

G.G.P. WHEELING 2003, LLC
29TH STREET PROPERTY
WHEELING, OHIO COUNTY, WEST VIRGINIA

LAND USE COVENANT

G.G.P. Wheeling 2003, 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 (VRRRA), W.Va. Code §§ 22-22-1 through 22-22-21 (hereinafter referred to as “the Act”), for a tract consisting of approximately 5.794 acres located in Wheeling District (formerly Webster District), Ohio County, West Virginia, and more particularly described in deeds of record in the office of the Clerk of the County Commission of Ohio County, West Virginia (“the Site”). The Site is “L shaped” and has street frontage along both 27th Street and Chapline Street and includes a 1.79 acre parcel to the west of the “L shaped” area. The Site is part of a larger tract of approximately 14.504 acres located south of 27th Street and west of Chapline Street currently being redeveloped, and which larger tract includes a parcel consisting of approximately 8.71 acres and known as the CSX 29th Street Railyard property, which property has received a Certificate of Completion issued through the West Virginia VRRRA program (April 2000) and which is not included in this covenant.

Paragraph 26 of the Agreement requires G.G.P. Wheeling 2003, LLC, as the owner of said property, to file a Land Use Covenant with the Clerk of the Ohio 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 Ohio 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 G.G.P.Wheeling 2003, LLC, hereinafter referred to as “Owner”, and the Secretary of the Department of Environmental Protection 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. The development of the Site for residential use and ownership.
- b. The extraction of ground water for any use except ground water monitoring.
- c. Prior to initiation of any excavation activities, the Owner shall implement the Contractor Health and Safety Plan (September 2004) and Contractor Soil Management Plan (September 2004) prepared by Arc Environmental, Inc., and approved by the West Virginia Department of Environmental Protection for this Site pursuant to the Agreement.
- d. Creation and maintenance of a soil/asphalt cap as described in the Final Report dated June 1, 2004 as supplemented, and approved by the West Virginia Department of Environmental Protection for this Site pursuant to the Agreement.

3. The Owner shall restrict the uses of the property to non-residential purposes only, as defined by W.Va. Code § 22-22-2(q), and such uses may include the operation of a Lowe’s Home Center.

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 Ohio 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 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 30TH day of SEPTEMBER, 2004.

SIGNED:

G.G.P. WHEELING 2003, LLC

By: [Signature]
Robert I. Glimcher, Managing Member

SECRETARY, DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: [Signature]
Director, DLR

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY, TO-WIT:

I, KAREN L. SISCO, a Notary Public in and for the Commonwealth and County aforesaid, do hereby certify that Robert I. Glimcher, Managing Member, whose name is signed to the writing above, bearing date the 30TH day of SEPTEMBER, 2004, has this day acknowledged same to be his true act and deed.

Given under my hand this 30TH day of SEPTEMBER, 2004.

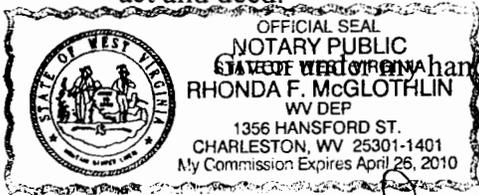


Member, Pennsylvania Association of Notaries
Commission Expires _____

[Signature]
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 Edison, whose name is signed to the writing above, bearing date the 4th day of October, 2004, has this day acknowledged same to be his true act and deed.



Given under my hand this 4th day of October, 2004.

Commission Expires April 26, 2010

[Signature]
Notary Public

County Clerk is directed to return the recorded document to the Secretary of the DEP listed above.

This instrument prepared by: Michael E. Hooper, WVSB #4800, JACKSON KELLY PLLC, 1144 Market Street, Suite 400, P.O. Box 871, Wheeling, WV 26003, P: (304) 233-4000; F: (304) 233-4077
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