

**Schrader
Byrd &
Companion**

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October 3, 2008



**Ken Ellison, Director
West Virginia Department of Environmental Protection
Division of Land Restoration
601 57th Street, SE
Charleston, WV 25304**

**Re: Land Use Covenants for Beazer East, Inc./Archer Heights site
McKim Ridge Road, Follansbee, Brooke County, VRP #04189**

Dear Mr. Ellison:

I have been instructed by Beazer East's attorney to forward the enclosed original Land Use Covenants to your attention. For your information, these documents were recorded in the Brooke County Clerk's Office on September 23, 2008.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

**SCHRADER BYRD
& COMPANION, PLLC**

A handwritten signature in black ink, appearing to read "Lisa M. Schmitt".

LISA M. SCHMITT

Author's Internet E-Mail:
lms@schraderlaw.com

LMS/
Enclosures

cc: Charles E. McChesney II, Esq. (w/encls.)

LAND USE COVENANT

65-1788

Return to: Lisa M. Schmitt, Esq.
Schrader, Byrd & Companion
32-20th Street, Suite 500
Wheeling, WV 26003

65-1788

LAND USE COVENANT

1. This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

Two tracts of property, located at Wells McKim Ridge Road (Archer Heights), in Cross Creek District, Brooke County, West Virginia, conveyed to the owners of such property identified in **Section 3** hereof by Elizabeth Velegol, married, on her own behalf and as conservator of the Estate of John L. Velegol, a protected person, her husband (under Conservatorship established by the Brooke County Circuit Court, Case No. 97-G-6-RI), by a General Warranty Deed dated June 29, 2000 and recorded in the Office of the Clerk of the County Commission of Brooke County, West Virginia at Deed Book Volume 287, Page 756, more particularly bounded and described in such General Warranty Deed as follows:

TRACT 3:

Parcel No. 1 –

Situate in Brooke County, West Virginia, and beginning at a stone, formerly a corner to lands of Eph. T. Wells and John O. Marsh and lying on the west side of Brooke County Route Four (4), approximately 1200 feet from the southerly end of said Route; thence with the line of said Eph. T. Wells, S 58° E., 525.1 feet to a point, thence S 5° 56' W., 321.4 feet to a point in the Brooke County Route 4; thence with the line of the former J. Anderson, Jr. lands S 89° 48' E.; 1049.25 feet to an iron pin; thence with the line of the Brooke County Court lands (State Highway Department) N. 2° 27' E., 781.0 feet to a point; thence with the line of said Eph. T. Wells, N. 52° E., 462.0 feet to a point; thence with the line of said Eph. T. Wells, S. 27° E., 528.0 feet to the stone at the place of beginning, containing 17.15 acres, more or less.

Parcel No. 2 –

Situate in Brooke County, West Virginia, and beginning at the north end of the eastern boundary of the aforesaid and drawn Parcel No. 1; thence with the line of the former Eph. T. Wells lands S. 58° E. to a point in the center of Brooke County Route Six (6); thence in a southwest direction along the center of Brooke County Route Six (6) to a point at the intersection of Brooke County Routes Four (4) and Six (6); thence with the line of the former J. Anderson, Jr. and the Brooke County Route Four (4), N. 10° 34' W., 352.5 feet to a point; thence with the aforesaid and drawn Parcel No. 1, N. 5° 56' E., 321.4 feet to the place of beginning, containing 3 acres, more or less.

Excepting, however, the following three conveyances from the said TRACT 3, Parcels 1 and 2:

A conveyance found in Deed Book Volume 184, Page 303 of 1.05 acres, more or less; a conveyance found in Deed Book Volume 247, Page 502 of 2.86 acres, more or less; and a conveyance found in Deed Book Volume 184, Page 293 of 7.02 acres, more or less.

Leaving a residue from the original Two Parcels of this TRACT of 10.13 acres, more or less.

Excepting from the said 10.13 acres residue of the original Two Parcels of this TRACT or parcel herein conveyed the following controlled access right of way, which will be conveyed to the West Virginia Department of Transportation, Division of Highways, pursuant to the proceedings taking place in the Circuit Court of Brooke County, West Virginia being Case Number 00-P-8-REW, styled West Virginia Department of Transportation, Division of Highways, a corporation v. Elizabeth Velegol, et al., the area of which is more particularly described as follows:

Controlled Access Right of Way Exception:

Beginning at a point in the eastern proposed controlled access right of way line of relocated WV Route 2, said point being in the eastern existing noncontrolled access right of way line and 534.5 feet right of and at right angle to relocated WV Route 2 Baseline at Station 291+85.0. Project U305-2-13.16 00, NFA-0002(356), Brooke County, West Virginia;

Thence, northeasterly, with said existing noncontrolled access right of way line 132 feet, more or less, to a point 529.1 feet right of and at right angle to Baseline at Station 293+16.5;

Thence, northwesterly, continuing with said existing noncontrolled access right of way line 330 feet, more or less, to a point 313.8 feet right of and at right angle to Baseline at Station 295+66.6;

Thence, northeasterly continuing with said existing noncontrolled access right of way line 272 feet, more or less, to a point 497.7 feet right of and at right angle to Baseline at Station 297+67.0;

Thence, northwesterly, continuing with said existing noncontrolled access right of way line 315 feet, more or less, to a point 478.6 feet right of and at right angle to Baseline at Station 300+81.6;

Thence, southeasterly, continuing with said existing noncontrolled access right of way line 161 feet, more or less, to a point in the eastern proposed

controlled access right of way line, said point being 639.0 feet right of and at right angle to Baseline at Station 300+87.0;

Thence, southwesterly, in a reverse baseline direction, with said proposed controlled access right of way line 219 feet, more or less, to a point 555.0 feet right of and at right to Baseline at Station 298+85.0;

Thence, southeasterly, continuing with said proposed controlled access right of way line 487 feet, more or less, to a point 597.0 feet right of and at right angle to Baseline at Station 294.+00.0;

Thence, southwesterly, continuing with said proposed controlled access right of way line 224 feet, more or less, to the place of beginning and containing 2.487 acres, more or less.

TRACT 4:

Parcel No. 1-

All that certain parcel of land situated in Cross Creek District, Brooke County, West Virginia, more particularly bounded and described as follows: To-Wit:

Beginning at two sugar trees, corner to lands formerly of Jesse Edgington; thence the following courses and distances: N. 39° 15' W. 330 feet; thence N. 44° E. 272 feet; N. 2° W. 315.15 feet; S. 88° E. 264 feet; N. 28° 30' W. 247.5 feet; S. 76° 30' W. 148.5 feet; N. 2° W. 1254 feet; S. 89° E. 1056 feet to a corner of a 20.43 acre parcel conveyed by Ephraim T. Wells and Wife to Nannie and Clara McKim by Deed dated the first day of June, 1917, and recorded in the Office of the Clerk of the County Court of said County, in Deed Book No. 46, Page 317; thence with the said McKim Line, N. 63° 2' E. 765.23 feet to the center of Steubenville-Hollidays Cove Road; thence with the center of said road, the following courses and distances: S. 26° 51' W. 332 feet; S. 31° 03' W. 200 feet; S. 31° 27' W. 200 feet; S. 29° 50' W. 301.65 feet; S. 24° 15' W. 400 feet; S. 22° 30' W. 250 feet; S. 24° 04' W. 200 feet; S. 25° 49' W. 200 feet; thence S. 26° 51' W. 149.85 feet to a stone monument set; thence N. 30° 30' W. 494.5 feet; thence S. 49° W. 445.5 feet to the place of beginning; containing 63.15 acres, more or less. The aforesaid description is according to a survey and plat on a scale of 200 feet to the inch by F. Yoos of Follansbee, West Virginia, in the month of April, 1943.

