Attachment 1

Exhibit "A"

Situate in the State of Ohio, County of Fayette, Union Township, being part of Virginia Military Survey Numbers 663 and 680 and being all of the 22.287 acre tract conveyed to Mac Tools, Inc. by deed of record in Deed Book 126, Page 125, records of the Recorder's Office, Union County, Ohio and being more particularly described as follows:

Beginning at a railroad spike set in the centerline of Old U.S. Route 35 (60 feet, in width) at a southeasterly corner of the said 22.287 acre tract and a northeasterly corner of the 47.359 acre tract conveyed to Steelox Systems, Inc. by deed of record in Deed Book 171, Page 588;

Thence S 49° 07' 48" W, a distance of 1155.80 feet, along the common line to the said 22.287 and 47.359 acre tracts (passing an iron pin found, on line, at a distance of 30.00 feet) to an iron pin found at a southwesterly corner of said 22.287 acre tract and a northwesterly corner of the said 47.359 acre tract, said iron pin being in a northeasterly line of a 50.00 foot wide strip of land now or formerly owned by Grand Trunk Western Railroad and a northeasterly corner of a 4.080 acre tract conveyed to Steelox Systems, Inc. by deed of record in Deed Book 183, Page 162;

Thence N 45° 05' 15" W, a distance of 775.04 feet, along the common line to said 22.287 acre tract and the said 50.00 foot strip of land owned by Grand Trunk Western Railroad to an iron pin (rebar) found at a northwesterly corner of said 22.287 acre tract and a southwesterly corner of the 10 acre tract conveyed to Mary F. Acton by deed of record in Deed Book 177, Page 537;

Thence N 44° 52' 17" E, a distance of 1216.71 feet, along the common line to said 22.287 and 10 acre tracts (passing an iron pin, rebar, found on line at a distance of 1186.63 feet), to a railroad spike set in the centerline of Old U.S. Route 35 at a northeasterly corner of said 22.287 acre tract and a southeasterly corner of the said 10 acre tract;

Thence S 40° 50' 00" E, a distance of 863.29 feet, along the centerline of Old U.S. Route 35 and the northeasterly line of the said 22.287 acre tract to the point of beginning, containing 22.277 acres, more or less.

The bearings in the above description were based on the bearing of N 40° 50' 00" W, for the centerline of Old U.S. Route 35 as shown on the Ohio Department of Transportation Right-of-Way Plans, Fayette County, I.C.H.-29 SEC-A, R/W Plans, Sheet 4 of 5.

Date 5-13-98

Fayette County Auditor

Penny S. Johnson

Approved By: HW

Instrument
9800002573

LIMITED WARRANTY DEEDInstrument
980002573

THE STANLEY WORKS, a Connecticut corporation, successor by merger to Stanley Mechanics Tools, Inc., formerly known as Mac Tools, Inc. ("Grantor"), for valuable consideration paid, grants, with limited warranty covenants, to WASHINGTON COURTHOUSE BUSINESS PARK, LLC, a Delaware limited liability company ("Grantee"), whose tax-mailing address is One West Avenue, Larchmont, New York 10538, the following real property:

Situated in the State of Ohio, County of Fayette and Township of Union, and being more particularly in Exhibit A which is attached hereto and incorporated herein by reference (the "Property").

Subject to real estate taxes and installments of assessments not due and payable, legal highways, zoning ordinances, easements, covenants, conditions and restrictions of record, a Lease Agreement dated as of March 4, 1997 between Grantor and Candle-Lite, a Division of Lancaster Colony Corporation, the Reserved Easement (as defined below) and the Restrictions (as defined below).

Prior Instrument Reference: Deed Book 126, page 125, Recorder's Office, Fayette County, Ohio.

