



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center  
50 West Town Street, Suite 700  
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184  
www.epa.state.oh.us

MAILING ADDRESS:

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

**CERTIFIED MAIL**

July 6, 2007

**Re: Environmental Covenant**  
AstroCosmos Metallurgical, Inc.  
3225 Lincolnway, LLC  
Wooster, Wayne County, Ohio

Allen A. Kacenjar, Esq.  
Squire, Sanders & Dempsey, L.L.P.  
4900 Key Tower  
Cleveland, Ohio 44114

Dear Mr. Kacenjar:

Enclosed please find the Environmental Covenant (Covenant) issued to AstroCosmos Metallurgical, Inc. and 3225 Lincolnway, LLC, Wayne County, on July 6, 2007. This Covenant will become effective when filed with the deed records maintained by the Office of the Wayne County Recorder.

To that end, the second original copy of the Covenant has been returned to you. It is the obligation of AstroCosmos Metallurgical, Inc. pursuant to Paragraph 10 of the Covenant, to complete the filing and, pursuant to paragraph 17 of the Covenant, to distribute copies of the recorded Covenant.

If you have any questions with this Covenant, do not hesitate to contact Fran Kovac, Ohio EPA Office of Legal Services, at (614) 644-3037.

Sincerely,

David A. Sholtis, Assistant Chief  
Division of Hazardous Waste Management

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Attachments

cc: Michael A. Savage, Chief, DHWM  
Ed Lim, Mgr., ERAS, DHWM  
Fran Kovac, Legal  
Kurt Princic, DHWM, NEDO  
Heidi Greismer, PIC

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korteski, Director

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by 3225 Lincolnway, LLC ("Owner"), having offices at 3225 West Old Lincoln Way, Wooster, Ohio; AstroCosmos Metallurgical, Inc., having offices at 401 N. Rice Avenue in Oxnard, CA ("Astro") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property (as defined below) to the activity and use limitations set forth herein.

WHEREAS, Owner currently owns the Property and conducts business operations thereon; and;

WHEREAS, Astro owned the Property before selling it in January of 2006 and, pursuant to the Resource Conservation and Recovery Act, has closed various hazardous waste management units at the Property pursuant to a closure plan filed with Ohio EPA during July of 2002 and amended during October 2004 and May of 2006 then approved (with modifications) by Ohio EPA on June 14, 2006 (Site ID #OHD 990 659 435);

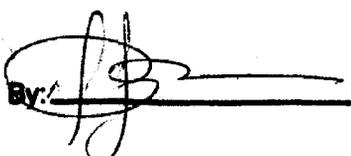
WHEREAS, the Administrative Record of the closure and corrective action is maintained as the file titled "AstroCosmos Metallurgical" in the Ohio EPA Northeast District Office, 2110 E. Aurora Rd, Twinsburg, OH 44087; and

WHEREAS, the implementation of appropriate limitations that restrict land use on the Property is necessary to protect human health and the environment, based upon a human health risk assessment and an ecological risk assessment conducted in association with Astro's closure work;

NOW THEREFORE, Owner, Astro and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns an approximately twenty (20) acre tract of real property in Wayne County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. 3225 Lincolnway, LLC, having offices at 3225 West Old Lincoln Way, Wooster, Ohio ("Owner") is the fee simple owner of the Property.
4. Holders. Owner and Astro are each "Holders" of this Environmental Covenant. Regardless of any future transfer of the Property, Owner and Astro shall each remain a Holder of this Environmental Covenant.

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

By:  Date: 7/6/07

OHIO E.P.A.  
JUL - 6 2007  
LAND DIRECTOR'S JOURNAL

5. Activity and Use Limitations. To facilitate Astro's closure of areas where historic releases of hazardous wastes have occurred pursuant to the Resource Conservation and Recovery Act:

- A. The Property shall not be used for Residential Activities, but may be used for Industrial Activities. The term "Residential Activities" shall include, but not be limited to, the following:
- i. Single and multi-family dwelling and rental units;
  - ii. Day care centers and preschools;
  - iii. Hotels and motels;
  - iv. Educational (except as a part of industrial activities within the Property) and religious facilities;
  - v. Restaurants and other food and beverage services (except as a part of industrial activities within the Property);
  - vi. Entertainment and recreational facilities (except as a part of industrial activities within the Property);
  - vii. Hospitals and other extended care medical facilities; and
  - viii. Transient or other residential facilities.

The term "Industrial Activities" shall include manufacturing, formulating, repackaging or refining operations, processing operations, and office and warehouse use, including but not limited to production, storage, and sales of durable goods and other non-food products, and parking/driveway use.