Excepting from the said 63.15 acre tract or parcel herein conveyed the following controlled access rights of way, which will be conveyed to the West Virginia Department of Transportation, Division of Highways, pursuant to the proceedings taking place in the Circuit Court of Brooke County, West Virginia, being Case

Number 00-P-8-REW, styled West Virginia Department of Transportation, Division of Highways, a corporation v. Elizabeth Velegol, et al., the area of which is more particularly described as follows:

Controlled Access Right of Way Exception No. 1:

Beginning at a point in the eastern proposed controlled access right of way line of relocated WV Route 2, said point being in the eastern existing noncontrolled access right of way line and 534.5 feet right of and at right angle to relocated WV Route 2 Baseline at Station 291+85.0. Project U305-2-13.16 00, NFA-0002(356), Brooke County, West Virginia;

Thence, northeasterly, with said existing noncontrolled access right of way line 132 feet, more or less, to a point 529.1 feet right of and at right angle to Baseline at Station 293+16.5;

Thence, northwesterly, continuing with said existing noncontrolled access right of way line 330 feet, more or less, to a point 313.8 feet right of and at right angle to Baseline at Station 295+66.6;

Thence, northeasterly continuing with said existing noncontrolled access right of way line 272 feet, more or less, to a point 497.7 feet right of and at right angle to Baseline at Station 297+67.0;

Thence, northwesterly, continuing with said existing noncontrolled access right of way line 315 feet, more or less, to a point 478.6 feet right of and at right angle to Baseline at Station 300+81.6;

Thence, southeasterly, continuing with said existing noncontrolled access right of way line 161 feet, more or less, to a point in the eastern proposed controlled access right of way line, said point being 639.0 feet right of and at right angle to Baseline at Station 300+87.0;

Thence, southwesterly, in a reverse baseline direction, with said proposed controlled access right of way line 219 feet, more or less, to a point 555.0 feet right of and at right to Baseline at Station 298+85.0;

Thence, southeasterly, continuing with said proposed controlled access right of way line 487 feet, more or less, to a point 597.0 feet right of and at right angle to Baseline at Station 294.+00.0;

Thence, southwesterly, continuing with said proposed controlled access right of way line 224 feet, more or less, to the place of beginning and containing 2.487 acres, more or less.

Controlled Access Right of Way Exception No. 2:

Beginning at a point in eastern proposed controlled access right of way line of relocated WV Route 2, said point being in the eastern existing noncontrolled access right of way line and 680.8 feet radially right of relocated WV Route 2 Baseline at Station 301-86.9, Project U305-2-13.1600, NFA-0002(356), Brooke County, West Virginia;

Thence, northwesterly, with said existing noncontrolled access right of way line 133 feet, more or less, to a point 610.4 feet radially right of Baseline at Station 302+91.6;

Thence, southwesterly, in a reverse baseline direction, continuing with said existing noncontrolled access right of way line 149 feet, more or less, to a point 468.3 feet radially right of Baseline at Station 302+51.8;

Thence, northeasterly, in a forward baseline direction, continuing with said existing noncontrolled access right of way line 746 feet, more or less, to a point in the eastern proposed controlled access right of way line, said point being 506.8 feet radially right of Baseline at Station 308+90.0;

Thence, southeasterly, in a reverse baseline direction, with said eastern proposed controlled access right of way line 661 feet, more or less, to a point 795.0 feet radially right of baseline at Station 304+15.0;

Thence, southwesterly, continuing with said eastern proposed controlled access right of way line 285 feet, more or less, to the place of beginning and containing 3.365 acres, more or less.

2. Activities on and uses of the above-described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- (a) All activities on the property, and uses of the property, that may interfere with the remedial action required by the Voluntary Remediation Agreement # 04189 entered into between Beazer East, Inc., a Delaware corporation (hereinafter referred to as the "applicant"), and the West Virginia Department of Environmental Protection (WVDEP), in the matter described in **Section 5** hereof, pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22 (the "Act").
- (b) All activities on the property, and uses of the property, 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 prohibited activities and uses include, but are not limited to:

- (i) Withdrawal and/or use of groundwater from the areas of the property described and depicted in **Exhibit A** hereto (hereinafter referred to as the “Groundwater Restriction Areas”) for any purpose except monitoring.
 - (ii) Construction of any structure intended for residential or non-residential use, within the areas of the property described and depicted in **Exhibit B** and referred to as the “Disturbance Restriction Areas,” and also being within and part of the Groundwater Restriction Areas.
 - (iii) Excavation, regrading, or land shaping that removes or disturbs any “engineered soil cover” (ESC) to a minimum cover thickness of less than two (2) feet within the Disturbance Restriction Areas (containing the former waste disposal areas of the property, as further discussed in **Section 5** hereof).
- (c) The Disturbance Restriction Areas may be used only for “Nonresidential” purposes, as defined in W.Va. Code § 22-22-2(q) (2002).
 - (d) The Groundwater Restriction Areas may be used for “Residential” purposes, as defined in W.Va. Code § 22-22-2(q) (2002), except for the Disturbance Restriction Areas noted in **Sections 2(b)(ii)** and **2(c)** hereof.
 - (e) The owner(s) of the property shall not convey any title, easement, or other interest in the Groundwater Restriction Areas, including the Disturbance Restriction Areas, 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 **Section 2** of this covenant.
3. The current owners of record of the property, and their contact information, are:
- (a) John L. Velegol, Jr.
R.D. 2, Box 308B
Colliers, WV 26035
 - (b) Patricia A. McCarthy
R.D. 2, Box 317B
Colliers, WV 26035

- (c) Mary E. Wigginton
P.O. Box 487
Powell, TN 37849
- (d) David A. Velegol, Sr.
R.D. 2, Box 317C
Colliers, WV 26035

4. Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government, may be a holder of an environmental covenant. The following are all of the holders of this covenant:

- (a) West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304-2345
- (b) Beazer East, Inc.
c/o Three Rivers Management, Inc.
One Oxford Centre
Suite 3000
Pittsburgh, PA 15219
- (c) John L. Velegol, Jr.
R.D. 2, Box 308B
Colliers, WV 26035
- (d) Patricia A. McCarthy
R.D. 2, Box 317B
Colliers, WV 26035
- (e) Mary E. Wigginton
P.O. Box 487
Powell, TN 37849
- (f) David A. Velegol, Sr.
R.D. 2, Box 317C
Colliers, WV 26035

5. The facts regarding the remediation response project at the Property are:

The property is part of the BEI Archer Heights Site, VRP Project # 04189 (the "Site"), subject to investigation and remediation under the Act, under the oversight and approval of the WVDEP. During the Site investigations, it was determined that certain portions of the Site located within or immediately adjacent to the Disturbance Restriction Areas were historically

used for, among other things, disposal of industrial wastes and ash. Disposed materials identified at the Site include, among other things, coal tar related materials, slag, soils, hardened pipe enamels, pencil pitch, concrete, steel, and rubber tires. The contaminants of concern (“COCs”) related to Site disposed materials were detected in soils immediately adjacent to the disposed materials, and in groundwater adjacent to the former disposal areas and include: benzene, toluene, ethylbenzene, xylenes, polycyclic aromatic hydrocarbons, and certain metals. The approved Site remedial action includes consolidation of a portion of Site disposed materials to within the Disturbance Restriction Areas, construction of ESCs over each consolidated disposal area to prevent human and ecological contact with the disposed materials, Site grading to limit and/or prevent storm water infiltration into or near ESCs, and recordation of land use covenants (including this covenant) at the Office of the Clerk of the County Commission of Brooke County to prohibit excavation, construction, and residential use in areas upon and immediately adjacent to the ESCs (including the Disturbance Restriction Areas) and to prohibit extraction or use of groundwater within the Groundwater Restriction Areas that encompass the contained and covered Site disposed materials. Under the approved Site remedial action, pathway elimination is used to demonstrate that direct contact exposure will not occur between receptors and the disposed materials in the Disturbance Restriction Areas of the Site due to the application of ESCs and a prohibition on excavation, construction and residential use in these areas. Under the approved Site remedial action, residential exposure assumptions were used to demonstrate compliance with the Act in those areas of the Site outside the Disturbance Restriction Areas. A complete characterization of Site COCs, pathways of potential exposure, the location and extent of disposed materials, and the remedial actions to be implemented to contain the disposed materials and prevent future exposures to COCs, can be found in the following WVDEP-approved Site reports and work plans, which are maintained by the WVDEP and available to the public at the WVDEP headquarters: (a) Site Assessment Report (2003); (b) Supplemental Site Assessment Report (2003); (c) Human Health & Ecological Risk Assessment (2003); (d) Supplemental Residual Health Risk Assessment (2005); and (e) Remedial Action Work Plan (2005).

6. The owner(s) of the property shall provide written notice to the Secretary of the West Virginia Department of Environmental Protection within ten (10) days following transfer of a specified interest in the Groundwater Restriction Areas (including the Disturbance Restriction Areas), changes in use of the Groundwater Restriction Areas (including the Disturbance Restriction Areas), application for building permits regarding the Groundwater Restriction Areas (including the Disturbance Restriction Areas), or proposals for any site work affecting contamination on the property.

