

COMMONWEALTH OF MASSACHUSETTS

_____ )	
IN THE MATTER OF )	BROWNFIELDS COVENANT
)	NOT TO SUE AGREEMENT
)	
ASTRO LOGISTICS, LLC )	MassDEP RTN 1-15821
REDEVELOPMENT OF )	
126 MEMORIAL DRIVE, )	
SPRINGFIELD, MASSACHUSETTS )	
_____ )	

I. STATEMENT OF PURPOSE

A. This Agreement is made and entered into by and between the Office of the Attorney General (the “OAG”) on behalf of the Commonwealth of Massachusetts (the “Commonwealth”), and Astro Logistics, LLC (“Astro”). Collectively, the OAG and Astro are referred to as the “Parties.”

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended and codified in Massachusetts General Laws Chapter 21E (“G.L. c. 21E”), and the OAG’s Brownfields Covenant Not to Sue Agreement Regulations at 940 CMR 23.00 (“Brownfields Covenant Regulations”), with reference to the Massachusetts Contingency Plan, 310 CMR 40.0000 (the “MCP”). This Agreement relates to the remediation and redevelopment of the approximately 7.73 acre property at 126 Memorial Drive, Springfield, Massachusetts into a renovated chemical distribution business facility (the “Project”).

C. The Parties intend to set forth in this Agreement their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of Springfield, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), relates to potential claims by the Commonwealth as to Astro and subsequent owners and operators of the Property and is predicated upon Astro’s compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, Response Action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5, or for property damage under common law. This Agreement does not, however, address liability arising under contract law.

D. The Parties agree that Astro’s ability to conduct the Project may be contingent upon independent approval processes of other departments, agencies and instrumentalities of federal, state and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the proposed project for such approval processes. Astro’s failure to secure independent governmental approvals for the Project shall not excuse it from performance of any term or condition of this Agreement.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Springfield, Massachusetts.

## II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at One Ashburton Place, Boston, Massachusetts 02108. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3).

B. Astro is a limited liability corporation organized under the laws of the Commonwealth, with a principal mailing address of 64 Shaws Lane, Springfield, Massachusetts 01104. In accordance with this Agreement, Astro shall undertake the Project as discussed in Section IV, Paragraph A, subparagraph 2, below.

## III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3), and the Brownfields Covenant Regulations.

B. Unless otherwise expressly provided, terms used in this Agreement which are defined in the Brownfields Covenant Regulations shall have the meaning assigned to them under those regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E or the MCP, shall have the meaning assigned to them under G.L. c. 21E or the MCP. Terms used in this agreement which are defined in the Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.

C. The Project involves a tract of land of approximately 7.73 acres at 126 Memorial Drive, Springfield, Massachusetts formerly owned and operated by Hampden Color and Chemical Company, Inc. and obtained by the City of Springfield through tax foreclosure proceedings (the "Property"). The City of Springfield's title is shown on Certificate of Title No. 30759 and an Order of Court dated September 11, 2002, registered in the Hampden County Registry of Deeds as Document No. 146687 on October 17, 2002. The Property is more fully described on Exhibit A, attached and incorporated into this Agreement. The Property has been contaminated primarily with 1,1,1-trichloroethane ("TCA") and toluene from the Property's historic industrial use.

D. The Massachusetts Department of Environmental Protection ("MassDEP") has received notice of a Release or Releases of Oil and/or Hazardous Material at or from the Property (the "Releases"), and has issued Release Tracking Numbers ("RTNs") 1-00178 and 1-15821 for these Releases. A Permanent Solution has been achieved for the Release or Releases assigned RTN 1-00178. The areas where Oil and/or Hazardous Materials have come to be located as a result of the Release or Releases assigned RTN 1-15821 constitute the "Site," as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site is also the property addressed by this Agreement for the purposes of 940 CMR 23.08(1) in the Brownfields

Covenant Regulations. The Site, as now delineated, is more fully described on Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes the environmental conditions in detail, including the nature and extent of contamination detected at the Site.

#### IV. COMMITMENTS AND OBLIGATIONS

In consideration of the representations made and promises exchanged by and between the Parties, each of them covenants and agrees to the terms and conditions which follow.