This Deed is being executed and delivered by Grantor to Grantee pursuant to a Purchase and Sale Agreement dated as of February 17, 1998 between Grantor and Grantee's predecessor in interest, S.L. Equities, Inc. (the "Purchase and Sale Agreement"). Section 15(b)(iii) of the Purchase and Sale Agreement ("Section 15(b)(iii)") provides that Grantor is to have certain rights with respect to the investigation and remediation of the environmental conditions of the Property after the execution and delivery of this Deed, as follows:

Buyer [Grantee] shall give Seller [Grantor] the opportunity to perform, or cause to be performed, any investigation or remediation and to engage such consultants and contractors in connection therewith as Seller [Grantor] may select, all of which shall be subject to Buyer's [Grantee's] prior written approval, which approval shall not be unreasonably withheld. In addition, Buyer [Grantee] specifically agrees to allow Seller [Grantor] to conduct investigative and remedial actions as Seller [Grantor] deems necessary for Seller [Grantor] to obtain and/or maintain a Covenant Not to Sue from government agencies under Ohio Revised Code Chapter 3746 and any other applicable statutes.

In furtherance of the rights retained by Grantor pursuant to Section 15(b)(iii), and as contemplated by the Purchase and Sale Agreement, Grantor reserves an easement (the "Reserved Easement") for the purpose of allowing Grantor and Grantor's employees, agents, consultants and contractors access to the Property to perform any investigation or remediation contemplated by Section 15(b)(iii) or as deemed necessary by Grantor to obtain and/or maintain a Covenant

Central City Title Agency, Ltd.
74 S. Fourth Street
Columbus, Ohio 43215
Mail Back:

Not to Sue from government agencies under Ohio Revised Code Chapter 3746 or any other applicable statutes. The Reserved Easement shall have a term expiring on the later of (i) the date which is seven (7) years after the date of this Deed or (ii) the completion of all investigations and remediations contemplated by Section 15(b)(iii). Upon termination of the Reserved Easement, Grantor shall, at the request of Grantee, execute and deliver to Grantee a document in recordable form confirming the termination of the Reserved Easement. The benefit of the Reserved Easement shall be personal to Grantor, its successors and assigns, and the burden of the Reserved Easement shall run with the land. The Reserved Easement shall be a non-exclusive easement, and Grantee may use the Property for purposes which are not inconsistent with, and do not unreasonably interfere with, the use and enjoyment of the Reserved Easement.

The Property is being conveyed by Grantor to Grantee, and Grantee, by acceptance of this Deed, accepts the Property, subject to the following restrictions (the "Restrictions"), which Restrictions are hereby created by this Deed:

- (a) The Property may be used only for commercial, light industrial, industrial and heavy industrial uses.
- (b) The ground water from beneath the Property shall not be produced or utilized for any purpose or use, potable or otherwise, except for investigation or remediation. For purposes of the immediately preceding sentence, potable purpose or use shall mean those uses described in Ohio Administrative Code Section 3745-300-01(A)(33) (effective December 16, 1996).

The Restrictions are declared in furtherance of Section 3746.10(C) of the Ohio Revised Code. For violation or breach of the Restrictions, Grantor, Grantee and all persons hereafter acquiring any ownership interest in or to the Property, or any part thereof, as well as the Ohio Environmental Protection Agency, shall have the right to proceed at law or in equity to compel compliance with the terms thereof or to obtain injunctive relief in order to prevent violation or breach of the Restrictions. Failure to timely enforce the Restrictions by any party shall not bar subsequent enforcement by such party and shall in no manner be deemed a waiver. If the Property is used in any manner inconsistent with the Restrictions, any Covenant Not to Sue which may be issued regarding the Property by the Ohio Environmental Protection Agency will be void on and after the commencement of any nonconforming use.

