

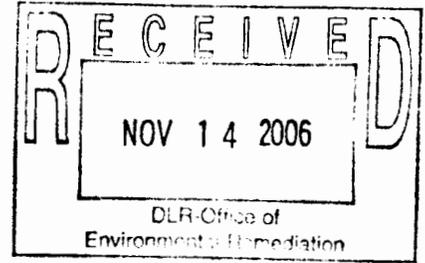


## Engineers and Environmental Consultants

7012 MacCorkle Avenue, SE, Charleston, WV 25304 • (304)342-1400 • FAX (304)343-9031; www.potesta.com

November 9, 2006

Mr. Ken Ellison  
Director  
West Virginia Department of Environmental Protection  
Division of Land Restoration, Office of Environmental Remediation  
601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304



RE: Recorded Land Use Covenant – Completion of Project Requirements  
Former Pennzoil Star City Terminal  
Pennzoil-Quaker State Company & University Commons Morgantown, LLC  
VRA Site # 04871  
Project No. 0101-05-0463-001

Dear Mr. Ellison:

In accordance with the Certificate of Completion (COC) issued to University Commons Morgantown, LLC (UCM) for the above referenced site, UCM is providing a recorded copy of the Land Use Covenant (LUC) to your office. The LUC was recorded on August 2, 2006. In addition, Dr. Pasupathy Ramanan, the West Virginia Department of Environmental Protection – Office of Environmental Remediation Project Manager for the site, has visited the site and verified that the asphalt/concrete capping requirements as specified have been met.

With the receipt of the recorded LUC by your office, UCM and the Licensed Remediation Specialist for this project consider the requirements of the COC met and do not anticipate further assessment or remediation necessary for the site.

If you have any questions or comments, please call me at (304) 342-1400. A copy of this letter will be placed in the Public Repository.

Sincerely,

POTESTA & ASSOCIATES, INC.

David J. Corsaro, LRS  
Senior Scientist

DJC/mh  
Enclosures

c: Mr. Richard Koehler - Collegiate Homes, Inc.  
Mr. Brian Gallagher – Steptoe & Johnson, PLLC  
Mr. Pasupathy Ramanan – WVDEP  
Ms. Wilma McKown – WVDEP

**POTESTA & ASSOCIATES, INC.**

Charleston, West Virginia • Morgantown, West Virginia • Winchester, Virginia

505202  
1322-694

**LAND USE COVENANT  
UNIVERSITY COMMONS MORGANTOWN, LLC  
FORMER STAR CITY TERMINAL PROPERTY  
BOYERS AVENUE EXTENSION  
STAR CITY, MONONGALIA COUNTY, WEST VIRGINIA**

University Commons Morgantown, LLC has entered as a co-applicant into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, located at the Boyers Avenue Extension in Star City, Monongalia County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia. Paragraph 75 of the Agreement requires University Commons Morgantown, LLC, as the Owner of said property, to file a Land Use Covenant with the Clerk of the Monongalia County Commission. The Agreement allows certain levels of contamination to remain on the property and requires a Land Use Covenant be recorded in the office of the Clerk of the Monongalia 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 University Commons Morgantown, LLC, hereinafter referred to as "Owner", and the Secretary have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.
2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:
  - The extraction of groundwater at the site with the exception of obtaining groundwater for the purpose of monitoring water quality at the site.
  - Removal of surface cover (including vapor barriers, asphalt or concrete) from Areas "A" or "B" identified on the attached map (**Drawing 1**), and
  - Construction of structures used for residential human occupancy in Areas "A," "B," or "C" identified on the attached map (**Drawing 1**).
3. The Owner shall restrict the uses of the property to:  
Residential use with surface cover and engineering controls in place as described above.

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 in paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and the Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding Land Use Covenants, W.Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner any person 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 the 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, and successors in accordance with regulations promulgated by the Secretary and successors. 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 Monongalia County Commission, and

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

The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS THEREOF, 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 day of July 12, 2004.

SIGNED:

Richard A. Tobin, Member  
University Commons Morgantown, LLC

Ken Ellison, Director  
Secretary, Department of Environmental Protection



City of  
Roanoke  
Commonwealth  
of Virginia

I, Daniel A. Tobin, a Notary Public in and for the State and County aforesaid, do hereby certify that **University Commons Morgantown, LLC**, whose name is signed to the writing above bearing date the 12 day of July, 2004, has this day acknowledged same to be his true act and deed.

Given under my hand this the 12 day of July, 2004  
My commission expires 03/31/09

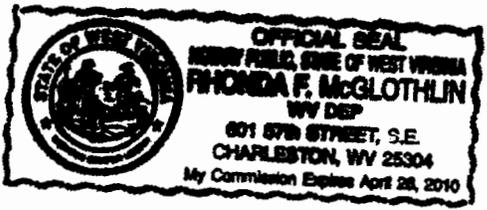
Notary Public

Ken Ellison  
for

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that **Secretary, West Virginia Department of Environmental Protection**, whose name is signed to the writing above, bearing date the 18<sup>th</sup> day of July, 2004 has this day acknowledged same to be his true act and deed.

