

CABELL COUNTY CLERK
COVENANT Clerk 21
Date/Time: 10/29/2002 12:11
Inst #: 147259
Book/Page: 324- / 288-
Recd/Tax: 7.00 .00

NOV 12 2002

LAND USE COVENANT

HUNTINGTON URBAN RENEWAL AUTHORITY, a West Virginia public corporation (hereinafter sometimes referred to as "HURA") 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 in the City of Huntington, Cabell County, West Virginia and more particularly described in Exhibit A attached hereto and incorporated by reference herein (the "Property"). Paragraph 75 of the Agreement requires HURA, as the owner of said Property, to file a Land Use Covenant with the Clerk of the County Commission of Cabell County, West Virginia. The Agreement allows certain levels of contamination to remain on the Property and requires a land use covenant be recorded in the office of the Clerk of the Cabell County Commission for the 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 HURA, hereinafter referred to as "Owner," and the 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:

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P.O. Box 324
Huntington, WV 25708

- (a) The Property will not be used for the extraction of groundwater for any potable or non-potable uses.
 - (b) If during the initial construction of improvements on the Property subsurface soil or groundwater contamination is encountered, the contaminated material will be managed in accordance with "Site Work Package No. 1 Project Manual Dated May 6, 2002 for the Pullman Square Project" prepared by Meacham & Apel Architects, Inc.
3. The Owner shall restrict the uses of the Property such that the Property is not used for any "Residential" purpose as defined in W.Va. Code §22-22-2(bb).
 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 forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

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

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owners, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release signed by the 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 County Commission of Cabell County, 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 21st day of October, 2002.

SIGNED:

HUNTINGTON URBAN RENEWAL
AUTHORITY, a West Virginia public
corporation

By: [Signature]
Its: president

[Signature]
Secretary, Department of Environmental
Protection

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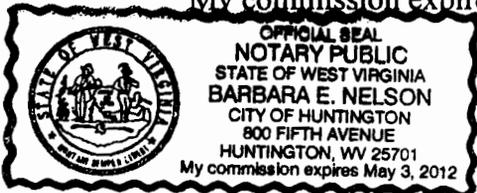
STATE OF WEST VIRGINIA,

COUNTY OF Cabell, TO - WIT:

I, Barbara E Nelson a Notary Public in and for the State and County aforesaid, do hereby certify that Ron E. Smith, of the HUNTINGTON URBAN RENEWAL AUTHORITY, a West Virginia public corporation, whose name is signed to the writing above, bearing date the 21ST day of October, 2002, has this day acknowledged same to be the true act and deed of the Huntington Urban Renewal Authority, a West Virginia public corporation, on behalf of said corporation.

Given under my hand this the 21ST day of October, 2002.

My commission expires May 3, 2012.



Barbara E Nelson
Notary Public

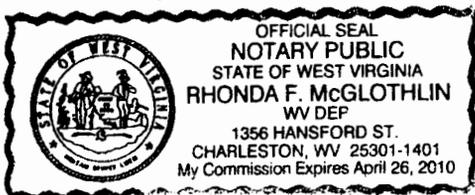
STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, TO - WIT:

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 to the writing above, bearing date the 28th day of October, 2002, has this day acknowledged same to be his true act and deed.

Given under my hand this the 28th day of October, 2002.

My commission expires April 26, 2010.



Rhonda F. McGlothlin
Notary Public

EXHIBIT A

**VOLUNTARY REMEDIATION
PROGRAM SITE**

A certain tract of land lying in the Gideon Magisterial District in the City of Huntington in Cabell County in the State of West Virginia, being located on the northeast portion of Block #118 of the original map of the City of Huntington, said tract of land being described in detail as follows:

Beginning at a #5 Rebar and Cap on the western 10th Street right-of-way line, being an existing corner of the Huntington Urban Renewal Authority (H.U.R.A.) tract;

Thence North 78° 28' 16" West 211.24' to a point;
Thence North 11° 31' 46" East 120.00' to a point;
Thence South 78° 28' 16" East 211.24' to a point;

Thence South 11° 31' 46" West 120.00' to the Point of Beginning containing 0.583 acres or 25,351 square feet more or less and as shown on the attached plat of survey entitled "Huntington Urban Renewal Authority Proposed Pullman Square Site City of Huntington Gideon Magisterial District, Cabell County, West Virginia VOLUNTARY REMEDIATION PROGRAM SITE" prepared by Earnest M. McCarty, Jr., West Virginia Professional Surveyor #1001 for Woolpert LLP dated August 2, 2002.

WEST VIRGINIA, CABELL COUNTY CLERK'S OFFICE
This instrument was this day presented in my
office, and thereupon, together with the certificate,
therein annexed, is admitted to record.
CLERK, CABELL COUNTY COURT

OCT 29 2002

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