- B. If any activity by the holder of an encumbrance, identified in Paragraph 12, below, constitutes a violation of these use and activity restrictions, Owner or Transferee (as hereinafter defined) shall notify Ohio EPA and Astro within thirty (30) days of becoming aware of the event, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event, or such other time frame as may be agreed to by the Owner or Transferee, Astro and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee (as defined below), and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion

thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. **Compliance Enforcement.** Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations 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 any action to enforce non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. **Rights of Access.** Owner hereby grants to Ohio EPA, its agents, contractors, and employees, and to Holder(s), the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. **Compliance Reporting.** Owner and any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis a written certification which complies with the requirements of Ohio Administrative Code 3745-50-42(B)(C)(D) that the activity and use limitations remain in place and are being complied with.

10. **Recordation of Environmental Covenant.** Within thirty (30) days after the date of the final required signature upon this covenant, Owner shall record, in the office of the Wayne County Recorder, this Environmental Covenant in the same manner as a deed to the property, pursuant to ORC § 5301.88. Owner shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the Environmental Covenant.

11. **Notice upon Conveyance.** Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 2007, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE WAYNE COUNTY RECORDER ON \_\_\_\_\_ 2007, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- A. The Property shall not be used for Residential Activities, but may be used for Industrial Activities. The term "Residential Activities" shall include, but not be limited to, the following:

- i. Single and multi-family dwelling and rental units;
- ii. Day care centers and preschools;
- iii. Hotels and motels;
- iv. Educational (except as a part of industrial activities within the Property) and religious facilities;
- v. Restaurants and other food and beverage services (except as a part of industrial activities within the Property);
- vi. Entertainment and recreational facilities (except as a part of industrial activities within the Property);
- vii. Hospitals and other extended care medical facilities; and
- viii. Transient or other residential facilities.

The term "Industrial Activities" shall include manufacturing, formulating, repackaging or refining operations, processing operations, and office and warehouse use, including but not limited to production, storage, and sales of durable goods and other non-food products, and parking/driveway use.

- B. If any activity by the holder of an encumbrance, identified in Paragraph 12, below, constitutes a violation of these use and activity restrictions, Owner or Transferee (as hereinafter defined) shall notify Ohio EPA and Astro within thirty (30) days of becoming aware of the event, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event, or such other time frame as may be agreed to by the Owner or Transferee, Astro and Ohio EPA.

Owner shall notify Ohio EPA and Astro within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, a legal description of the Property being transferred, a survey map of the Property being transferred; and the closing date of the transfer of ownership of the Property.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is subject to the encumbrances listed and described in Exhibit B hereto;

- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner has identified all other parties, identified in Exhibit B (as described above) that hold any interest in the Property and has notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party of by which Owner may be bound or affected.

13. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner, Astro, Ohio EPA, and any Transferee, pursuant to ORC § 5301.90 and other applicable law. Amendment means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. Termination means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee and the Holder of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Wayne County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

14. Severability. If any provision of this Environmental Covenant 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.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Wayne County Recorder.

17. **Distribution of Environmental Covenant.** The Owner or Astro shall distribute copies of the recorded Environmental Covenant to: Ohio EPA, any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, each unit of local government in which the real property is located, and any other person designated by Ohio EPA.

18. **Notice.** Any document or communication required by this Environmental Covenant to be submitted to Ohio EPA shall be submitted to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Hazardous Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049

and

Ohio Environmental Protection Agency  
Northeast District Office  
2110 Aurora Road  
Twinsburg, OH 44087  
Attn: DHWM Manager

Any notice to Astro shall be sent to:

Allen A. Kacenjar, Esq.  
Squire, Sanders & Dempsey L.L.P.  
4900 Key Tower  
Cleveland OH, 44114

Any notice to Owner shall be sent to:

3225 Lincolnway, LLC  
3225 West Old Lincoln Way  
Wooster, Ohio 44691-1229

The undersigned representatives of Owner and Astro certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

3225 Lincolnway, LLC



Signature of Owner and Holder

CONRAD STITZLEIN

Printed Name and Title

Date

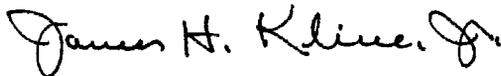
State of OHIO )  
 ) ss:  
County of HOLMES )

Before me, a notary public, in and for said county and state, personally appeared CONRAD STITZLEIN, a duly authorized representative of 3225 LINCOLNWAY, LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of 3225 LINCOLNWAY LLC

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 4<sup>TH</sup> day of MAY, 2007.