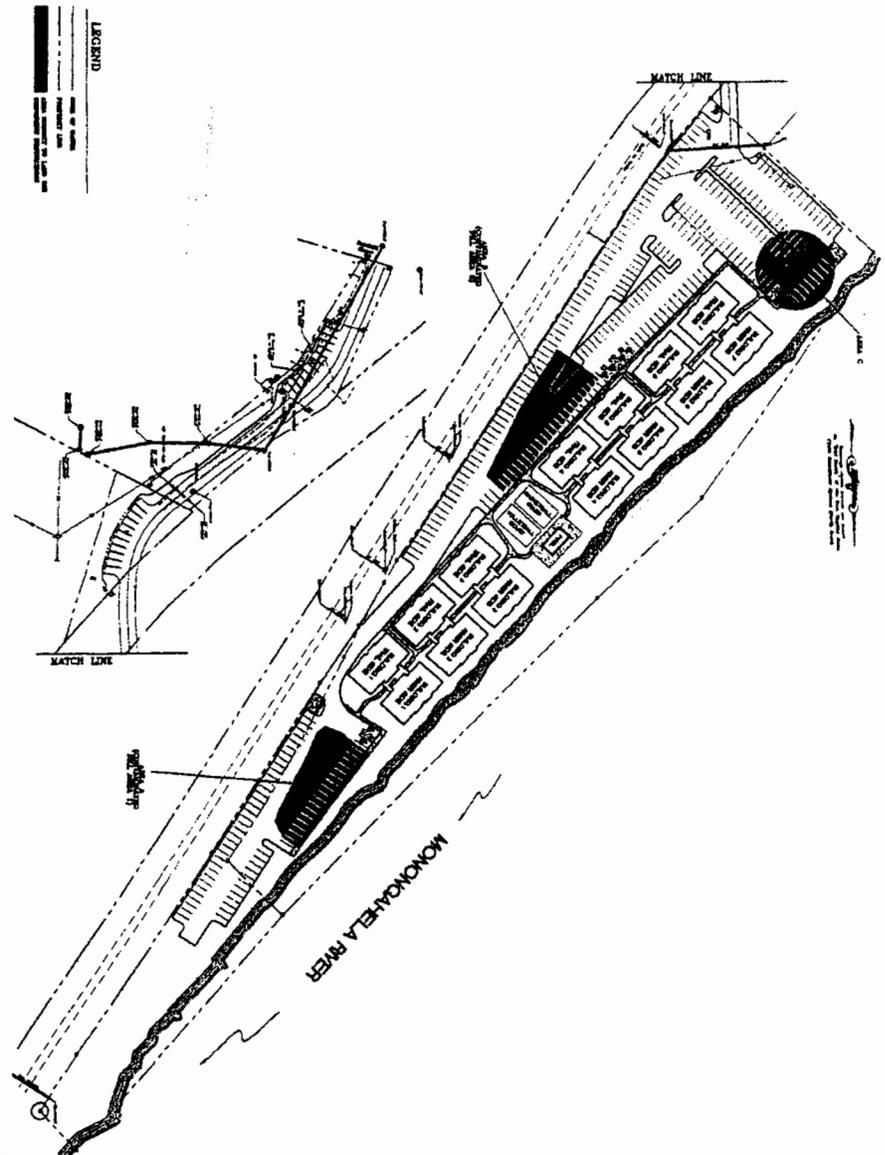
Given under my hand this the 18<sup>th</sup> day of July, 2006  
My commission expires April 26, 2010

Rhonda F. McGlothlin  
Notary Public



Prepared by: Brian D. Gullagher, Esq.  
Steptoe & Johnson, PLLC  
P.O. Box 1616

DRAWING 1



LEGEND

- PROPOSED DRIVE
- PROPOSED SIDEWALK
- PROPOSED PATH
- PROPOSED FENCE
- PROPOSED CURB
- PROPOSED DRIVE
- PROPOSED SIDEWALK
- PROPOSED PATH
- PROPOSED FENCE
- PROPOSED CURB

PROPOSED DRIVE

PROPOSED SIDEWALK

PROPOSED PATH

PROPOSED FENCE

PROPOSED CURB

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA  
TO WIT:

Monongalia County Clerk  
Michael A. Oliverio  
AGREEMENT      Drawer 4  
Date/Time: 08/02/2006 10:59  
Inst #:            225035  
Recd/Tax:        6.00      .00

I, Michael A. Oliverio, Monongalia County Clerk, do hereby certify that the foregoing writing, with certificate thereto annexed, was this day produced to me in my office and duly admitted to record.

Witness my hand

*Michael A. Oliverio*, Clerk