Pursuant to Section 15(d) of the Purchase and Sale Agreement ("Section 15(d)"), Grantee has covenanted that, upon Grantor's request made from time to time within seven (7) years after the date of this Deed: (i) Grantee shall execute and record a recordable document subjecting the Property to such of the restrictions specified in Exhibit F to the Purchase and Sale Agreement (the "Additional Restrictions") (in addition to the Restrictions) as are (a) required by any "No Further Action Letter" issued by an Ohio EPA Certified Professional (an "NFA Letter") or (b) necessary or appropriate in order to obtain and/or maintain a Covenant Not to Sue from government agencies under Ohio Revised Code Chapter 3746 and any other applicable statutes (a "Covenant Not to Sue"); and (ii) Grantee shall join with Grantor in entering such Operation and Maintenance Agreement(s) (each, an "O&M Agreement") with respect to the

Property as are required by any NFA Letter or as are necessary or appropriate in order to obtain and/or maintain a Covenant Not to Sue, provided that as a condition to requiring Grantee to enter into any O&M Agreement, Grantor shall agree to pay and be responsible for the direct costs of complying with the O&M Agreement, other than such costs which arise from the actions or omissions of Grantee. This paragraph is included in this Deed in furtherance of the intention of Grantor and Grantee, as specified in Section 15(d), that Grantee's obligations under Section 15(d) run with the land. This paragraph is not operative to establish any Additional Restrictions, but establishes Grantee's obligation to impose Additional Restrictions in the future as provided in Section 15(d). Upon the earlier of (i) the date which is seven (7) years after the date of this Deed, if there are not then any outstanding requests by Grantor for Grantee to establish any Additional Restrictions or to enter an O&M Agreement pursuant to Section 15(d), or (ii) the date on which Grantor determines, in its discretion exercised in a commercially reasonable manner, that any Additional Restrictions and any O&M Agreement(s) as are required by any NFA Letter or as are necessary or appropriate in order to obtain and/or maintain a Covenant Not to Sue have been established and entered, Grantor shall, at the request of Grantee, execute and deliver to Grantee a document in recordable form confirming that Grantee has no further obligations under Section 15(d). The benefit of Section 15(d) shall be personal to Grantor, and the burden of Section 15(d) shall run with the land.

In witness whereof, Grantor has executed this deed as of the 4TH day of ~~April~~ ^{MAY}, 1998.

Signed and acknowledged
in the presence of:

Laurence O'Geefe
Print Name: LAURENCE O'GEEFE

Deice A. McEllan
Print Name: Deice A. McEllan

THE STANLEY WORKS

By: Frank M. Harvey
Name: FRANK M. HARVEY
Title: DIRECTOR OF REAL ESTATE

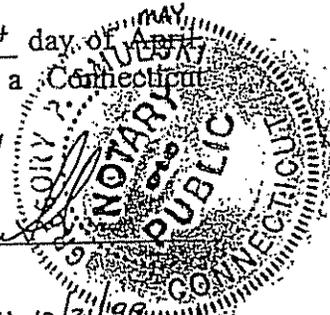
STATE OF ~~OHIO~~ CONNECTICUT
COUNTY OF ~~HAMILTON~~, SS:
HARTFORD

The foregoing instrument was acknowledged before me this 4TH day of ~~April~~ ^{MAY}, 1998, by FRANK M. HARVEY, DIRECTOR OF REAL ESTATE of The Stanley Works, a Connecticut corporation, on behalf of the corporation.

<p>TRANSFERRED This Conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code</p> <p>MAY 13 1998</p> <p>FEE \$ <u>1,200.⁰⁰</u> EXEMPTS _____</p> <p>PENNY S. JOHNSON, Fayette County Auditor</p>
--

Sergey P. Shumakov
Notary Public

MY COMMISSION EXPIRES: 10/31/99



This instrument prepared by:

Donald J. Shuller
Vorys, Sater, Seymour and Pease
221 East Fourth Street, Suite 2100
P. O. Box 0236
Cincinnati, Ohio 45201-0236

9800002573
Filed for Record in
FAYETTE COUNTY, OHIO
BARBARA A. ZOOSMA
On 05-13-1998 At 03:58 pm.
DEED 26.00
Book OR Vol. 25 Pg. 408 - 412

