

**LAND USE COVENANT**

Jamegy WV, Inc. ( hereinafter referred to as "Owner") has entered into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the Department 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 South Chester Street, New Cumberland, Clay District, Hancock County, West Virginia and more particularly described as follows:

**BEGINNING** at the northeast corner of a 3.16 acre tract of land formerly lands of the Owner, now lands of Jamegy, Inc., deed book 247-page 128, said point also being on the west line of lands of the original P.C.C. and St. L. Railway Co., now Norfolk and Southern Railroad and on the dividing line of said Barkhurst Construction, Inc., and lands formerly Crescent Brick Co., now or formerly other lands Barkhurst Construction, Inc., deed book 228-page 215; thence with the west line of the said Railway Company, south 33 degrees, 04 minutes, east, a distance of 259.38 feet to a railroad spike and the true place of beginning of the property here to be described; thence continuing with said railroad west right-of-way, south 33 degrees, 04 minutes, east, a distance of 556.58 feet to a railroad spike in the traveled portion of the New Cumberland Industrial Park Road (Old Pottery Road); thence leaving said right-of-way and toward the Ohio River leaving said roadway, south 56 degrees, 56 minutes, west, passing through an iron pin witness at 91 feet, a total distance of 168.60 feet to a point at the Ohio River; thence with said river, north 45 degrees 14 minutes west a distance of 67.8 feet to a point; thence north 40 degrees, 00 minutes, west, a distance of 154.86 feet to a point; thence north 56 degrees, 56 minutes east a distance of 26.51 feet to a point; thence north 41 degrees, 12 minutes, west, a distance of 340 feet to a point; thence through the said 3.16 acre tract, north 56 degrees, 56 minutes, east, passing through an iron pin, witness at 68 feet, a total distance of 223.17 feet to the place of beginning, containing 2.484 acres more or less and being part of lands of the Owner, deed book 229-page 423 and deed book 236-page 485.

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Section XXV, Paragraph 79 of the Agreement requires the Owner of said property to file a Land Use Covenant with the Clerk of the Hancock 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 Hancock 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 the Owner and the Secretary 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 contaminant that was contained as part of the remedial action.

These activities include, but are not limited to:

- (a) The extraction of ground water for any purpose other than monitoring,
  - (b) Excavation activities that have the potential to encounter groundwater without an appropriate and approved Health and Safety Plan such as detailed in the Final Report.
3. The Owner shall restrict the uses of the property to nonresidential uses only.

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4. The Owner shall provide written notice to the Secretary of the Department 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 Department 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 Department 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 any person

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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 Secretary 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.

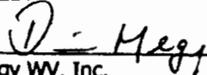
10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

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 Secretary of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the Secretary or his successor. Within 5 days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment,

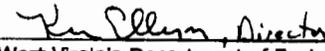
modification or termination with the Clerk of the Hancock Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

IN WITNESS WHEREOF, the said Owner of the above described property and the Secretary of the Department of Environmental Protection have caused this Land Use Covenant to be executed this 21<sup>st</sup> day of November, 2005.

SIGNED:

  
\_\_\_\_\_  
Jamegy WV, Inc.  
By Devin Megy, its President

SIGNED:

  
\_\_\_\_\_  
West Virginia Department of Environmental  
Protection, by Stephanie R. Timmermyer, its Secretary

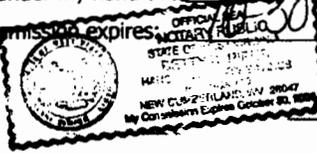
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Betty Kops

a Notary Public in and for the State and County  
aforesaid, do hereby certify that Devin Magy, President, who signed the above  
writing bearing date the 28 day of Sept, 2005, for Jamegy  
WV, Inc., has this day acknowledged before me the said writing to be the act  
and deed of said Corporation.

Given under my hand this 28 day of Sept, 2005

My commission expires:



Betty Kops

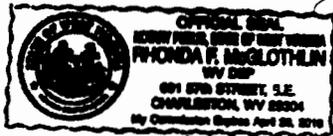
Notary Public

Rhonda F. McGlothlin

a Notary Public in and for the State and County  
aforesaid, do hereby certify that Stephanie R. Timmermyer, Secretary, who  
signed to the writing above, bearing date the 21<sup>st</sup> day of November,  
2005, for the West Virginia Department of Environmental Protection, has this day  
acknowledged before me the said writing to be the act and deed of said Agency.

Given under my hand this the 21<sup>st</sup> day of November, 2005

My commission expires: April 26, 2010



Rhonda F. McGlothlin

Notary Public

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Please return to:

West Virginia Department of Environmental Protection  
Secretary, Stephanie R. Timmermyer  
601 57<sup>th</sup> Street  
Charleston, WV 25303

This document prepared by James T. Carey, Esq., MANYPENNY & CAREY LAW  
OFFICE, 106 Court Street - PO Box 638, New Cumberland, WV 26047

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Revision: September 15, 2005

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State of West Virginia, County of Hancock, to-wit:  
I, Eleanor Straight, Clerk of the County Commission of the County aforesaid, do hereby certify  
that the foregoing writing dated ~~November 21, 2005~~, and together with the certificate of  
acknowledgment thereto, was presented for and by me duly admitted to record on ~~November 30,~~  
2005, at 11:03 A. M.

  
\_\_\_\_\_  
Eleanor Straight, County Clerk

State of West Virginia,  
County of Hancock

I, ELEANOR STRAIGHT, Clerk of the County Commission of Hancock County, having the custody of the Files, Journals and Records of said Commission, do hereby certify that the foregoing is a true and accurate copy of: Deed

(Land Use Covenant) between Jamegy WV, Inc., and West Virginia Department  
of Environmental Protection

as the same appears of record in my office, in \_\_\_\_\_ Deed \_\_\_\_\_ Book No. 276  
Page 199, and I further certify that the same is a full and correct transcript thereof.

In Witness Whereof, I have set my hand and affixed the seal of said commission at New Cumberland, Hancock County, West Virginia, this 14th day of December, 2005.



Eleanor Straight  
Eleanor Straight, County Clerk  
Hancock County, West Virginia