##### A. REPRESENTATIONS AND COMMITMENTS BY APPLICANT

1. Astro represents that it:

a. is an Eligible Person;

b. is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E other than pursuant to clause (1) of paragraph (a) of Section 5 of G.L. c. 21E;

c. is not now nor has ever been previously affiliated with any person having potential liability for the Site pursuant to G.L. c. 21E, except as set forth below.

d. has been involved with the Site only to:

i. evaluate the Property for purposes of acquiring the Property;

ii. negotiate to acquire and acquiring the Property;

iii. communicate with the Commonwealth and local authorities with respect to the design and planning of the Project and various permitting issues with respect to the Property; and

iv. conduct, at the request of the City of Springfield, activities associated with remediation, building enhancement, and closure of the former hazardous waste treatment, storage and disposal facility on the Property.

e. has not caused or contributed to the Release or Threat of Release of Oil and/or Hazardous Material at the Site under G.L. c. 21E and/or the MCP.

f. is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.

2. Astro agrees to the following terms and conditions:

a. Astro shall acquire the Property and redevelop it into a chemical

distribution facility for Astro Chemicals, Inc. to employ approximately 40 full time employees. A copy of a proposed site plan for the Project is attached as Exhibit C.

b. Astro shall either achieve or arrange for the achievement and maintenance of a Permanent Solution or Remedy Operation Status (“ROS”) at the Site in accordance with G.L. c. 21E and the MCP. Astro shall cooperate fully with MassDEP with respect to contamination at the Site.

c. To cooperate fully includes, without limitation:

1. providing prompt and reasonable access to the Site to MassDEP for any purpose consistent with G.L. c. 21E and the MCP, and to other persons intending to conduct Response Actions pursuant to G.L. c. 21E and the MCP;

ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;

iii. responding in a timely manner to any request made by the MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. taking reasonable steps to prevent the Exposure of people to Oil and/or Hazardous Materials, such as by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent such Exposure or as otherwise required by G.L. c. 21E, the MCP, MassDEP or a Licensed Site Professional acting on behalf of Astro or a subsequent owner and/or operator of the Site;

v. taking reasonable steps to contain any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container at the Site, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting, or causing to be conducted, Response Actions at the Site in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

d. Astro shall reimburse the Commonwealth in the amount of sixty-five thousand four hundred forty six and 20/100 dollars (\$65,446.20) for costs associated with MassDEP Response Actions at the Property pursuant to G.L. c. 21E, § 4. Payment shall be made before or simultaneously with Astro’s acquisition of the Property or any portion of the Property. Payment shall be made by certified check, cashier’s check, or money order payable to the Commonwealth of Massachusetts, and mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, MA 02241-3982

Astro's full name, Federal Taxpayer Identification Number, and "RTN 1-00178" must be clearly printed on the check or money order. A copy of the check or money order shall be mailed to:

Marc Collins  
Cost Recovery Unit  
MassDEP – BWSC  
One Winter Street, Seventh Floor  
Boston, MA 02108

**B. COVENANT NOT TO SUE BY THE COMMONWEALTH**

**1. Covenant as to Astro**

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by Astro set forth in Section IV, Paragraph A of this Agreement, and subject to Astro's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue Astro pursuant to G.L. c. 21E for Response Action costs, contribution, property damage or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in an RAO Statement and/or ROS Submittal to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement and/or ROS Submittal rely meet the Standard of Care in effect when the RAO Statement and/or ROS Submittal are submitted to MassDEP. The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV, Paragraph E, subparagraph 5. This Agreement shall not affect any liability established by contract.

**2. Subsequent Owners and/or Operators**

The Commonwealth covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of Astro's real property interests in the Property or any portion of the Property, or who are lessees or licensees of Astro's successors and assigns (the "Subsequent Owners and/or Operators") pursuant to G.L. c. 21E for Response Action costs, contribution, property damage or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in an RAO Statement and/or ROS Submittal to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement and/or ROS Submittal rely meet the Standard of Care in effect when the RAO Statement and/or ROS Submittal are submitted to MassDEP. The liability relief available to Subsequent Owners and/or Operators shall be subject to the same terms and conditions as those that apply to Astro and the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV, paragraph C, below.

**3. Applicability of the Agreement**

This Agreement shall be in effect unless and until the statutory protections available to Astro or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5.