9800002573
MAIL: CENTRAL CITY TITLE AGENCY LTD
74 S FOURTH ST
COLUMBUS, OH 43215

ATTACHMENT 3

**OPERATION AND MAINTENANCE AGREEMENT
REGARDING THE STANLEY WORKS FACILITY, FAYETTE COUNTY, OHIO
BETWEEN THE OHIO ENVIRONMENTAL PROTECTION AGENCY,
THE STANLEY WORKS and WASHINGTON COURT HOUSE BUSINESS PARK, LLC**

In consideration of the mutual covenants and provisions contained herein, this Operation and Maintenance Agreement ("Agreement") is entered into as of this 12th day of ~~May~~^{July} 1999 by the Director of the Ohio Environmental Protection Agency ("Director"), The Stanley Works ("Stanley"), and Washington Court House Business Park, LLC, pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, under the following circumstances and subject to the terms and conditions herein stated:

TERMS AND CONDITIONS

- 1. The Original NFA.** An original No Further Action Letter (NFA Letter No. 98NFA027, or the "NFA") under the Voluntary Action Program ("VAP") was submitted to the Ohio Environmental Protection Agency ("Ohio EPA") Division of Emergency and Remedial Response on behalf of Stanley on June 8, 1998, by Mr. John Simon, VAP Certified Professional No. 152, for real property located at 1429 Old U.S. Route 35, Washington Court House, Fayette County, Ohio as described in Attachment I to the Covenant Not to Sue ("Covenant") for the Property (the "Property").
- 2. Amendments to Original NFA.** Amendments to the NFA were submitted by John Simon on December 8, 1998, and on April 29, 1999, in response to comments from Ohio EPA. The NFA, Ohio EPA comments, and amendments to the NFA are collectively referred to as the "NFA" in this Agreement.
- 3. Requirement for an Operation and Maintenance Agreement.** An Operation and Maintenance Agreement is required for the Property, pursuant to ORC Section 3746.12 and OAC rules 3745-300-15 (A)(2) and (F)(4).
- 4. Remedy Subject to Operation and Maintenance.** The remedy to be operated and maintained for the Property consists of:

- (a) An engineering control, consisting of a fence around the API Dump Area, to be maintained on the areas of the Property identified in Appendix I and for such time as provided herein;
 - (b) An engineering control, consisting of soil excavation and treatment on the areas of the Property identified in Appendix I and for such time as provided herein;
 - (c) An institutional control on all of the areas of the Property within the buffer zones identified in Appendix II, requiring compliance with a Health and Safety Plan ("HASP") developed in accordance with the requirements for a HASP as set forth in Section 3.3 of the Operation and Maintenance Plan dated March 31, 1999 (the "Plan"), attached hereto as Appendix III, by any persons conducting unusual subsurface activities at the Property as defined in Section 3.2.2 of the Plan;
 - (d) An institutional control on all of the areas of the Property within the buffer zones identified in Appendix II, prohibiting the construction of permanent subsurface structures designed for routine human occupancy on the Property, as described in Section 3.2.3 of the Plan, unless Ohio EPA has approved their construction; and
 - (e) Ground water monitoring for the Property, as provided in Section 2.2 of the Plan.
5. **Agreement Runs With the Property.** The terms and conditions of this Agreement shall run with the Property and are binding on the parties hereto and all subsequent owners, heirs, successors and assigns of the Property, or any portion thereof. "Current Owner," as used in this Agreement, means the Washington Court House Business Park, LLC, and any subsequent owners, heirs, successors or assigns of the Property, or any portion thereof.

