

BOOK 1305 PAGE 1206 LAND USE COVENANT

Eagle Convex Glass Specialty Company, Inc. has entered into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the Division of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-21 (hereinafter referred to as "the Act"), for certain property, located at 423 Tuna Street, Clarksburg, Harrison County, West Virginia, and more particularly described as follows:

Beginning at a set 5/8" rebar located on the top of the southern bank of Elk Creek, said beginning point being further identified as the northeastern corner of Lot No. 717, thence leaving the bank of the creek and running with the adjoining western line of Lot No. 716, crossing Ann Moore run, S. 19° 11' 00" E. 292.00' to a set 5/8" rebar located on the northern right of way line of the CSX Railroad property, thence running with that line and also recrossing Ann Moore Run;

S. 70° 49' 00" W. 1159.00' to a set 5/8" rebar identified as the southwestern corner of Lot No. 727, thence leaving the right of way line of the railroad property and running with the adjoining eastern right of way line of the East Main Street Bridge;

N. 38° 50' 00" W. Passing through a set 5/8" rebar located on the top of the southern bank of Elk Creek at 130.00' and continuing with that same bearing an additional 41.57' to a point located on the southern edge of the creek, thence running with the edge of the creek;

N. 50° 26' 31" E. 233.72' to a point; thence;

N. 54° 27' 13" E. 243.41' to a point; thence;

N. 70° 14' 56" E. 383.76' to a point; thence;

N. 73° 20' 41" E. 195.50' to a point; thence;

N. 75° 21' 37" E. 185.59' to the place of beginning containing a combined total of 7.78 acres more or less.

(Previous deed references: book 1294, page 214, deed book 812, ~~page 58, deed book 465, page~~ <sup>BOOK 1305 PAGE 1207</sup>

367.) Paragraph 16 of the Agreement requires Eagle Convex Glass Specialty Company, Inc., as the owner of said property, to file a Land Use Covenant with the Clerk of the Harrison County Commission. The Agreement allows non-residential levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the Harrison County Commission for the purposes of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

NOW THEREFORE, as Eagle Convex Glass Specialty Company, Inc., hereinafter referred to as "Owner," and the director have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.
2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminate that was contained as part of the remedial action. These activities include, but are not limited to:
  - A. Removal of that portion of the asphalt pavement cap placed on Lot Nos. 718 and 719 of the Property in accordance with the engineering requirements established by GAI Consultants, Inc., Charleston, West Virginia which covers areas where lead concentrations in surface soils exceed the Industrial De Minimus Risk-Based Standard (such area shown on the attached map), for any reason other than maintenance of

underground facilities, expansion of present manufacturing facility, or construction of future non-residential facilities. The Owner must notify the Director prior to maintenance of underground facilities, expansion of present manufacturing facility, or construction of future non-residential facilities that disturbs the asphalt cap in areas where lead concentrations in surface soils exceed the Industrial De Minimus Risk-Based Standard.

3. The Owner shall restrict the uses of the property to non-residential uses only, as defined by the Act.
4. The Owner shall provide written notice to the director of the Division of Environmental Protection of the intent to transfer any interest in the property.
5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.
6. The Owner shall grant the West Virginia Division of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and the Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.
7. The Division of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner and any person identified in W. Va. Code §22-22-18 from all civil liability to the state as provided under the Act so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owners, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release signed by the director and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of the county where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the director of the West Virginia Division of Environmental Protection, or his successor in accordance with regulations promulgated by the director or his successor. Within 5 days of executing an amendment, modification or termination of this Land

Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the Harrison County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the director of the Division of Environmental Protection.

The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS WHEREOF, the said Owner of the above described property and the director of the Division of Environmental Protection have caused this Land Use Covenant to be executed this 2<sup>nd</sup> day of Nov, 19 98.

SIGNED:

Russell E. DeLong  
Property Owner

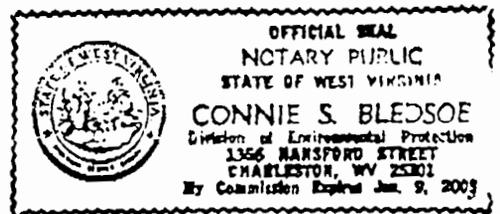
Ken Ellison  
Director, Division of Environmental Protection

I, Connie Bledsoe Notary Public in and for the State and County aforesaid, do hereby certify that Russell E. DeLong whose name is signed to the writing above, bearing date the 2 day of November, 1998, has this day acknowledged same to be his true act and deed.

Given under my hand this 2nd day of November, 1998

My commission expires January 9, 2005

Connie Bledsoe  
Notary Public



I, Connie Bledsoe Notary Public in and for the State and County aforesaid, do hereby

certify that Ken Ellison whose name is signed to the writing above, bearing date the

2 day of November, 1998, has this day acknowledged same to be his true act

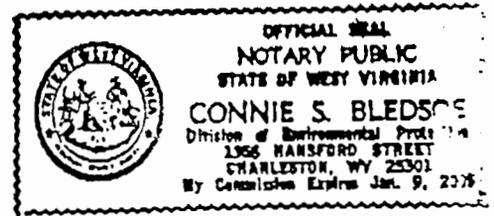
and deed.

Given under my hand this the 2 day of November, 1998

My commission expires January 9, 2005

Connie Bledsoe

Notary Public



HARRISON COUNTY, WV  
FILED  
December 07, 1998 15:31:08

SYLVIA BASILE  
COUNTY CLERK  
TRANSACTION NO: 1998153542

DEED BOOK  
Book: 01305 Page: 01206  
Line: 00001

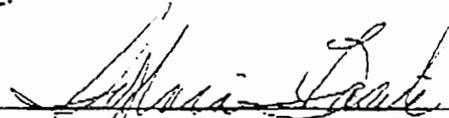


STATE OF WEST VIRGINIA,

County of Harrison:

I, SYLVIA BASILE, Clerk of the Harrison County Commission do hereby certify that the foregoing writing is a true and accurate copy as appears of record in my office in DEED Book No. 1305 at Page 1206, of said records.

Given under my hand and Seal of said Office this 8 day of DECEMBER, 1998.

  
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Clerk, Harrison County Commission