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GARY W. WILLIAMS, BOONE COUNTY CLERK

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LAND USE COVENANT AND RELEASE

GARY W. WILLIAMS
BOONE COUNTY CLERK

THIS LAND USE COVENANT AND RELEASE, hereinafter the "Agreement," made this 16th day of July, 2002, by and between **DEBBIE L. EVERSOLE**, hereinafter the "Owner," and **THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**, hereinafter the "WVDEP."

WHEREAS, the Raleigh Boone Service Company, Inc., hereinafter "Raleigh-Boone" has entered into a Corrective Action Agreement with the WVDEP pursuant to the Underground Storage Act, W.Va. Code §§22-17-1 through 22-17-23 (hereinafter referred to as the "Act"), in respect of certain property in Madison, West Virginia, more particularly described as Lot Numbers 126, 127, 128, 129, 130, 131, 203, 204 and 205, Court Addition to Madison, Scott District, Boone County, West Virginia (also known as the "Madison Terminal" and hereinafter referred to as the "Property"), and as also described in Exhibit 1 to this Agreement.

WHEREAS, as set forth in the Corrective Action Agreement, Raleigh-Boone operated a bulk petroleum storage facility on the Property and as a result of those operations certain environmental contamination occurred on and under the Property arising from causes including, without limitation, the leakage of petroleum products from tanks and spillage of petroleum products during loading and unloading activities (hereinafter "Environmental Conditions").

WHEREAS, Raleigh-Boone has an agreement with Debbie L. Eversole ("Eversole") whereby Eversole will purchase the Property for One Hundred Thousand Dollars (\$100,000).

WHEREAS, pursuant to the Corrective Action Agreement, Raleigh-Boone will place eighty-seven and one-half percent (87.5%) of the proceeds from the sale of the Property to Eversole, or \$87,500, in an escrow account for the purpose of funding the WVDEP's response to

and remediation of the Environmental Conditions at the Property pursuant to its authority under the Act.

WHEREAS, pursuant to an escrow agreement between Raleigh-Boone, the WVDEP and the Boone County Bank, hereinafter the "Escrow Agreement," the WVDEP will be authorized to receive payment for the costs of response and remediation activities conducted at the Property from the escrow account.

NOW THEREFORE, The Owner enters into the following Land Use Covenant and Release with the WVDEP:

1. The WVDEP is authorized to enter into this Agreement pursuant to the Underground Storage Act, W.Va. Code §§ 22-17-1 et seq.

2. The Owner will hold harmless the WVDEP from any and all claims, actions, causes, expenses or damages arising from the WVDEP's performance of the investigation and remedial activities at the Property that it conducts pursuant to the Corrective Action Agreement except to the extent such claims, actions, expenses or damages arise out of the negligence, gross negligence or willful misconduct of the WVDEP, its employees, or agents.

3. 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.

4. The Owner shall prohibit all activities that may result in human exposures above industrial risk based exposure levels or that would result in a release of a contaminant that was contained as part of the WVDEP's response and remediation actions. These activities include, but are not limited to, construction of basements, underground parking areas, or other underground structures.

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5. 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.

6. 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 2, 3 and 4 above.

7. The Owner shall provide written notice to the Director of the WVDEP Division of Waste Management of any conveyance of any kind of interest in the Property.

8. The Owner grants the WVDEP and its designated representatives the right to enter the Property at reasonable times for the purpose of conducting response or monitoring activities relating to the Environmental Conditions.

9. The WVDEP may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

10. In accordance with the provisions of the Act, this Land Use Covenant relieves the Owner, its lender and any subsequent successors and assigns of the Owner from all civil liability to the State of West Virginia for and arising from the Environmental Conditions existing at the time the Owner purchased the Property from Raleigh-Boone.

11. 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 written modification or releases signed by the Director of the WVDEP Division of Waste Management and the owner of the Property at the time of such modification or release, and filed in the office of the Clerk of the County Commission of Boone County, West Virginia, this Land Use Covenant shall continue in perpetuity.

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12. Upon execution of this Agreement with the Owner and the Owner's filing of such Agreement with the Clerk of the Boone County Commission, the WVDEP hereby relieves the Owner and its lender, and any of their subsequent successors and assigns, from all civil liability to the State for and arising from the Environmental Conditions at the Property existing at the time the covenant is filed with the Clerk of the Boone County Commission.

13. This Agreement shall not be amended, modified or terminated except by written instrument executed by and between the owner of the Property at the time of the proposed amendment, modification or termination, and the Director of the WVDEP Division of Waste Management, or his successor in accordance with any applicable regulations promulgated by the Secretary or his successor. Within five (5) days of executing an amendment, modification or termination of this Agreement, the owner of the Property at the time shall record such amendment, modification or termination with the Clerk of the County Commission of Boone County, West Virginia, and within five (5) days thereafter, the owner of the Property at the time shall provide a true copy of the recorded amendment, modification or termination to the Director of the WVDEP Division of Waste Management.

14. The Clerk of the County Commission of Boone County, West Virginia is hereby requested and directed to return this instrument following recordation to the Director of the WVDEP Division of Waste Management, at the address indicated below, with evidence showing it has been duly recorded as required by the regulations promulgated by the Secretary of the WVDEP.

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IN WITNESS WHEREOF, Eversole, as the Owner of the Property and the Director of the WVDEP Division of Waste Management, for and on behalf of the Department of Environmental Protection of the State of West Virginia, have caused this Agreement to be executed this 16th day of July, 2002.

DEBBIE L. EVERSOLE

By: Debbie L. Eversole

Its: owner

Property Owner

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Ron Ellison

Director of the Division of Waste Management

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STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing was acknowledged before me this 16th day of July, 2002, by DEBBIE L. EVERSOLE, who signed the foregoing writing, bearing date the 16th day of July, 2002.

Given under my hand and official notarial seal this 16th day of July, 2002.

My commission expires: June 5, 2005.



Judy Pordua
Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing was acknowledged before me this 19th day of July, 2002, by Ken Ellison, the Director of the **DIVISION OF WASTE MANAGEMENT, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF WEST VIRGINIA**, an agency of state government, who signed the foregoing writing, bearing date the 19th day of July, 2002, for and on behalf of said agency.

Given under my hand and official notarial seal this 19th day of July, 2002.
My commission expires 9-1-2003.

[NOTARIAL SEAL]

Shannon Egnor
Notary Public



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STATE OF WEST VIRGINIA, BOONE COUNTY COMMISSION CLERK'S OFFICE
THE FOREGOING WRITING TOGETHER WITH THE ANNEXED CERTIFICATE
WAS THIS 19th day of July, 2002 AT 2:19 O'CLOCK P.M.
ADMITTED TO RECORD IN MY SAID OFFICE
TESTE: Shannon Egnor CLERK
Page 6 of 6 Ken Ellison DEPUTY
FEE \$ 7.00 INSTR # 18932