6. **Operation and Maintenance Plan.** Stanley or the Current Owner must perform all maintenance, repair, monitoring, reporting, record keeping, and other requirements, as set forth in this Agreement, and in the Plan. The Plan is hereby approved, and incorporated into this Agreement as if fully rewritten herein.
7. **Effect of Violation/Applicable Standard.** For the purposes of ORC Section 3746.12(B), this Agreement is an applicable standard upon which the Covenant is based. Failure to comply with the terms contained in this Agreement and the Plan, shall be the failure to maintain an applicable standard in accordance with and subject to ORC Section 3746.12(B), OAC Chapter 3745-300, and the process outlined in paragraph 17 of this Agreement, except for noncompliance with institutional controls, which voids the Covenant, as provided in paragraph 9.3 of this Agreement.
8. **Protectiveness of the Remedy.** Based upon the information provided in the NFA, the remedy for the Property is considered protective of public health, safety and the environment, and so long as Stanley or the Current Owner continues to comply with the terms and conditions herein, and all other obligations of the Covenant for the Property.
9. **Institutional Controls.** Stanley and the Current Owner shall comply with all institutional controls, as applicable to each, required in this Agreement and in Section 3.2 of the Plan. For the purposes of this paragraph, institutional controls are those required under paragraphs 4(c) and 4(d) of this Agreement.
 - 9.1 **Restrictions are Part of Remedy.** The restrictions on the use of the Property contained herein are part of a remedy under a voluntary action pursuant to ORC Section 3746.10(C)(3), and as such this Agreement, including the Plan as attached hereto as Appendix III, must be recorded in the Fayette County Recorder's Office.
 - 9.2 **Locations.** The locations on the Property of the institutional controls required by paragraphs 4(c) and 4(d) this Agreement are shown in Appendix II, which are incorporated by reference as part of this Agreement.

- 9.3 **Noncompliance With Institutional Controls.** Pursuant to ORC Section 3746.05, noncompliance with any institutional controls set forth herein, in the Plan, or in the deed for the Property, immediately voids the Covenant for the Property.
- 9.4 **Modification/Termination of Institutional Control.** The institutional controls required under paragraphs 4(c) and 4(d) of this Agreement may only be modified or terminated pursuant to paragraph 16 of this Agreement, and only by an instrument executed by Stanley, all owners of the Property at the time of modification or termination, and the Ohio EPA, and provided that both the instrument and documentation of the modification or termination are recorded in the Fayette County Recorder's Office in accordance with the requirements of ORC Chapter 3746 and OAC Chapter 3745-300.
10. **Engineering Control: Fence.** Stanley or the Current Owner shall establish and maintain the fence as required herein and in Section 2.1.1 of the Plan.
- 10.1 **Establishment and Maintenance.** The fence shall be established and maintained in good repair, in accordance with the minimum requirements herein and in the Plan, and must provide a reliable barrier between potential receptors and hazardous substances and petroleum in the areas of the Property in excess of applicable standards as shown in the excavation areas described in Appendix I.
- 10.2 **Locations.** The locations of the fence on the Property required by this Agreement are shown in Appendix I, which is incorporated by reference as part of this Agreement.
11. **Engineering Control: Soil Excavation and Treatment.** Stanley or the Current Owner shall conduct soil excavation and treatment activities as required herein and in Section 2 of the Plan, and shall complete all monitoring, reporting, and other obligations required herein and in Section 2 of the Plan, for the soil excavation and treatment conducted at the Property.