7. The Applicant shall conduct inspections of the Groundwater Restriction Areas described in **Section 2(b)(i)** hereof and the Disturbance Restriction Areas described in **Section 2(b)(ii)** hereof to monitor compliance with this covenant at least one time per year, and shall submit two (2) signed copies of the inspection monitoring report to the WVDEP, Division of Land Restoration, 601 57th Street, SE, Charleston, West Virginia 25304-2345 within thirty (30) days of the inspection.

8. This covenant relieves the applicant and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and

shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant was issued.

9. The administrative record for the environmental response project reflected in this covenant is maintained in the office of the West Virginia Department of Environmental Protection, Division of Land Restoration, 601 57th Street, SE, Charleston, West Virginia 25304, (304) 926-0455, and is entitled BEI Archer Heights, VRP Project # 04189.

10. The West Virginia Department of Environmental Protection and applicant are granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

11. All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders, and their respective grantees, lessees, authorized agents, employees or persons acting under their direction or control.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED:

John L. Velegol, Jr.
John L. Velegol, Jr.
Owner and Holder
Date: 7-14, 2008

Sally Velegol
Name: Sally Velegol
Spouse (pursuant to W.Va. Code § 43-1-2)
Date: 7-14, 2008

Patricia A. McCarthy
Patricia A. McCarthy
Owner and Holder
Date: 7-14, 2008

Harry L. McCarthy
Name: HARRY L. MCCARTHY
Spouse (pursuant to W.Va. Code § 43-1-2)
Date: 7-14, 2008

Mary E. Wigginton
Mary E. Wigginton
Owner and Holder
Date: July 2, 2008

Mary E. Wigginton
Name: Mary E. Wigginton
Spouse (pursuant to W.Va. Code § 43-1-2)
Date: 7/2, 2008

David A. Velegol, Sr.
David A. Velegol, Sr.
Owner and Holder
Date: JUNE 28, 2008

Carolyn J. Velegol
Name: Carolyn J. Velegol
Spouse (pursuant to W.Va. Code § 43-1-2)
Date: June 28, 2008

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Holder

By: Ken Ellison
Name: Ken Ellison, Director
Secretary
Date: 8/27/08, 2008

BEAZER EAST, INC.
Holder

By: Jill M. Blunden
Name: Jill M. Blunden
Title: Vice President
Date: 7/14/08, 2008

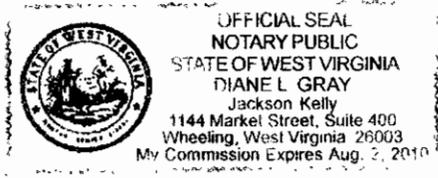
STATE OF WEST VIRGINIA)
)
COUNTY OF Ohio)

SS:

I, Diane L. Gray, a Notary Public in and for the State and County aforesaid, do hereby certify that John L. Velegol, Jr., and Sally Velegol, his spouse, whose names are signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 14th day of July, 2008.

My commission expires: Aug. 2, 2010.



Diane L. Gray
Notary Public

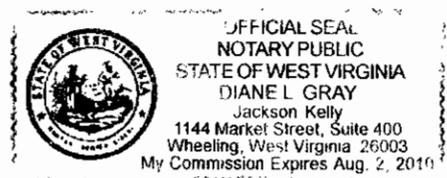
STATE OF WEST VIRGINIA)
)
COUNTY OF Ohio)

SS:

I, Diane L. Gray, a Notary Public in and for the State and County aforesaid, do hereby certify that Patricia A. McCarthy, and Harry L. McCarthy, her spouse, whose names are signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 14th day of July, 2008.

My commission expires: Aug. 2, 2010.



Diane L. Gray
Notary Public

STATE OF Tennessee)
)
COUNTY OF Knox)

SS:

I, Teresa A Long, a Notary Public in and for the State and County aforesaid, do hereby certify that Mary E. Wigginton, whose name is signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 2 day of July, 2008.

My commission expires: 06/06/2011.



Teresa A Long
Notary Public

STATE OF TENNESSEE)
)
COUNTY OF KNOX)

SS:

I, Teresa A Long, a Notary Public in and for the State and County aforesaid, do hereby certify that Harry E. Wigginton, whose name is signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 2 day of July, 2008.

My commission expires: 06/06/2011.



Teresa A Long
Notary Public

STATE OF WEST VIRGINIA)
)
COUNTY OF Hancock) SS:

I, Lisa Butler, a Notary Public in and for the State and County aforesaid, do hereby certify that David A. Velegol, Sr., and Carolyn J. Velegol, his spouse, whose names are signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 28 day of June, 2008.

My commission expires: January 26, 2014.



Lisa Butler
Notary Public

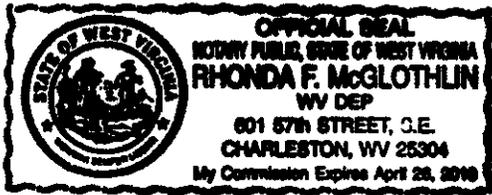
STATE OF WEST VIRGINIA)
COUNTY OF Kanawha)

SS:

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed above as the Director for Secretary of the West Virginia Department of Environmental Protection, this day executed this document in my presence or this day acknowledged same to be his/her true act and deed on behalf of said department.

Given under my hand this the 27th day of August, 2008.

My commission expires: April 26, 2010.



Rhonda F. McGlothlin
Notary Public

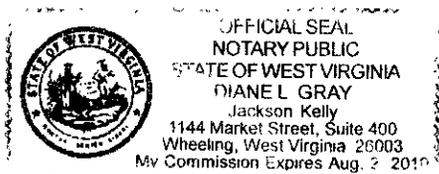
STATE OF WEST VIRGINIA)
COUNTY OF Ohio)

SS:

I, Diane L. Gray, a Notary Public in and for the State and County aforesaid, do hereby certify that Jill Blundon, whose name is signed above as the Vice President of Beazer East, Inc., this day executed this document in my presence or this day acknowledged same to be his/her true act and deed on behalf of said corporation.

Given under my hand this the 14th day of July, 2008.

My commission expires: Aug. 2, 2010.



Diane L. Gray
Notary Public

**EXHIBIT A
TO LAND USE COVENANT**

DESCRIPTION AND DEPICTION OF GROUNDWATER RESTRICTION AREAS

The Groundwater Restriction Areas shall include all land within the Northwestern Groundwater Restriction Parcel and the Southwestern Groundwater Restriction Parcel, each of which are described below and graphically depicted on the attached plat of survey titled "Plat of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and on the attached map titled "VRRP Site Land Use Covenant Restriction Areas":

NORTHWESTERN GROUNDWATER RESTRICTION PARCEL

A groundwater restriction parcel of land located west of West Virginia Secondary Route #4 a.k.a. McKim's Ridge Road. Said groundwater restriction parcel being located in the Cross Creek Magisterial District of Brooke County West Virginia. This new groundwater restriction parcel of land being ± 26.04 acres of the parent tract of land held by John L. Velegol, Jr. et al. as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 5 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #2 of this survey). The said new groundwater restriction parcel of land being more particularly described as follows:

BEGINNING from a 1' x 1' square stone found being a corner common to the fore mentioned Parent Parcel #2 and the John L. Velegol Jr. and David Velegol parcel as recorded in Deed Book 182 at Page 174 in the Brooke County Clerk's Office and graphically shown as Parcel 13 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #1 of this survey) and the John L. Velegol, Jr. et al. parcel as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 2 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #3 of this survey).

Thence with the line common to the fore mentioned Parent Parcel #3, North 27° 33' 28" West for a distance of 495.01 feet to a #8 rebar found this survey.

Thence continuing with the line common to the fore mentioned Parent Parcel #3, South 48° 48' 37" West for a distance of 498.11 feet to a #8 rebar found this survey.

Thence continuing with the line common to the fore mentioned Parent Parcel #3, North 02° 13' 18" East for a distance of 4.15 feet to a #8 rebar found this survey, said point being located 554.83 feet radially right of centerline station 292+54.93 for the centerline of WV Route #2, WVDOT project number U305-2-13.16, plans dated May 22, 2005.

