



Office of Environmental Remediation  
1356 Hansford Street  
Charleston, WV 25304-1401  
Telephone: (304) 558-2508  
Fax: (304) 558-0256

Parcel 1  
LUC March 2000



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## West Virginia Division of Environmental Protection

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Cecil H. Underwood  
Governor

Michael C. Castle  
Director

March 14, 2000

COPY

Mr. Robert E. Childers, President  
Structures Resources, Inc.  
P. O. Box 8124  
Huntington, WV 25705-8124

Dear Mr. Childers:

Enclosed are signed copies of the Land Use Covenant for Parcel 1 of the former Polan Industries Property in Huntington. Please sign both copies and return one to me. The other should be attached to the deed in the Cabell County Clerk's Office. Please notify me as soon as the Covenant is filed and I will send you the Certificate of Completion for this parcel.

If you have any questions, you can reach me at the following:

558-2508 (office Monday-Thursday 7:30-5:30)  
558-0256 (FAX)  
[dhight@mail.dep.state.wv.us](mailto:dhight@mail.dep.state.wv.us)

Sincerely,

David H. Hight  
Project Manager,  
Office of Environmental Remediation

DHH/rm  
Attachment: Land Use Covenant (2)  
cc: Ken Ellison, Chief, OER

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"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia  
Division of  
Environmental Protection

## LAND USE COVENANT

Structures Resources, Inc. (hereinafter Structures) has entered into a Voluntary Remediation Agreement dated \_\_\_\_\_ (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 22-22-2 (hereinafter referred to as "the Act"), for certain property, located at the eastern terminus of Park Avenue, in the City of Huntington, Kyle District, Cabell County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Cabell County, West Virginia in Deed Book 733, Page Number 649. Paragraph 30 of the Agreement requires Structures, as the owner of said property, to file a Land Use Covenant with the Clerk of the Cabell County Commission. The Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the Cabell County Commission for the purpose 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 Structures, hereinafter referred to as "Owner," and the director of the Division of Environmental Protection have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall restrict the uses of the property to commercial and industrial use. This restriction prohibits use of the property for any residential use, including schools, daycare centers, nursing homes, or other residential-style facilities or recreational areas.
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 contaminant that was

contained as part of the remedial action. These activities include, but are not limited to construction of basements, underground parking areas, or other underground structures.

3. The Owner shall not allow the installation or use of groundwater withdrawal wells, except for purposes of monitoring groundwater quality under the authority of the Act.
4. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued operation of the restrictions set forth in Paragraphs 1, 2, and 3 above.
5. The Owner shall provide written notice to the director of the Division of Environmental Protection of the transfer of any interest in the property.
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 paragraph 16 of 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 owner, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to

subsequent written modification or releases 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.

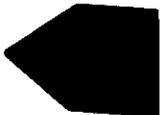
10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.
11. This Land Use 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 any applicable 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 Cabell 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.
12. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2000.

SIGNED:

\_\_\_\_\_  
Property Owner

*Ken Ellison, Chief*  
\_\_\_\_\_  
Director, Division of Environmental Protection



I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the writing above, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has this day acknowledged same to be his true act and deed.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the writing above, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has this day acknowledged same to be his true act and deed.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public