

**LAND USE COVENANT**

BP&D HOLDINGS, LLC has entered into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the **DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE STATE OF WEST VIRGINIA** pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, located at Ann Street in the City of Parkersburg District, Wood County, West Virginia and more particularly described in deeds of record in the office of the Clerk of the County Commission of Wood County, West Virginia. Paragraph 75 of the Agreement requires BP & D Holdings, LLC, as the owner of said property, to file a Land Use Covenant with the Clerk of the Wood 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 Wood 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 BP&D Holdings, 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:

a. No excavation, drilling or subsurface work may occur unless the excavation operations and activities are either (i) performed by a qualified and knowledgeable contractor that is aware of any potential release of a contaminant and has a Health and Safety Plan to protect the public and workers, or (ii) performed by a qualified and knowledgeable contractor working under the supervision of a Licensed Remediation Specialist or a similarly qualified individual or organization,

ATTORNEYS AT LAW  
PO BOX 273  
CHARLESTON WV 25321-0273

b. Buildings on the property shall not have or include basements or other below-grade spaces intended for human occupancy,

c. Buildings shall include effective and properly maintained vapor barriers and sub-slab ventilation systems below the slab of the lowest floor or space designed for human occupancy sufficient to assure workplace safety,

d. No groundwater underlying the property may be extracted except for monitoring purposes.

3. The Owner shall restrict the uses of the property to:

“Non-Residential purposes” only, as that term is defined in W. Va. Code § 22-22-2(q)

4. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to transfer any interest in the property.

5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

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

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

8. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner 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 Wood 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 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 \_\_\_\_ day of January, 2007

SIGNED:

Pamela Susan Fell

Susan Pamela Fell, Assistant Manager  
BP&D Holdings, LLC

Ken Ellison, Director

Secretary, Department of Environmental Protection

STATE OF North Carolina,  
COUNTY OF Brunswick, TO-WIT:

I, Dorothea Mayhew, a Notary Public in and for the State and County aforesaid, do hereby certify that Pamela Susan Fell, whose name is signed to the writing above, bearing date the 29 day of December, 2006 has this day acknowledged same to be his true act and deed.

Given under my hand this the 29 day of December, 2006

My commission expires 03/02/08

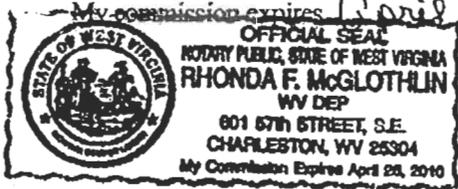
Dorothea Mayhew  
Notary Public

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 18<sup>th</sup> day of January, 2007 has this day acknowledged same to be his true act and deed.