Thence with the right of way for WV Route #2, North 20° 10' 49" East for a distance of 151.07 feet to a #8 rebar found this survey, said point being located 597.00 feet radially right of centerline station 294+00.00 for the centerline of WV Route #2,

Thence with the right of way for WV Route #2, North 00° 58' 41" West for a distance of 486.82 feet to a #8 rebar found this survey, said point being located 555 feet radially right of centerline station 298+85 for the centerline of WV Route #2,

Thence with the right of way for WV Route #2, North 26° 33' 47" East for a distance of 218.79 feet to a #8 rebar with cap #312 set this survey, said point being located 639.05 feet radially right of centerline station 300+87.00 for the centerline of WV Route #2,

Thence with the right of way for WV Route #2, South 87° 55' 43" East for a distance of 103.22 feet to a #8 rebar with cap #101 this survey, said point being located 742.22 feet radially right of centerline station 300+90.42 for the centerline of WV Route #2,

Thence with the right of way for WV Route #2, North 28° 21' 33" West for a distance of 114.78 feet to a #8 rebar with cap #100 this survey, said point being located 680.84 feet radially right of centerline station 301+86.83 for the centerline of WV Route #2,

Thence with the right of way for WV Route #2, North 26° 33' 47" East for a distance of 284.88 feet to a #8 rebar found this survey, said point being located 795.00 feet radially right of centerline station 304+15.00 for the centerline of WV Route #2,

Thence leaving the WVDOT right of way for WV Route #2 and running across and upon the Parent Parcel #2 with a new line, North 57° 56' 02" East for a distance of 635.67 feet to a #8 rebar with cap #308 set this survey.

Thence continuing across the Parent Parcel #2, South 57° 28' 38" East, passing a #8 rebar and cap #307 at a distance of 555.76 feet, crossing the WVDOT right of way for WV Secondary Route #4 at a distance of 565.76 feet, and in all for a distance of 580.76 feet to a MAG nail set this survey in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 31° 58' 36" West for a distance of 130.65 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 32° 55' 18" West for a distance of 88.57 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 35° 30' 16" West for a distance of 116.58 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 32° 14' 32" West for a distance of 62.67 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 27° 38' 10" West for a distance of 85.85 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 25° 42' 42" West for a distance of 100.69 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 26° 05' 25" West for a distance of 116.41 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 27° 06' 58" West for a distance of 204.09 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 27° 23' 54" West for a distance of 118.54 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 28° 18' 37" West for a distance of 103.78 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 28° 59' 10" West for a distance of 138.43 feet to a point in the centerline of WV Secondary Route #4.

Thence with the said centerline of WV Secondary Route #4, South 29° 42' 56" West for a distance of 97.01 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4.

Thence leaving the said centerline of WV Secondary Route #4 South 30° 53' 41" West a distance of 149.76 feet to the **POINT OF BEGINNING** containing 1,134,281 square feet or 26.04 acres more or less as surveyed by Steven A. Clark P.S. #2073 of Triad Engineering in May of 2008 and as shown on the plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" prepared by Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering in May of 2008.

SOUTHWESTERN GROUNDWATER RESTRICTION PARCEL

A groundwater restriction parcel of land located west of West Virginia Secondary Route #4 a.k.a. McKim's Ridge Road. Said groundwater restriction parcel being located in the Cross Creek Magisterial District of Brooke County West Virginia. This new groundwater restriction parcel of land being ±3.57 acres of the parent tract of land held by John L. Velegol, Jr. et al. as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 2 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #3 of this survey). The said new groundwater restriction parcel of land being more particularly described as follows:

BEGINNING from a 1' x 1' square stone found being a corner common to the fore mentioned Parent Parcel #3 and the John L. Velegol Jr. and David Velegol parcel as recorded in Deed Book 182 at Page 174 in the Brooke County Clerk's Office and graphically shown as Parcel 13 on Tax

Map CC6 in the Brooke County Assessor's Office (Parent Parcel #1 of this survey) and the John L. Velegol, Jr. et al. parcel as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 5 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #2 of this survey).

Thence running across and upon the Parent Parcel #3 with a new line, North 90° 00' 00" West for a distance of 630.49 feet to a #8 rebar with cap #317 set this survey on the WVDOT right of way for WV Route #2, said point being located 536.39 feet radially right of centerline station 291+38.40 for the centerline of WV Route #2, WVDOT project number U305-2-13.16, plans dated May 22, 2005.

Thence with the said WVDOT right of way for WV Route #2, North 01° 39' 23" East for a distance of 46.63 feet to a #8 rebar found this survey, said point being located 534.50 feet radially right of centerline station 291+85.00 for the centerline of WV Route #2,

Thence with the said WVDOT right of way for WV Route #2, North 20° 10' 49" East for a distance of 72.83 feet to a #8 rebar found this survey, said point being located 554.83 feet radially right of centerline station 292+54.93 for the centerline of WV Route #2, said point being a corner common to the Parent Parcel #2 shown as parcel 5 on Tax Map CC6.

Thence leaving the said WVDOT right of way for WV Route #2 and running with the line common to the Parent Parcel #2, South 02° 13' 18" West for a distance of 4.15 feet to a #8 rebar found this survey being a corner common to the Parent Parcel #2.

Thence continuing with the line common to Parent Parcel #3 and Parent Parcel #2, North 48° 48' 37" East for a distance of 498.11 feet to a #8 rebar found this survey being a corner common to the Parent Parcel #2.

Thence continuing with the line common to Parent Parcel #3 and Parent Parcel #2, South 27° 33' 28" East, passing a #8 rebar found this survey at 358.44 feet, in all a distance of 495.01 feet to the **POINT OF BEGINNING** containing 155,362 square feet or 3.57 acres more or less as surveyed by Steven A. Clark P.S. #2073 of Triad Engineering in May of 2008 and as shown on the plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" prepared by Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering in May of 2008.

(for graphical depiction see attached plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and see the attached map titled "VRRP Site Land Use Covenant Restriction Areas")

**EXHIBIT B
TO LAND USE COVENANT**

DESCRIPTION AND DEPICTION OF DISTURBANCE RESTRICTION AREAS

The Disturbance Restriction Areas shall include all land within the Northwestern Disturbance Restriction Parcel and the Southwestern Disturbance Restriction Parcel, each of which are described below and graphically depicted on the attached plat of survey titled "Plat of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and on the attached map titled "VRRP Site Land Use Covenant Restriction Areas":

NORTHWESTERN DISTURBANCE RESTRICTION PARCEL

A disturbance restriction parcel of land located west of West Virginia Secondary Route #4 a.k.a. McKim's Ridge Road. Said disturbance restriction parcel being located in the Cross Creek Magisterial District of Brooke County West Virginia. This new disturbance restriction parcel of land being ±1.73 acres of a 2.96 acre Northwestern Property Parcel partitioned from the parent tract of land held by John L. Velegol, Jr. et al. as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 5 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #2 of this survey). The said new disturbance restriction parcel of land being more particularly described as follows:

COMMENCING from a 1' x 1' square stone found being a corner common to the fore mentioned Parent Parcel #2 and the John L. Velegol Jr. and David Velegol parcel as recorded in Deed Book 182 at Page 174 in the Brooke County Clerk's Office and graphically shown as Parcel 13 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #1 of this survey) and the John L. Velegol, Jr. et al. parcel of record in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 2 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #3 of this survey).

Thence North 14° 54' 00" East for a distance of 997.35 feet to a #8 rebar and cap #214 set this survey on the southwestern boundary line for the Northwestern Property Parcel of this same survey, said point being the **POINT OF BEGINNING** for the said new parcel.

Thence with the boundary line for the said Northwestern Property Parcel, North 51° 17' 18" West for a distance of 138.05 feet to a #8 rebar and cap #126 set this survey.

Thence continuing with the boundary line for the said Northwestern Property Parcel, North 05° 15' 36" West for a distance of 337.40 feet to a #8 rebar and cap #217 set this survey.

Thence leaving the boundary line and running across and within the said Northwestern Property Boundary Parcel, North 79° 50' 50" East for a distance of 131.37 feet to a #8 rebar and cap #216 set this survey.

Thence continuing across and upon the said Northwestern Property Parcel, South 18° 24' 00" East for a distance of 449.63 feet to a #8 rebar and cap #215 set this survey.

Thence continuing across and upon the said Northwestern Property Parcel, South 81° 54' 59" West a distance of 133.92 feet to the **POINT OF BEGINNING**; Containing 75,292 square feet or 1.73 acres more or less as surveyed by Steven A. Clark P.S. #2073 of Triad Engineering in May of 2008 and as shown on the plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" prepared by Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering in May of 2008.