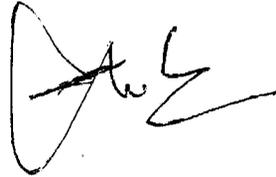
Notary Public

**JAMES H. KLINE JR.**  
Notary Public, State of Ohio  
My Commission Expires Jan. 18, 2009



**AstroCosmos Metallurgical, Inc.**

Signature of Owner and Holder



ERNEST TOTINO

Printed Name and Title

Date

State of FRANCE )  
City ) ss:  
County of Posny-Sur-Moselle

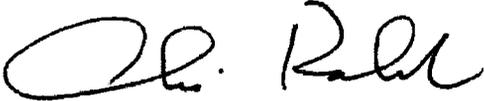
Before me, a notary public, in and for said county and state, personally appeared ERNEST TOTINO, a duly authorized representative of AstroCosmos Metallurgical, Inc. who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of AstroCosmos Metallurgical, Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 25 day of MAY, 2007.

Notary Public



**OHIO ENVIRONMENTAL PROTECTION AGENCY**

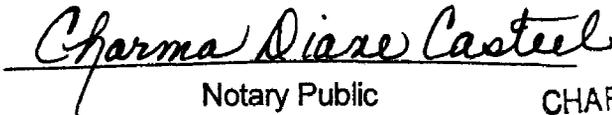


Chris Korleski, Director

State of Ohio            )  
                                  ) ss:  
County of Franklin    )

Before me, a notary public, in and for said county and state, personally appeared **CHRIS KORLESKI**, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 2nd day of July, 2007.



Notary Public

**CHARMA DIANE CASTEEL  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES  
MAY 10, 2009**

This instrument prepared by:

Frances M. Kovac, Esq.  
Ohio Environmental Protection Agency  
50 East Town Street  
Columbus, OH 43215

EXHIBIT A

LEGAL DESCRIPTION

Situated in the Township of Plain, County of Wayne, and State of Ohio and known as being a part of the Southeast Quarter of Section 1, Township 19, Range 14, bounded and described as follows:

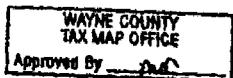
Beginning at the center of Section 1, Township 19, Range 14;

- 1) Thence South 3 degrees 30' West along the quarter line 1,329.40 feet to an iron pipe;
- 2) Thence South 86 degrees 30' East 605.72 feet to an iron pipe;
- 3) Thence South 4 degrees 35' West 450.15 feet to a spike in U.S. Route 30 (witnessed by an iron pipe 55.9 feet North on line);
- 4) Thence South 76 degrees 05' East (along U.S. Route 30) 35.47 feet to a spike (witnessed by an iron pipe set 55.9 feet North and being on the East line);
- 5) Thence North 4 degrees 35' East 456.55 feet to an iron pipe;
- 6) Thence North 3 degrees 30' East 1,322.7 feet to an iron pipe on the quarter line;
- 7) Thence North 85 degrees 54' West along the quarter line 640.76 feet to the place of beginning. *Containing 19.869 acres*

Permanent Parcel No.: 44-00205.000 *CR VOL 541 PG 1023*

Prior Instrument Reference: *Volume 657, Page 702* of Wayne County Records

*SURVEY REF: "S" 305*



CLEVELAND/89966J

EXHIBIT B

EXCEPTIONS

1. Any encroachments, easements, discrepancies, conflicts in boundary lines, variations or shortages in area or content or any other facts which an accurate survey would disclose.
2. Easement granted to Central Ohio Light & Power Company, disclosed by instrument recorded in Volume 316, Page 440.
3. Easement granted to Ohio Power Company, disclosed by instrument recorded in Volume 371, Page 699.
4. Right of Way in favor of The Ohio Fuel Supply Co. filed for record January 27, 1915, in Volume 20, Page 418 of Wayne County Records.
5. Right of Way in favor of The Ohio Fuel Supply Company filed for record September 22, 1921, in Volume 33, Page 458 of Wayne County Records.
6. Right of Way in favor of Ohio Fuel Supply Company filed for record June 24, 1914, in Volume 20, Page 315 of Wayne County Records.
7. Right of Way in favor of The Ohio Fuel Gas Company filed for record July 29, 1960, in Volume 368, Page 410 of Wayne County Records.
8. Right of Way in favor of Medina Gas & Fuel Company filed for record September 11, 1914, in Volume 21, Page 614 of Wayne County Records.
9. Right of Way in favor of The Ohio Fuel Supply Company filed for record September 22, 1921, in Volume 33, Page 453 of Wayne County Records.
10. Right of Way in favor of The Ohio Fuel Supply Co. filed for record May 22, 1939, in Volume 58, Page 26 of Wayne County Records.
11. Rights of the public and others entitled thereto in and to that portion of the property within the bounds of Lincoln Way West.