Given under my hand this the 18<sup>th</sup> day of January, 2007

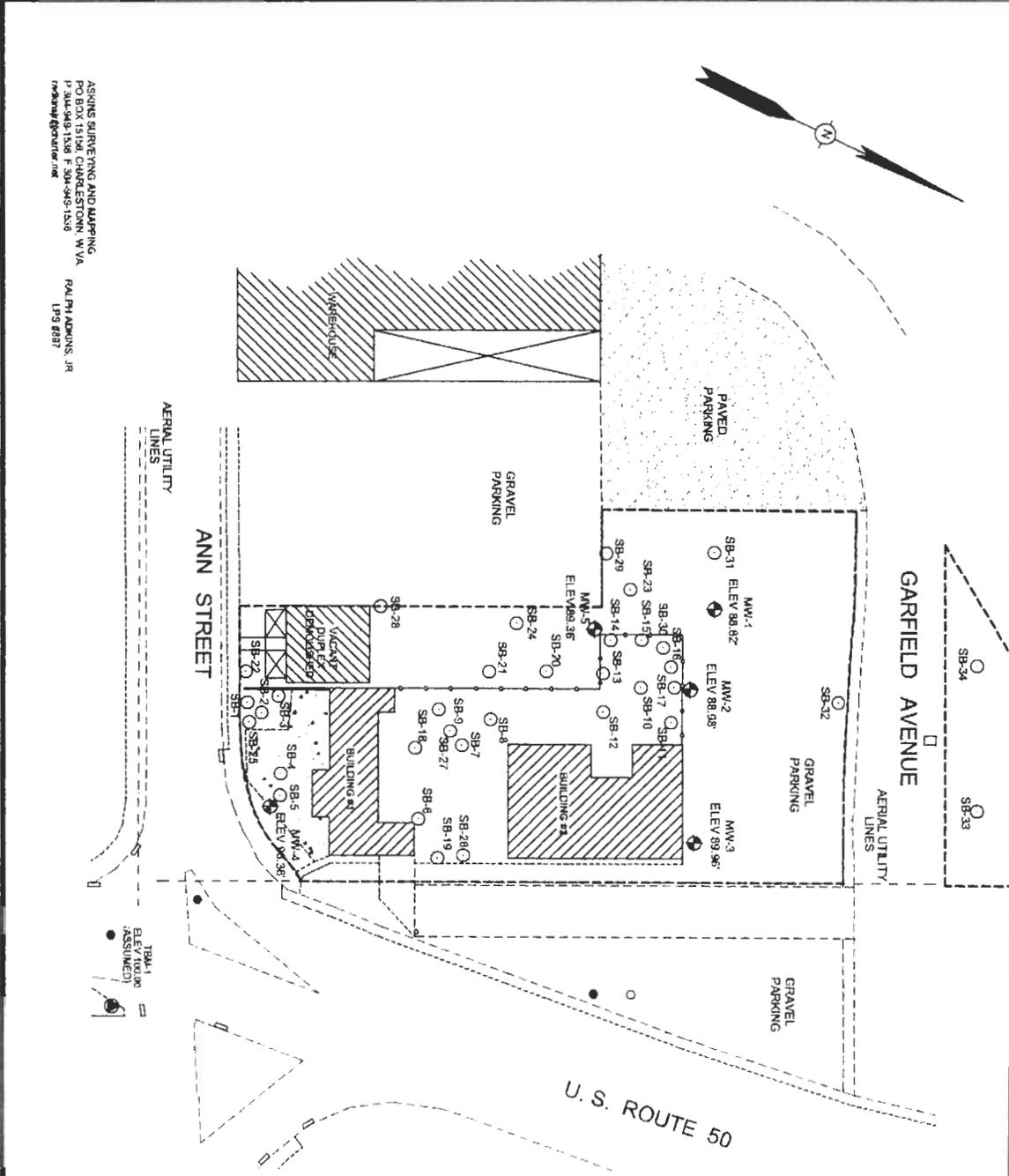
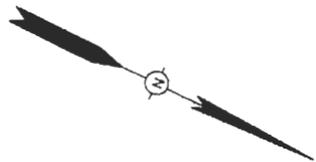
My commission expires April 26, 2010



Rhonda F. McGlothlin  
Notary Public

Include instructions to the Clerk directing that the recorded document be returned to  
Mr. Ken Ellison, Director  
WVDEP, DLR  
601 57<sup>th</sup> Street  
Charleston, WV 25304

JANIE SIX  
WOOD County 09:55:45 AM  
Instrument No 520182  
Date Recorded 01/22/2007  
Document Type AGMT/D  
Book-Page 1108-221  
RAC/Preserve \$5.00 \$1.00



LEGEND

- ◉ MONITORING WELL
- SOIL BORING
- BENCH MARK
- MANHOLE
- DROP-INLET
- UNDERGROUND CABLE MARKER
- PROPERTY LINE

U. S. ROUTE 50

ANN STREET

GARFIELD AVENUE

\*NOTE:  
TM-1 IS THE TOP OF A FIRE HYDRANT,  
AT THE NORTHEASTERLY INTERSECTION  
OF ANN STREET AND U. S. ROUTE 50.

SCALE: 1" = 60'

ASONS SURVEYING AND MAPPING  
70 BOX 5136 CHARLESTON, W. VA.  
RALPH ADKINS, JR.  
LTS 9 8837

<b>Kemtron</b>		REGISTERED PROFESSIONAL SURVEYOR, INC.	
INDEPENDENT SERVICE		PO BOX 1000	
WV00014		SHEPHERD, WV	
PROJECT NO.	DATE	SHEET NO.	TOTAL SHEETS
121703	12/17/03	1	1
PROJECT	SITE MAP		
CLIENT	JONES BLK PLANT		
LOCATION	411 ANN STREET, PARKERSBURG, WEST VIRGINIA		
DATE	WOOD COUNTY, WV		
PROJECT	JONES BLK PLANT		
CLIENT	JONES BLK PLANT		
LOCATION	WOOD COUNTY, WV		
DATE	12/17/03		