SOUTHWESTERN DISTURBANCE RESTRICTION PARCEL

A disturbance restriction parcel of land located west of West Virginia Secondary Route #4 a.k.a. McKim's Ridge Road. Said disturbance restriction parcel being located in the Cross Creek Magisterial District of Brooke County West Virginia. This new disturbance restriction parcel of land being ±4.74 acres of a 6.46 acre Southwestern Property Parcel partitioned from the parent tract of land held by John L. Velegol, Jr. et al. as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 5 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #2 of this survey). The said new disturbance restriction parcel of land being more particularly described as follows:

COMMENCING from a 1' x 1' square stone found being a corner common to the fore mentioned Parent Parcel #2 and the John L. Velegol Jr. and David Velegol parcel as recorded in Deed Book 182 at Page 174 in the Brooke County Clerk's Office and graphically shown as Parcel 13 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #1 of this survey) and the John L. Velegol, Jr. et al. parcel of record in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 2 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #3 of this survey).

Thence with the line common to the fore mentioned Parent Parcel #3, North 27° 33' 28" West for a distance of 136.57 feet to a #8 rebar found this survey, said point being the **POINT OF BEGINNING** for the said new parcel.

Thence continuing with the line common to the fore mentioned Parent Parcel #3, North 27° 33' 28" West for a distance of 358.44 feet to a #8 rebar found this survey.

Thence leaving the line common to the fore mentioned Parent Parcel #3 and running across and upon the Parent Parcel #2 with a new line, North 75° 44' 23" West for a distance of 30.30 feet to a #8 rebar with cap #102 set this survey.

Thence continuing across and upon the Parent Parcel #2, North 11° 38' 53" West for a distance of 499.45 feet to a #8 rebar with cap set this survey set on the WVDOT right of way for WV Route #2, said point being located 742.22 feet radially right of centerline station 300+90.42 for the centerline of WV Route #2, WVDOT project number U305-2-13.16, plans dated May 22, 2005.

Thence with the said WVDOT right of way for WV Route #2, North 28° 21' 33" West for a distance of 114.78 feet to a #8 rebar with cap #100 set this survey, said point being located 680.84 feet radially right of centerline station 301+86.83, for WV Route #2.

Thence with the said WVDOT right of way for WV Route #2, North 26° 33' 47" East for a distance of 49.19 feet to a #8 rebar with cap #112 set this survey, said point being located 699.84 feet radially right of centerline station 302+29.99 for WV Route #2.

Thence leaving the said WVDOT right of way for WV Route #2 and running across the Parent Parcel #2 with a new line, South 63° 37' 49" East for a distance of 200.55 feet to a #8 rebar with cap #222 set this survey.

Thence continuing across the Parent Parcel #2 with a new line, South 08° 25' 59" East for a distance of 287.93 feet to a #8 rebar with cap #223 set this survey.

Thence continuing across the Parent Parcel #2 with a new line, South 42° 45' 58" East for a distance of 105.37 feet to a #8 rebar with cap #224 set this survey.

Thence continuing across the Parent Parcel #2 with a new line, North 78° 59' 03" East for a distance of 184.02 feet to a #8 rebar with cap #225 set this survey.

Thence continuing across the Parent Parcel #2 with a new line, South 41° 53' 54" East for a distance of 91.33 feet to a #8 rebar with cap #226 set this survey.

Thence continuing across the Parent Parcel #2 with a new line, South 10° 09' 15" West for a distance of 252.88 feet to a #8 rebar with cap #227 set this survey.

Thence continuing across the Parent Parcel #2 with a new line, South 35° 34' 32" West a distance of 278.36 feet to the **POINT OF BEGINNING** containing 206,519 square feet or 4.74 acres more or less as surveyed by Steven A. Clark P.S. #2073 of Triad Engineering in May of 2008 and as shown on the plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" prepared by Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering in May of 2008.

(for graphical depiction see attached plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and see the attached map titled "VRRP Site Land Use Covenant Restriction Areas")

This instrument prepared by: Matthew I. Moses, Esq.
Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center
8th Floor
Pittsburgh, PA 15228

After recording, please return to: Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304-2345

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

The foregoing paper writing was this day, September 23, 2008
at 2:09 a.m., p.m. presented for record in my office, and thereupon, together with
the certificate thereto annexed is admitted to record.

Teste: Sylvia J. Berz Clerk, Brooke County Commission

LAND USE COVENANT

65-1790

65-1790

LAND USE COVENANT

1. This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

Certain property, located at Wells McKim Ridge Road (Archer Heights), in Cross Creek District, Brooke County, West Virginia, conveyed to the owners of the property identified in **Section 3** hereof by Darlene B. Pierce et al. by a General Warranty Deed dated November 17, 1970 and recorded in the Office of the Clerk of the County Commission of Brooke County, West Virginia at Deed Book Volume 182, Page 174, more particularly bounded and described in such General Warranty Deed as follows:

FIRST: BEGINNING at two sugar trees; thence with the original line of the late Jesse Edgington N. 2° W. 134 Poles to a pile of stone corner to Samuel Hindman; thence with his line S. 89° E. 64 poles to a B.O. stump corner to said Hindman; thence N. 54° E. 64 poles to a stake corner to Thomas McKim; thence with his line, S. 42° E. 69 ½ poles to a beech on the line of heirs of Daniel Montgomery; thence with their line S. 60° W. 40 poles to a W. O.; thence S. ¼° E. 54 poles to a hickory; thence S. 43° E. 40 poles to a locust post; thence S. 43 ½° W. 82 poles to a sugar tree; thence N. 62° W. 63 poles to a post on the road corner to John O. Marsh; thence N. 30 ½° W. 33 poles to a post; thence S. 49° W. 27 poles to the place of beginning; containing 133 A. 2 R. & 27 P.;

SECOND: BEGINNING at two sugar trees beginning corner to the above described tract corner to John O. Marsh, thence N. 35 ¼° W. 20 poles to a stake near a precipice; thence N. 44° E. 16 ½ poles to a stake in a drain; thence S. 2° E. 28 3/10 poles to the place of beginning; containing 1.76 A.;

TOGETHER WITH all buildings, appurtenances, hereditaments, property, leases, contracts, rights and privileges unto the said tracts of land or either of them belonging or appertaining.

The foregoing crosses and distance are taken substantially from the Deed to the said Ephraim T. Wells from Nathaniel Wells and Rebecca Wells, his wife, bearing date the third day of March, 1884 and recorded in the Office of the Clerk of the County of said County in Deed Book No. 25, page 394.

There is excepted therefrom, however, and not thereby conveyed:

- (1) The coal lying below the level of the bed of the Ohio River, as conveyed to LaBelle Iron Works by Ephraim T. Wells and May E. Wells, his wife, their Deed bearing date the 2nd day of August, 1902, and recorded in the Office aforesaid in Deed Book No. 34, page 42, together with and subject to the mining rights and privileges therein contained;
- (2) 11/100 of an acre as conveyed to John McKim, Sr., Thomas McKim, Sr., George T. Marsh and Louis Wells by Ephraim T. Wells and Mary E. Wells, his wife, by their Deed bearing date the 12th day of December, 1913, and recorded in the Office aforesaid in Deed Book No. 42, page 190; and
- (3) 20.43 acres as conveyed to Nanie McKim and Clara McKim by Ephraim T. Wells and Mary E. Wells, by their Deed bearing date the 1st day of June, 1917, and recorded in the Office aforesaid in Deed Book No. 46, page 317;
- (4) 5 acres, more or less, as conveyed to Annie Schreckengost by Louis Horvath, et ux, by Deed dated February 2, 1942, and recorded in the Office aforesaid in Deed Book No. 75, page 116;
- (5) 1 acre, more or less, as conveyed to Catherin Neizuel by Louis Horvath, et ux, by Deed dated February 12, 1942, and recorded in the Office aforesaid in Deed Book 75 at page 118; and
- (6) 63.15 acres, more or less as conveyed to John L. Velegol, et ux, by Deed dated May 3, 1943 and recorded in the Office aforesaid in Deed Book No. 76, at page 167.

Being 43 acres, more or less.

2. Activities on and uses of the above-described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- (a) All activities on the property, and uses of the property, that may interfere with the remedial action required by the Voluntary Remediation Agreement # 04189 entered into between Beazer East, Inc., a Delaware corporation (hereinafter referred to as the "applicant"), and the West Virginia Department of Environmental Protection (WVDEP), in the matter described in **Section 5** hereof, pursuant to the Voluntary Remediation and

Redevelopment Act, West Virginia Code Chapter 22, Article 22 (the "Act").