- 11.1 **Establishment and Maintenance.** The soil excavation and treatment shall be conducted in accordance with the minimum requirements herein and in the Plan, such that at the completion of the soil excavation and treatment activities, the commercial and industrial direct contact soil standards contained in OAC rule 3745-300-08 are met at the Property.
- 11.2 **Locations.** The locations where the soil excavation and treatment activities will be conducted on the Property are shown in Appendix I, which is incorporated by reference as part of this Agreement.
12. **Monitoring and Reporting.** Stanley or the Current Owner shall establish and conduct monitoring activities as described in the Plan, and shall complete all reporting obligations for the institutional and engineering controls maintained on the Property, as described in the Plan.
13. **Notice of Transfer/Notice to Transferees.** Prior to a sale or other transfer of the Property, or any portion thereof, notification will be provided by the Current Owner to the Director that the Property, or a portion thereof, is being sold or otherwise transferred. This notice to the Director must include the name, address, telephone number and contact person for the transferee, a legal description of the property being transferred if not the entire Property, and the closing date for the transfer of ownership of the Property or portion thereof. The Current Owner agrees to provide written notice to the prospective transferee prior to the execution of any sales contract or other document transferring ownership, for the purchase of the Property, or any portion thereof, that the Property is subject to a Covenant issued by the Director and of the obligations imposed by this Agreement, as a term and condition of the Covenant.
14. **Recordation/Effectiveness of Agreement.** This Agreement, including the Plan, as part of the Covenant for the Property, must be recorded as set forth in the Covenant. This Agreement shall be effective upon the Director's issuance of a Covenant for the Property.

15. **Reliance Upon the Covenant.** In order to rely upon the Covenant for the Property, Stanley and the Current Owner agree that one or both of them will establish and comply with all engineering and institutional controls set forth in this Agreement, and will perform all maintenance, repair, monitoring, reporting, record keeping, and other requirements, as set forth in the Plan and this Agreement.
16. **Modifications.** Except for Minor Modifications discussed below, any proposed Modifications to this Agreement, including the Plan, shall be submitted by Stanley or the Current Owner to the Director for approval, unless proposed by the Director. Modifications include any change to the terms and conditions of this Agreement, including but not limited to engineering controls, institutional controls, financial assurance, and the Plan. Approval of Modifications is subject to the sole discretion of the Director and must be agreed to by the Director, in writing, prior to implementation. Minor Modifications include non-substantive administrative changes to this Agreement, or the Plan, including changes of the contact persons and addresses contained in this Agreement. Minor Modifications shall not include changes to the remedy upon which the Covenant is based, such as changes to the type or location of any engineering or institutional control used at the Property. Stanley or the Current Owner shall, within fourteen (14) days of implementation of a Minor Modification, provide notice to Ohio EPA of any such Minor Modifications to this Agreement or the Plan.
17. **Compliance Schedule Agreement.** Consistent with ORC Section 3746.12(B), upon a finding that the Property or a portion thereof no longer complies with the applicable standards upon which the issuance of the Covenant was based, Stanley or the Current Owner will have thirty (30) days from receipt of notice from the Director of such finding to notify the Director of the intention to return the Property or portion thereof to compliance ("cure") with the applicable standards upon which the Covenant was based and enter into a reasonable compliance schedule for such cure with the Director. The process provided in this paragraph shall apply to all activities required in this Agreement and in the Plan, except as provided in paragraph 9 above.

18. Financial Assurance.

(a) Stanley or the Current Owner ("Fund Entity"), shall establish and, except as set forth herein, must maintain an Operation and Maintenance fund ("Fund") for the Property in the amount of Ten Thousand Dollars (\$10,000) ("Minimum Amount"), to ensure that reasonable and adequate funds are available, if necessary, to comply with the terms of this Agreement. The Fund shall consist of a designated fund or account on the books of the Fund Entity. The Fund shall be replenished annually, if necessary, to maintain the Minimum Amount. The Fund Entity shall provide the Director with an annual report of all expenditures for compliance with the terms and conditions of this Agreement, within thirty (30) days of the anniversary date of the issuance of a Covenant for the Property. In the event the financial assurance mechanism provided herein is inadequate to comply with the terms and conditions of this Agreement, the Director shall require a Modification of the provision pursuant to paragraph 16 of this Agreement.

(b) Upon adequate completion of the remedial and monitoring activities contained in Section 2 of the Plan, the Minimum Amount of the Fund shall be reduced to One Hundred Dollars (\$100), to ensure that reasonable and adequate funds are available to conduct the monitoring activities contained in Section 3 of the Plan at the Property.