4. Reservations of Rights

The Commonwealth's covenants in this Agreement shall not apply to:

a. any new Release of Oil and/or Hazardous Material at, or from the Property that occurs after the date of execution of this Agreement;

b. any Release of Oil and/or Hazardous Material which Astro or any Subsequent Owner and/or Operator causes, contributes to, or causes to become worse, but if the cause or contribution is that of a Subsequent Owner and/or Operator, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator;

c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered when an RAO Statement is submitted to MassDEP that would have been discovered if an assessment of the Site covered by or addressed in the RAO Statement had been performed consistent with the Standard of Care in effect when the RAO Statement was submitted;

d. any Release or Threat of Release of Oil and/or Hazardous Material from which there is a new Exposure that results from any action or failure to act pursuant to G.L. 21E by Astro or a Subsequent Owner and/or Operator during Astro's or a Subsequent Owner's and/or Operator's ownership or operation of the Property, but if the action or failure to act is that of a Subsequent Owner and/or Operator, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator;

e. any Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B, subparagraph 1, above; and

f. any claims for damages for injury to, destruction of, or loss of natural resources.

5. Termination for Cause

a. If the OAG or MassDEP determines that Astro submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c. below. A statement made by Astro regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this subparagraph if the statement was asserted in good faith at the time it was made.

b. In the event that the OAG or MassDEP determines that Astro or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including but not limited to, failure to pursue development of the Project, failure to arrange for the achievement and maintenance of a Permanent Solution or ROS at the Site in accordance with G.L. c. 21E and the MCP, failure to arrange for a timely response to a Notice of Audit Finding or any such other Notice requiring additional work to achieve and/or maintain a Permanent Solution or ROS at the Site, or failure to reimburse the Commonwealth for its Response Action costs, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of the violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide Astro or a Subsequent Owner and/or Operator, as appropriate, with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG shall, if appropriate, provide a reasonable period of time for Astro or a Subsequent Owner and/or Operator to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

d. Termination of liability relief pursuant to this section shall not affect any defense that Astro or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

#### C. COVENANT NOT TO SUE BY ASTRO AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, Astro covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the following matters as they relate to the Site or this Agreement:

a. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E in connection with any Release that is subject to the Commonwealth's covenants not to sue in Section IV, Paragraph B (the "Covered Releases");

b. any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under G.L. c. 79 based on the argument that, with respect to a Covered Release, the requirements of Chapter 21E, the MCP, or the requirements of this Agreement constitute a taking;

c. any claims for monetary damages arising out of Response Actions at the Site and/or the Property;

d. any claims or causes of action for interference with contracts,

business relations or economic advantage based upon the conduct of MassDEP pursuant to Chapter 21E prior to the date of this Agreement concerning the Covered Releases; or

e. any claims for costs, attorneys fees, other fees or expenses incurred in connection with the Covered Releases.

2. Subsequent Owners and/or Operators shall be bound by Astro's covenants in this Paragraph C. In the event that, despite these covenants, a Subsequent Owner and/or Operator asserts any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the claims listed in this Section C, such claims and/or causes of actions shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

#### D. PROTECTION FROM THIRD PARTY CLAIMS

With regard to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in the RAO Statement to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to MassDEP, Astro and any Subsequent Owner or Operator are entitled to the protection G.L. c. 21E, §3A(j)(3) provides from claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under common law or G.L. c. 21E, §5, based solely on the status of Astro or any Subsequent Owner or Operator as owner or operator of the Property or the Site, provided, however, that Astro has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3), and 940 CMR 23.06(1).

#### E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.

2. If any court of competent jurisdiction finds any term or condition of this Agreement or its application to any person or circumstance unenforceable, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.

4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5. The terms of this Agreement shall be effective as of the date it is fully executed by all Parties.

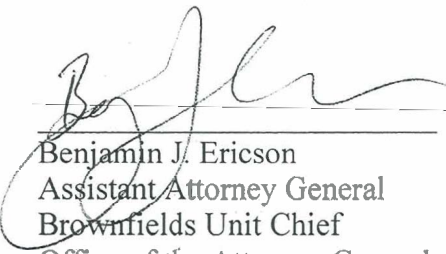



6. Astro may terminate this Agreement by providing notice to the OAG if Astro is not able, after reasonable efforts, to acquire title to the Property by June 30, 2007 or within a commercially reasonable period after that date.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

ASTRO LOGISTICS, LLC

By:   
Benjamin J. Ericson  
Assistant Attorney General  
Brownfields Unit Chief  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

By:   
Name (printed): William Cunningham  
Title: Manager  
Date: 1/22/07

Date: 1/16/07

EXHIBIT A

The property is a 7.73 acre parcel of land with an approximately 65,000 square foot building located at 126 Memorial Drive, Springfield, Massachusetts (the "Property"). The Property was obtained by the City of Springfield ("City") by tax taking in 2002. See Certificate of Title No. 30759 and Order of Court dated September 11, 2002 and registered as Document No. 146687 on October 17, 2002. The Property was formerly owned by Hampden Color & Chemical Company, which operated a hazardous waste treatment, storage and disposal facility on the site.

The site is in the heart of Springfield's industrial area. Headquarters for Smith & Wesson and Big Y Supermarkets are nearby. The entrance to Interstate 291 is less than one mile to the north. The site is zoned "Industrial Park" and is located within a local and state Economic Opportunity Area.

EXHIBIT B

## **EXHIBIT B**

### **Site Description**

#### **RELEASE CONDITION**

On July 13, 2005, a 10,000 gallon underground storage tank (USTs) formerly utilized for storage of toluene was removed from the ground at the property. Monitoring of soils immediately beneath the UST utilizing a headspace screening procedure indicated total volatile organic compound (VOC) concentration greater than 100 parts per million by volume (ppmv). This observation triggered a 72-hour reporting condition in accordance with 310 CMR 40.0000. This confirmed the toluene UST as the source of light non-aqueous phase liquid (LNAPL) previously observed in a groundwater monitoring well located adjacent to the tank. Oral notification of this condition was made to MassDEP on July 13, 2005. MassDEP issued RTN 1-15821. MassDEP issued a Letter of Responsibility for an Other Party to Astro Logistics on July 29, 2005.

#### **NATURE AND EXTENT OF CONTAMINATION**

##### SOIL

Soil samples for laboratory analysis have been collected in the vicinity of the toluene release during several environmental site assessments including July 2003, October 2003, July 2005, August 2005, and May 2006. Field screening of soil samples for VOC utilizing a photoionization detector (PID) was conducted during installation of soil borings in October 2003 and August 2005. The screening results along with the laboratory results are used to define the vertical and horizontal extent of toluene contamination in soils. Toluene impacted soils are present at depths of about 12 to 20 feet below grade in an area approximately 2,000 square feet (50 feet by 40 feet) immediately north-northeast (downgradient) of the former UST location.

##### GROUNDWATER

OTO collected groundwater samples for laboratory analysis in December 2005. Elevated concentrations of toluene were detected immediately downgradient of the toluene UST, but toluene was not detected further downgradient at the property boundary. In addition, LNAPL has been detected sporadically in site monitoring wells located immediately downgradient of the former UST location.

##### SURFACE WATER

Toluene has not been detected in groundwater at the property boundary downgradient of the toluene release. Consequently, an impact to surface water is not likely.

## AIR EXPOSURE

Elevated concentrations of toluene in groundwater are present in well TX-1, which is located about 20 feet from a portion of the site building. Data indicated that the subsurface migration of toluene is towards the north, away from the site building. In addition, monitoring points GP-2 and BS-15' located near the site building did not indicate elevated concentrations of VOCs. Consequently, impacted groundwater and soils are not a potential source of releases to air in the building.

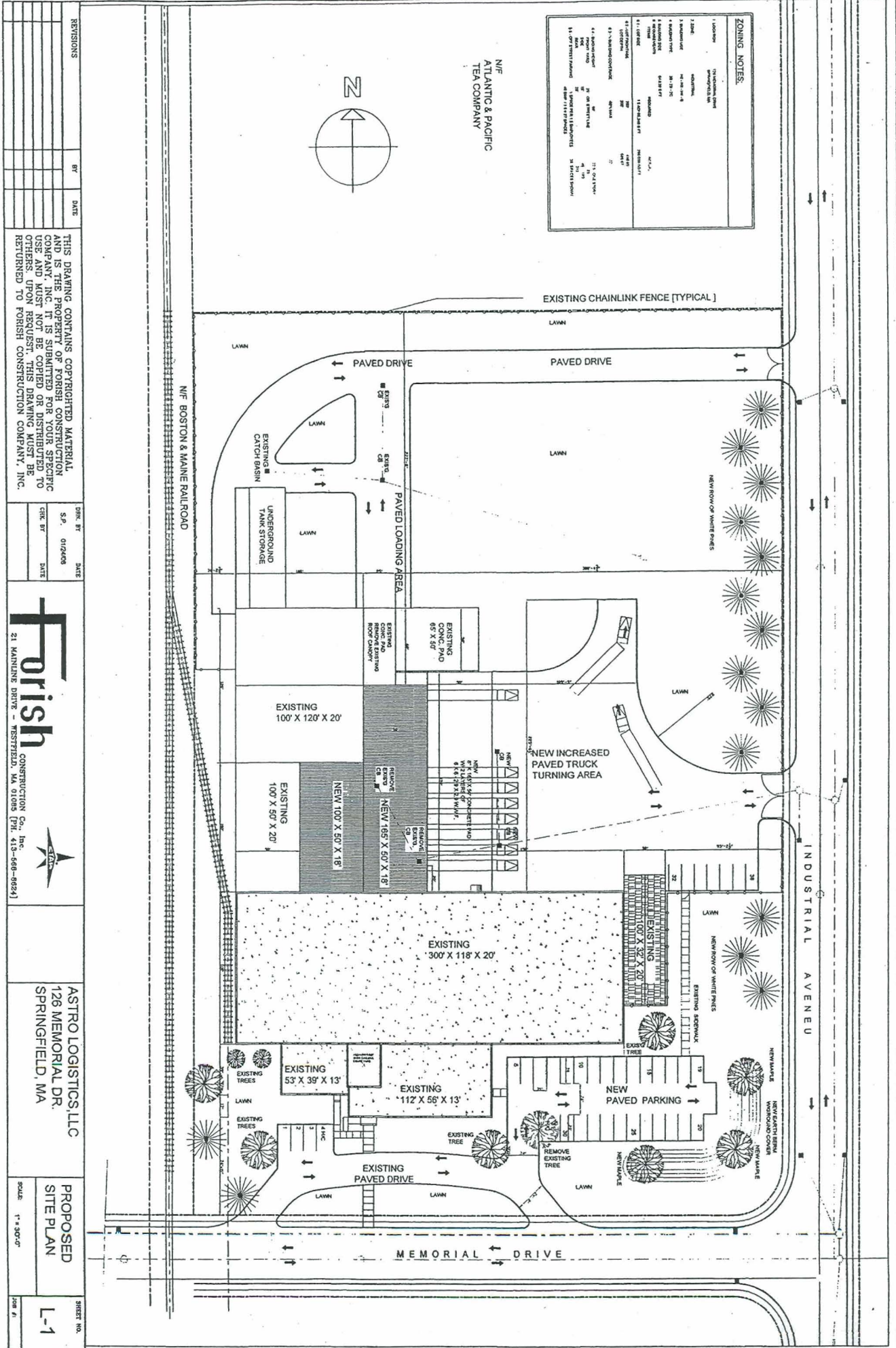
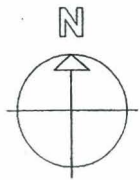
## PHASE I REPORT

Site details including analytical data and site plans are presented in the Phase I Report dated July 13, 2006 prepared by O'Reilly, Talbot & Okun on behalf of Astro Logistics, LLC on file with the MassDEP Western Region Office, Springfield, Massachusetts.

EXHIBIT C

ZONING NOTES	
1. LOCATION	100% INDUSTRIAL
2. ZONE	INDUSTRIAL
3. MAXIMUM LOT	40,000 SQ. FT.
4. MAXIMUM FLOOR AREA	250,000 SQ. FT.
5. MAXIMUM HEIGHT	35 FEET
6.1. LOT AREA	11,111.11 SQ. FT.
6.2. LOT AREA	11,111.11 SQ. FT.
6.3. MAXIMUM FLOOR AREA	250,000 SQ. FT.
6.4. MAXIMUM HEIGHT	35 FEET
6.5. MAXIMUM FLOOR AREA	250,000 SQ. FT.
6.6. MAXIMUM HEIGHT	35 FEET
6.7. MAXIMUM FLOOR AREA	250,000 SQ. FT.
6.8. MAXIMUM HEIGHT	35 FEET
6.9. MAXIMUM FLOOR AREA	250,000 SQ. FT.
6.10. MAXIMUM HEIGHT	35 FEET

NIP  
ATLANTIC & PACIFIC  
TEA COMPANY



REVISIONS		
NO.	DATE	BY

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DRG. BY	DATE
S.P. OUDAKS	
CHK. BY	DATE

**Forsh**  
CONSTRUCTION Co., Inc.  
21 MAINLINE DRIVE - WESTFIELD, MA 01085 (PH. 413-668-8624)

ASTRO LOGISTICS, LLC  
126 MEMORIAL DR.  
SPRINGFIELD, MA

PROPOSED  
SITE PLAN  
SCALE 1" = 30'-0"  
SHEET NO. L-1  
OF 1