- (b) All activities on the property, and uses of the property, 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 prohibited activities and uses include, but are not limited to:
 - (i) Withdrawal and/or use of groundwater from the area of the property described and depicted in **Exhibit A** hereto (hereinafter referred to as the "Groundwater Restriction Area") for any purpose except monitoring.
 - (ii) Construction of any structure intended for residential or non-residential use, within the area of the property described and depicted in **Exhibit B** and referred to as the "Disturbance Restriction Area", and also being within and part of the Groundwater Restriction Area.
 - (iii) Excavation, regrading, or land shaping that removes or disturbs any "engineered soil cover" (ESC) to a minimum cover thickness of less than two (2) feet within the Disturbance Restriction Area (containing the former waste disposal areas of the property, as further discussed in **Section 5** hereof).
 - (c) The Disturbance Restriction Area may be used only for "Nonresidential" purposes, as defined in W.Va. Code § 22-22-2(q) (2002).
 - (d) The Groundwater Restriction Area may be used for "Residential" purposes, as defined in W.Va. Code § 22-22-2(q) (2002), except for the Disturbance Restriction Area noted in **Sections 2(b)(ii) and 2(c)** hereof.
 - (e) The owner(s) of the property shall not convey any title, easement, or other interest in the Groundwater Restriction Area, including the Disturbance Restriction Area, 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 **Section 2** of this covenant.
3. The current owners of record of the property, and their contact information, are:
- (a) John L. Velegol, Jr.
R.D. 2 Box 308B
Colliers, WV 26035

- (b) David A. Velegol, Sr.
R.D. 2 Box 317C
Colliers, WV 26035

4. Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government, may be a holder of an environmental covenant. The following are all of the holders of this covenant:

- (a) West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304-2345
- (b) Beazer East, Inc.
c/o Three Rivers Management, Inc.
One Oxford Centre
Suite 3000
Pittsburgh, PA 15219
- (c) John L. Velegol, Jr.
R.D. 2 Box 308B
Colliers, WV 26035
- (d) David A. Velegol, Sr.
R.D. 2 Box 317C
Colliers, WV 26035

5. The facts regarding the remediation response project at this Property are:

The property is part of the BEI Archer Heights Site, VRP Project # 04189 (the "Site"), subject to investigation and remediation under the Act, under the oversight and approval of the WVDEP. During the Site investigations, it was determined that certain portions of the Site located within or immediately adjacent to the Disturbance Restriction Area were historically used for, among other things, disposal of industrial wastes and ash. Disposed materials identified at the Site include, among other things, coal tar related materials, slag, soils, hardened pipe enamels, pencil pitch, concrete, steel, and rubber tires. The contaminants of concern ("COCs") related to Site disposed materials were detected in soils immediately adjacent to the disposed materials, and in groundwater adjacent to the former disposal areas and include: benzene, toluene, ethylbenzene, xylenes, polycyclic aromatic hydrocarbons, and certain metals. The approved Site remedial action includes consolidation of a portion of Site disposed materials to within the Disturbance Restriction Area, construction of ESCs over each consolidated disposal area to prevent human and ecological contact with the disposed materials, Site grading to limit and/or prevent storm water infiltration into or near ESCs, and recordation of land use covenants (including this covenant) at the Office of the Clerk of the County Commission of Brooke County to prohibit excavation, construction, and residential use in areas upon and immediately adjacent to the ESCs (including the Disturbance Restriction Area) and to prohibit extraction or use of

groundwater within the Groundwater Restriction Area that encompasses the contained and covered Site disposed materials. In the early 1970s the United States Department of Agriculture, Soil Conservation Service reclaimed a portion of this property under its Rural Abandoned Mine Program. Under the approved Site remedial action, pathway elimination is used to demonstrate that direct contact exposure will not occur between receptors and the disposed materials in the Disturbance Restriction Area of the Site due to the application of ESCs and a prohibition on excavation, construction and residential use in this area. Under the approved Site remedial action, residential exposure assumptions were used to demonstrate compliance with the Act in those areas of the Site outside the Disturbance Restriction Area. A complete characterization of Site COCs, pathways of potential exposure, the location and extent of disposed materials, and the remedial actions to be implemented to contain the disposed materials and prevent future exposures to COCs, can be found in the following WVDEP-approved Site reports and work plans, which are maintained by the WVDEP and available to the public at the WVDEP headquarters: (a) Site Assessment Report (2003); (b) Supplemental Site Assessment Report (2003); (c) Human Health & Ecological Risk Assessment (2003); (d) Supplemental Residual Health Risk Assessment (2005); and (e) Remedial Action Work Plan (2005).

6. The owner(s) of the property shall provide written notice to the Secretary of the West Virginia Department of Environmental Protection within ten (10) days following transfer of a specified interest in the Groundwater Restriction Area (including the Disturbance Restriction Area), changes in use of the Groundwater Restriction Area (including the Disturbance Restriction Area), application for building permits regarding the Groundwater Restriction Area (including the Disturbance Restriction Area), or proposals for any site work affecting contamination on the property.

7. The Applicant shall conduct inspections of the Groundwater Restriction Area described in **Section 2(b)(i)** hereof and the Disturbance Restriction Area described in **Section 2(b)(ii)** hereof to monitor compliance with this covenant at least one time per year, and shall submit two (2) signed copies of the inspection monitoring report to the WVDEP, Division of Land Restoration, 601 57th Street, SE, Charleston, West Virginia 25304-2345 within thirty (30) days of the inspection.

8. This covenant relieves the applicant and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant was issued.

9. The administrative record for the environmental response project reflected in this covenant is maintained in the office of the West Virginia Department of Environmental Protection, Division of Land Restoration, 601 57th Street, SE, Charleston, West Virginia 25304, (304) 926-0455, and is entitled BEI Archer Heights, VRP Project # 04189.

10. The West Virginia Department of Environmental Protection and applicant are granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

11. All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders, and their respective grantees, lessees, authorized agents, employees or persons acting under their direction or control.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED:

John L. Velegol, Jr.
John L. Velegol, Jr.
Owner and Holder
Date: 7-14-6, 2008

Sally Velegol
Name: Sally Velegol
Spouse (pursuant to W.Va. Code § 43-1-2)
Date: 7-14, 2008

David A. Velegol, Sr.
David A. Velegol, Sr.
Owner and Holder
Date: JUNE 28, 2008

Carolyn J. Velegol
Name: Carolyn J. Velegol
Spouse (pursuant to W.Va. Code § 43-1-2)
Date: JUNE 28, 2008

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Holder

By: Ken Ellison
Name: Ken Ellison, Director
for Secretary
Date: 8/27/08, 2008

BEAZER EAST, INC.
Holder

By: William M. Blundell
Name: William M. Blundell
Title: Vice President
Date: 7/14/08, 2008



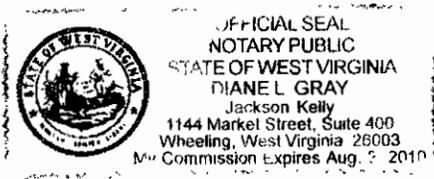
STATE OF WEST VIRGINIA)
)
COUNTY OF Ohio)

SS:

I, Diane L. Gray, a Notary Public in and for the State and County aforesaid, do hereby certify that John L. Velegol, Jr., and Sally Velegol, his spouse, whose names are signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 14th day of July, 2008.

My commission expires: Aug. 2, 2010.



Diane L. Gray
Notary Public

STATE OF WEST VIRGINIA)
)
COUNTY OF Hancock)

SS:

I, Lisa Butler, a Notary Public in and for the State and County aforesaid, do hereby certify that David A. Velegol, Sr., and Carolyn J. Velegol, his spouse, whose names are signed above, this day executed this document in my presence or this day acknowledged same to be their true acts and deeds.

Given under my hand this the 28 day of June, 2008.

My commission expires: January 26, 2014.



Lisa Butler
Notary Public

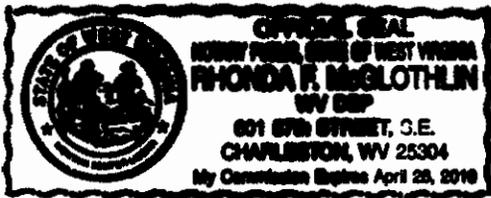
STATE OF WEST VIRGINIA)
COUNTY OF Kanawha)

SS:

I, Rhonda J. McEllothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed above as the Director for Secretary of the West Virginia Department of Environmental Protection, this day executed this document in my presence or this day acknowledged same to be his/her true act and deed on behalf of said department.

Given under my hand this the 27th day of August, 2008.

My commission expires: April 26, 2010.



Rhonda J. McEllothlin
Notary Public

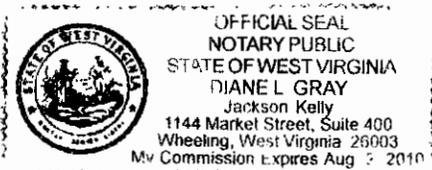
STATE OF WEST VIRGINIA)
COUNTY OF Ohio)

SS:

I, Diane L. Gray, a Notary Public in and for the State and County aforesaid, do hereby certify that Jill M. Blundon, whose name is signed above as the Vice President of Beazer East, Inc., this day executed this document in my presence or this day acknowledged same to be his/her true act and deed on behalf of said corporation.

Given under my hand this the 14th day of July, 2008.

My commission expires: Aug 2, 2010.



Diane L. Gray
Notary Public

**EXHIBIT A
TO LAND USE COVENANT**

DESCRIPTION AND DEPICTION OF GROUNDWATER RESTRICTION AREA

The Groundwater Restriction Area shall include all land within the Eastern Groundwater Restriction Parcel described below and graphically depicted on the attached plat of survey titled "Plat of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and on the attached map titled "VRRP Site Land Use Covenant Restriction Areas":

EASTERN GROUNDWATER RESTRICTION PARCEL

A groundwater restriction parcel of land located east of West Virginia Secondary Route #4 a.k.a. McKim's Ridge Road. Said groundwater restriction parcel being located in the Cross Creek Magisterial District of Brooke County West Virginia. This new groundwater restriction parcel of land being ±20.69 acres of the parent tract of land held by John L. Velegol, Jr. and David Velegol as recorded in Deed Book 182 at Page 174 in the Brooke County Clerk's Office and graphically shown as Parcel 13 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #1 of this survey). The said new groundwater restriction parcel of land being more particularly described as follows:

BEGINNING from a 1' x 1' square stone found being a corner common to the fore mentioned Parent Parcel #1 and the John L. Velegol, Jr. et al. parcel as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 5 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #2 of this survey) and the John L. Velegol, Jr. et al. parcel as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 2 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #3 of this survey).

Thence with the line common to the fore mentioned Parent Parcel #2, North 30° 53' 41" East for a distance of 149.76 feet to a MAG Nail set this survey in the centerline of said WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 29° 42' 56" East for a distance of 97.01 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 28° 59' 10" East for a distance of 138.43 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 28° 18' 37" East for a distance of 103.78 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 27° 23' 54" East for a distance of 118.54 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 27° 06' 58" East for a distance of 204.09 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 26° 05' 25" East for a distance of 116.41 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 25° 42' 42" East for a distance of 100.69 feet to a MAG Nail set this survey in the centerline WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 27° 38' 10" East for a distance of 85.85 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 32° 14' 32" East for a distance of 62.67 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 35° 30' 16" East for a distance of 116.58 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 32° 55' 18" East for a distance of 88.57 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 31° 58' 36" East for a distance of 130.65 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 33° 43' 57" East for a distance of 78.22 feet to a point in the centerline of WV Secondary Route #4.

Thence with the centerline of WV Secondary Route #4, North 33° 32' 12" East for a distance of 114.16 feet to a MAG Nail set this survey in the centerline of WV Secondary Route #4 said point being a corner common to the Dale and Betty Parr parcel of record in Deed Book 319 at Page 703 in the Brooke County Clerk's Office and graphically shown as Parcel 12 on Tax Map CC6 in the Brooke County Assessor's Office.

Thence leaving the said centerline of WV Secondary Route #4 and running with the line common to the fore mentioned Parr parcel, South 63° 08' 58" East, crossing the WVDOT right of way for WV Secondary Route #4 at 15.13 feet, passing a #8 rebar found at 26.00 feet, passing a #8 rebar and cap #116 set this survey at 486.30 feet, passing a #8 rebar and cap #206 set this survey at 547.50 feet, in all for a distance of 649.05 feet to a 1" Iron Pipe found this survey being a corner common to the Parent Parcel #1, the fore mentioned Parr parcel and the Wesley LLC parcel of record in Deed Book 291 at Page 749 in the Brooke County Clerk's Office and graphically shown as Parcel 14 on Tax Map CC6 in the Brooke County Assessor's Office.

Thence with the line common to the Wesley LLC parcel, South 00° 04' 47" West for a distance of 303.63 feet to a 7" triangular concrete monument found being a corner common to the said Wesley LLC parcel and the Parent Parcel #1.

Thence running across and upon the Parent Parcel #1 with a new line, South 28° 02' 03" West for a distance of 566.89 feet to a #8 rebar with cap #302 set this survey.

Thence continuing across and upon the Parent Parcel #1 with a new line, North 89° 09' 52" West for a distance of 191.43 feet to a 7" triangular concrete monument found being a corner common to the John McKim, Sr. Heirs Cemetery of record in Deed Book 42 at Page 190 in the Brooke County Clerk's Office.

Thence with the northern line of the said cemetery, North 79° 42' 42" West for a distance of 59.71 feet to a 7" triangular concrete monument found.

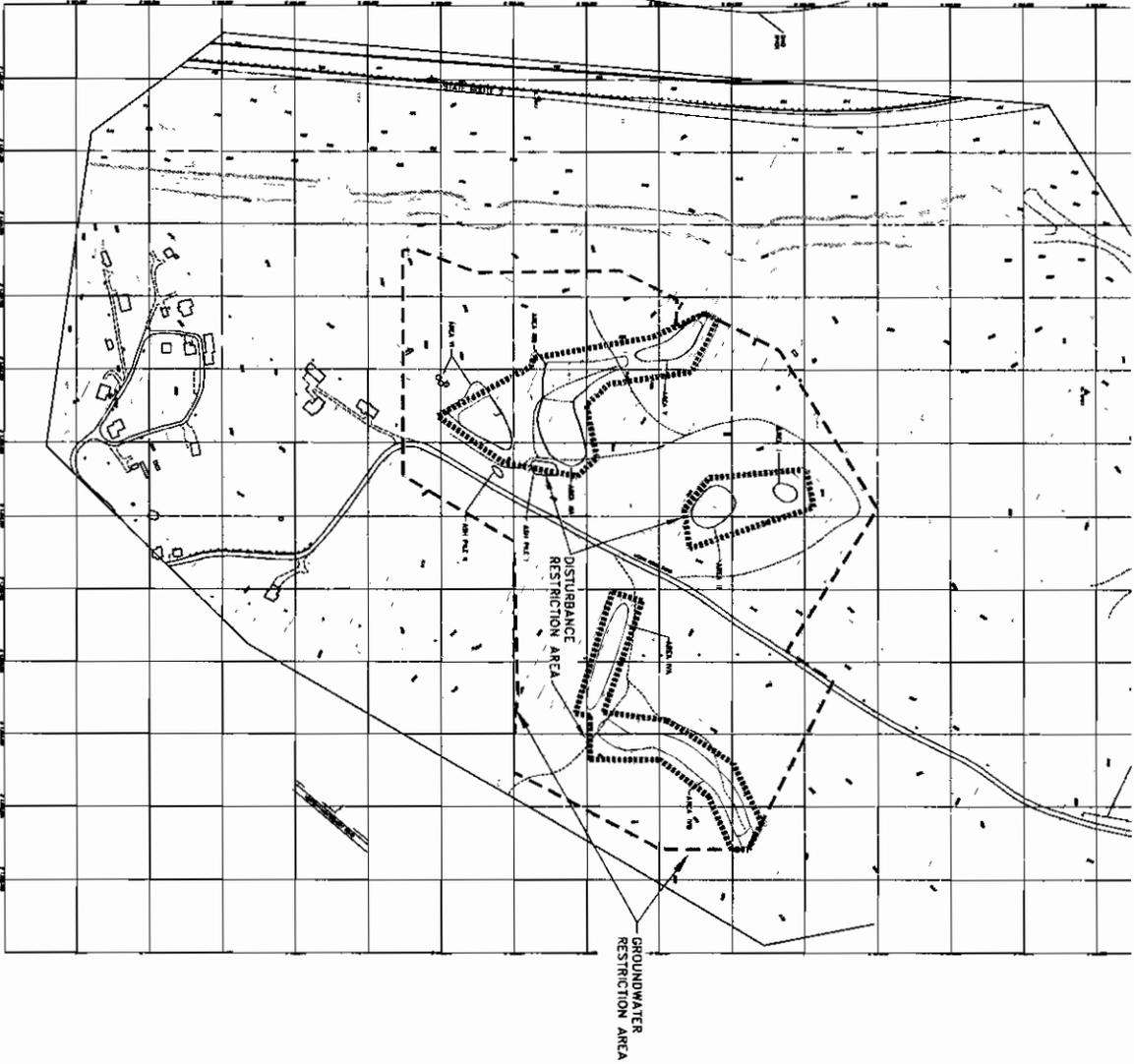
Thence continuing across and upon the Parent Parcel #1 with a new line, South 88° 30' 08" West for a distance of 545.94 feet to a #8 rebar with cap #301 set this survey.

Thence continuing across and upon the Parent Parcel #1 with a new line, South 30° 35' 28" West for a distance of 440.01 feet to a #8 rebar with cap #318 set this survey.

Thence North 90° 00' 00" West a distance of 140.91 feet to the **POINT OF BEGINNING** containing 901,171 square feet or 20.69 acres more or less as surveyed by Steven A. Clark P.S. #2073 of Triad Engineering in May of 2008 and as shown on the plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" prepared by Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering in May of 2008.

(for graphical depiction see attached plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and see the attached map titled "VRRP Site Land Use Covenant Restriction Areas")

CITY OF VIRGINIA GROUP 141120N SOURCE LD-0001 PROJ-001 PLOT-0001 TRN-0001 LYN-0001/0001/0001-REF
 G:\PROJECTS\2008\20080617\20080617\20080617.DWG LAYOUT - SAV.D 5/26/2008 2:51 PM ACADVLK 17.05 LMS TECH PROJECT 11 - H1015 P1E1TAB1E PLTVAL.GPJ PLOTTED: 5/26/2008 2:53 PM BY: BASSETT, HOWARD
 XREFS IMAGES PROJECT NAME



- LEGEND:**
- APPROXIMATE LIMITS OF ORIGINAL AREAS (DASHED LINES SHOW LIMITS FROM 10 OBSERVATION)
 - ACCESS ROAD
 - UTILITY PALE
 - GROUNDWATER RESTRICTION AREA
 - DISTURBANCE RESTRICTION AREA

NOTES:

1. BASE DATA FROM A DRAWING BY MERRILL AERIAL PHOTOGRAPHY.
2. THE DISTURBANCE RESTRICTION AREA BOUNDARY AND THE GROUNDWATER RESTRICTION AREA BOUNDARY WERE FIELD SURVEYED BY TERRY BOWEN AND JAMES W. BOWEN ON A JUNE 17, 2008 SURVEY BY TERRY BOWEN AND JAMES W. BOWEN.



 <p>ARCADIS</p>	<p>BEAZER EAST, INC. ARCHER HEIGHTS SITE BROOKE COUNTY, WEST VIRGINIA</p>
<p>VRRP SITE LAND USE COVENANT RESTRICTION AREAS</p>	
<p>FIGURE -</p>	

**EXHIBIT B
TO LAND USE COVENANT**

DESCRIPTION AND DEPICTION OF DISTURBANCE RESTRICTION AREA

The Disturbance Restriction Area shall include all land within the Eastern Disturbance Restriction Parcel described below and graphically depicted on the attached plat of survey titled "Plat of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and on the attached map titled "VRRP Site Land Use Covenant Restriction Areas":

EASTERN DISTURBANCE RESTRICTION PARCEL

A disturbance restriction parcel of land located east of West Virginia Secondary Route #4 a.k.a. McKim's Ridge Road. Said disturbance restriction parcel being located in the Cross Creek Magisterial District of Brooke County West Virginia. This new disturbance restriction parcel of land being ±3.29 acres of a 7.16 acre parcel (the Eastern Property Parcel of this survey) partitioned from the parent tract of land held by John L. Velegol, Jr. and David Velegol as recorded in Deed Book 182 at Page 174 in the Brooke County Clerk's Office and graphically shown as Parcel 13 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #1 of this survey). The said new disturbance restriction parcel of land being more particularly described as follows:

COMMENCING from a 1' x 1' square stone found being a corner common to the fore mentioned Parent Parcel #1 and the John L. Velegol, Jr. et al. parcel as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 5 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #2 of this survey) and John L. Velegol, Jr. et al. parcel as recorded in Deed Book 287 at Page 756 in the Brooke County Clerk's Office and graphically shown as Parcel 2 on Tax Map CC6 in the Brooke County Assessor's Office (Parent Parcel #3 of this survey).

Thence North 50° 20' 20" East for a distance of 1854.43 feet crossing the said Parent Parcel #1 to a 1" Iron Pipe found this survey being a corner common to the Parent Parcel #1, the Dale and Betty Parr parcel of record in Deed Book 319 at Page 703 in the Brooke County Clerk's Office and graphically shown as Parcel 12 on Tax Map CC6 in the Brooke County Assessor's Office and the Wesley LLC parcel of record in Deed Book 291 at Page 749 in the Brooke County Clerk's Office and graphically shown as Parcel 14 on Tax Map CC6 in the Brooke County Assessor's Office, said pipe being the **POINT OF BEGINNING** for the said new parcel.

Thence with the line of the Wesley LLC parcel, South 00° 04' 47" West for a distance of 59.49 feet to a #8 rebar and cap set this survey #204.

Thence leaving the said line and running across and upon the Parent Parcel #1 with a new line, South 67° 07' 51" West for a distance of 197.44 feet to a #8 rebar and cap set this survey #203.

Thence continuing across and upon the Parent Parcel #1, South 37° 12' 17" West for a distance of 211.20 feet to a #8 rebar and cap set this survey #202.

Thence continuing across and upon the Parent Parcel #1, South 00° 20' 43" West for a distance of 240.73 feet to a #8 rebar and cap set this survey #201.

Thence continuing across and upon the Parent Parcel #1, North 90° 00' 00" West for a distance of 148.31 feet to a #8 rebar and cap set this survey #200.

Thence continuing across and upon the Parent Parcel #1, South 12° 22' 23" West for a distance of 49.69 feet to a #8 rebar and cap set this survey #212.

Thence continuing across and upon the Parent Parcel #1, North 73° 08' 48" West for a distance of 436.38 feet to a #8 rebar and cap set this survey #211.

Thence continuing across and upon the Parent Parcel #1, North 16° 52' 53" East for a distance of 107.73 feet to a #8 rebar and cap set this survey #210.

Thence continuing across and upon the Parent Parcel #1, South 70° 57' 51" East for a distance of 405.52 feet to a #8 rebar and cap set this survey #209.

Thence continuing across and upon the Parent Parcel #1, North 07° 26' 12" East for a distance of 219.87 feet to a #8 rebar and cap set this survey #208.

Thence continuing across and upon the Parent Parcel #1, North 32° 56' 21" East for a distance of 269.55 feet to a #8 rebar and cap set this survey #207.

Thence continuing across and upon the Parent Parcel #1, North 64° 43' 24" East for a distance of 229.47 feet to a #8 rebar and cap set this survey #206 on the line common to the Parent Parcel #1 and said Parr parcel.

Thence with the line common to the fore mentioned Parr parcel, South 63° 08' 58" East a distance of 101.55 feet to the **POINT OF BEGINNING**; containing 143,265 square feet or 3.29 acres more or less as surveyed by Steven A. Clark P.S. #2073 of Triad Engineering in May of 2008 and as shown on the plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" prepared by Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering in May of 2008.

(for graphical depiction see attached plat of survey titled "Plat Of Survey, The Delineation and Partitioning of the Velegol Property, Brooke County, WV" dated May 2008 and see the attached map titled "VRRP Site Land Use Covenant Restriction Areas")

This instrument prepared by: Matthew I. Moses, Esq.
Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center
8th Floor
Pittsburgh, PA 15228

After recording, please return to: Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304-2345

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

The foregoing paper writing was this day, September 23, 2008
at 2:11 a.m., p.m. presented for record in my office, and thereupon, together with
the certificate thereto annexed is admitted to record.

Teste: Sylvia J. Berzo Clerk, Brooke County Commission