19. Annual Inspections by Ohio EPA. Stanley, and the Current Owner of the Property or any portion thereof, agree to allow Ohio EPA to perform annual inspections to determine compliance with this Agreement. Such inspections, and any additional inspections or audits by Ohio EPA shall be consistent with ORC Chapter 3746, OAC Chapter 3745-300, and due process considerations, including but not limited to the reasonableness of inspection timing and frequency in accordance with ORC Section 3746.21.

20. Document Submittals/Notifications to Parties. All documents, including but not limited to, notices and reports required to be submitted by Stanley or the Current Owner, pursuant to this Agreement, shall be addressed to:

Ohio Environmental Protection Agency
Division of Emergency and Remedial Response, Voluntary Action Program
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215
Attn: Section Manager, VAP

All documents, including any notice, required to be submitted by Ohio EPA pursuant to this Agreement shall be delivered to Stanley and the Current Owner as provided herein. Notice to any future owners not identified herein shall also be delivered to the Property, unless the future owners provide in writing to Ohio EPA a different address for purposes of notice. Notice to Stanley shall be addressed to:

The Stanley Works:

Attn: Ms. Jacqueline T. Wetzsteon or successor, Manager
Corporate Environmental Affairs, Health and Safety
The Stanley Works
c/o Stanley Hydraulic Tools
3810 S.E. Naef Road
Milwaukie, OR 97267

Notice to the Current Owner shall be addressed to:

Washington Court House Business Park, LLC:

Attn: Stuart Lichter
One West Avenue
Larchmont, NY 10538

21. **Entire Agreement.** The terms and conditions herein, including the Plan, constitute the entire Agreement of the parties and no oral or written representation or modification of the Agreement shall be binding, unless agreed to pursuant to paragraph 16 of this Agreement. The terms and conditions herein shall be interpreted consistent with ORC Chapter 3746 and OAC Chapter 3745-300.

22. **Compliance With Other Laws.** Stanley or the Current Owner must conduct all activities pursuant to this Agreement, including the Plan, in compliance with all local, state and federal laws, including but not limited to obtaining all required permits or authorizations. Any HASP developed for and implemented at the Property shall not supercede any requirements imposed by the Occupational Health and Safety Administration ("OSHA").
23. **Termination.** This Agreement shall terminate upon revocation or termination of the Covenant for the Property, or otherwise upon the written approval of the Director.
24. **Waiver.** Stanley and the Current Owner agree that the terms and conditions herein are lawful and reasonable, that the schedules provided herein are reasonable, and agree to comply with the terms and conditions contained in this Agreement. Stanley and the Current Owner hereby waive their rights to appeal the issuance, and terms and conditions of this Agreement, and hereby waive any and all rights they might have to seek judicial or administrative review of this Agreement either in law or equity. Stanley and the Current Owner reserve their rights to participate in any appeal by a third party to the Environmental Review Appeals Commission (ERAC), or to any applicable appellate court.
25. **Authorized Signatories.** Each undersigned representative of a signatory to this Agreement represents that he or she is fully authorized to execute this Agreement and that upon execution the Agreement shall be valid and binding obligations enforceable in accordance with its terms.

In witness whereof, the parties hereto have executed this Agreement on the date noted herein.

THE STANLEY WORKS:

Jacqueline T. Wetzsteon

By: 
Title: Manager, Environmental Affairs

6/14/99
Date:

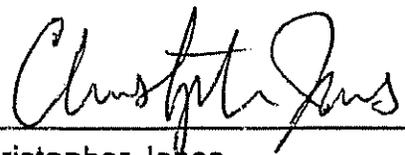
WASHINGTON COURT HOUSE BUSINESS PARK, LLC:

By: S.L. Properties, Inc., a
Delaware corporation

By: 
Title: President

6/5/99
Date:

OHIO ENVIRONMENTAL PROTECTION AGENCY:


Christopher Jones
Director, Ohio Environmental Protection Agency

JUL 12 1999
Date: