

RETURN TO  
DAVID M. MOORE  
211 N. COURT STREET  
LEWISBURG, WV 24901  
(304) 645-5500

RETURN RECORDED DOCUMENT TO THE SECRETARY OF THE WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**LAND USE COVENANT**

**REMEDICATION PARCEL LOT #7**

**AT**

**OLD WHITE COTTAGES ON HOWARD'S CREEK NEIGHBORHOOD**

**CSX Hotels, Inc., d. b. a. The Greenbrier** ("CSX") 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 and about the former Old White Golf Course Maintenance Facility at The Greenbrier Resort in White Sulphur District, Greenbrier County, West Virginia and more particularly described as Lot #7 of the residential development known as Old White Cottages on Howard's Creek (see attached Exhibit "A" and Exhibit "B") in a deed of record in the office of the Clerk of the County Commission of Greenbrier County, West Virginia. Paragraph 75 of the Agreement requires CSX, as the owner of said property, to file a Land Use Covenant with the Clerk of the Greenbrier 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 Greenbrier 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 CSX, 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) The extraction of groundwater for any potable or non-potable purpose.
  - b) Excavation or disturbance activities that decrease the permanent finished ground elevation below 1831.0-feet (utilizing NAD 83 reference datum). [Elevation 1831.0-feet is approximately 1.2-feet below the finish ground surface elevation of 1832.2-feet presently occurring within the buildable portion of the property (the "Base Ground Surface"), which area was graded and filled to meet or exceed the calculated 100-year flood plain level.] Temporary ground disturbance activities are permitted above ground elevation 1829.0-feet (or approximately 3.2-feet below the Base Ground Surface), provided that any area so disturbed is promptly restored to the pre-disturbance ground elevation.

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3. The Owner shall restrict the uses of the property to: Single-family "Residential" (and related open space, supporting utility infrastructure and road/driveway construction) purposes.

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 her successor in accordance with regulations promulgated by the Secretary or her successor. Within 5 days of

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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 Greenbrier 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 12<sup>th</sup> day of August, 2005.

SIGNED:

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By Ken Ellison  
Name Ken Ellison  
Title Director

**CSX HOTELS, INC., d. b. a. The Greenbrier,**  
a West Virginia corporation

By Theodore J. Kleisner  
Theodore J. Kleisner, President

RECEIVED  
Office of Oil & Gas

AUG 04 2005

**WV** Department of  
Environmental Protection

RETURN RECORDED DOCUMENT TO THE SECRETARY OF THE WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF WEST VIRGINIA  
COUNTY OF Kanawha

I, Patricia J White, a Notary Public in and for the State and County  
aforesaid, do hereby certify that Ken Ellison,  
of the **WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**, whose  
name is signed to the writing above, bearing date the 12<sup>th</sup> day of August, 2005,  
has this day acknowledged same to be his true act and deed.

Given under my hand this the 12<sup>th</sup> day of August, 2005  
My commission expires October 8, 2009

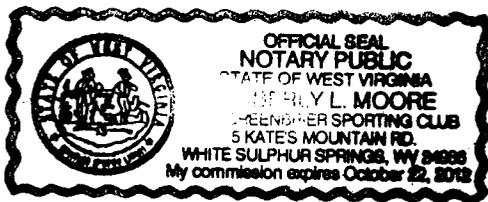


Patricia J. White  
Notary Public

STATE OF WEST VIRGINIA  
COUNTY OF GREENBRIER

I, Kimberly L. Moore, a Notary Public in and for the State and County  
aforesaid, do hereby certify that Theodore J. Kleisner, President of **CSX HOTELS, INC. d. b. a.**  
**The Greenbrier**, whose name is signed to the writing above, bearing date the 12<sup>th</sup> day of  
August, 2005, has this day acknowledged same to be his true act and deed.

Given under my hand this the 4<sup>th</sup> day of August, 2005.  
My commission expires 10-22-12.

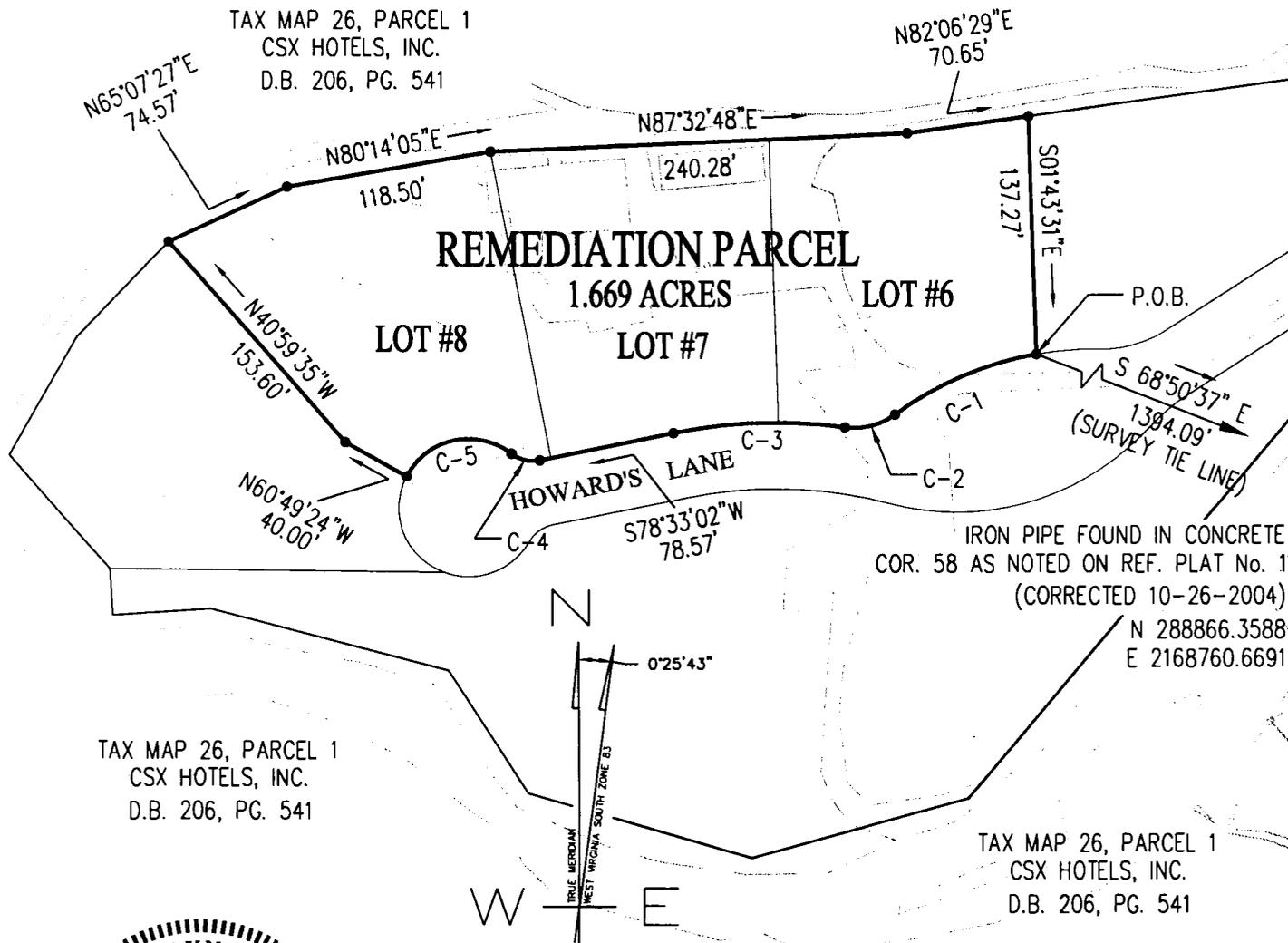
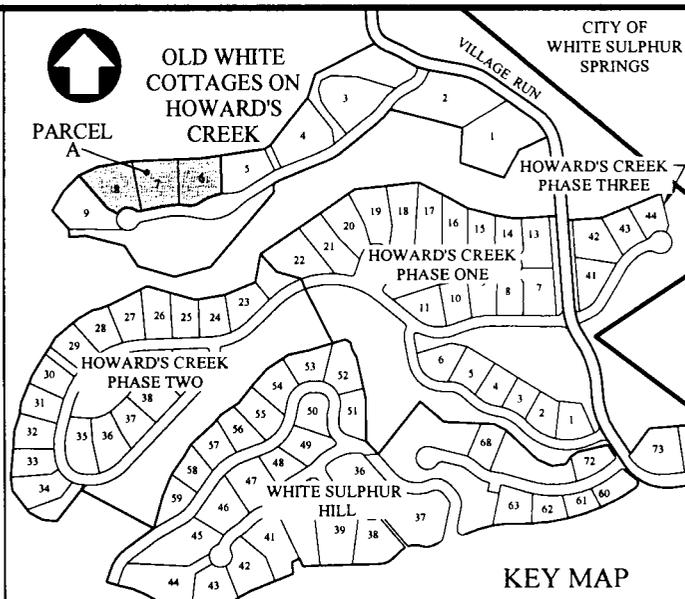


Kimberly L. Moore  
Notary Public

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Office of Oil & Gas  
AUG 04 2005  
WV Department of  
Environmental Protection

Reference Plats / Notes:

- "Ashford General Hospital, White Sulphur Springs W. VA., Reservation Map". U.S. Engineer Office, January, 1943 Recorded in the Greenbrier County Courthouse Map Book 4, Cabinet B, File 65 & 66.
- "Subdivision Plot, Old White Cottages on Howard's Creek Neighborhood," March 10, 2005, DAA Plan No. B00118-28G, Recorded in the Greenbrier County Courthouse Deed Book 496 at page 451 Map Book 5, Cabinet No. B-174
- For corrected coordinates for Monument 58 see "Subdivision Plot Howard's Creek Phase Three Neighborhood", DAA Job Number B00118-28E Recorded in the Greenbrier County Courthouse Deed Book 495, at page 743, Map Book 5, Cabinet B-164.



TAX MAP 26, PARCEL 1  
CSX HOTELS, INC.  
D.B. 206, PG. 541

TAX MAP 26, PARCEL 1  
CSX HOTELS, INC.  
D.B. 206, PG. 541



**EXHIBIT A**  
**REMEDATION PARCEL**  
**LOTS #6, #7, AND #8**  
**OLD WHITE COTTAGES ON**  
**HOWARD'S CREEK NEIGHBORHOOD**  
**1.669 ACRES, MORE OR LESS**

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BEARING
C-1	26°07'07"	196.08	89.38	45.48	88.61	S 67°10'08" W
C-2	43°38'04"	40.00	30.46	16.01	29.73	S 75°55'36" W
C-3	19°11'36"	297.00	99.49	50.22	99.03	S 88°08'50" W
C-4	49°27'30"	20.00	17.26	9.21	16.73	N 76°43'13" W
C-5	100°37'42"	40.00	70.25	48.20	61.56	S 77°41'41" W



**Draper Aden Associates**

Engineering • Surveying • Environmental Services

2206 South Main Street  
Blacksburg, VA 24060  
540-552-0444 Fax: 540-552-0291

Richmond, VA  
Charlottesville, VA  
Hampton Roads, VA

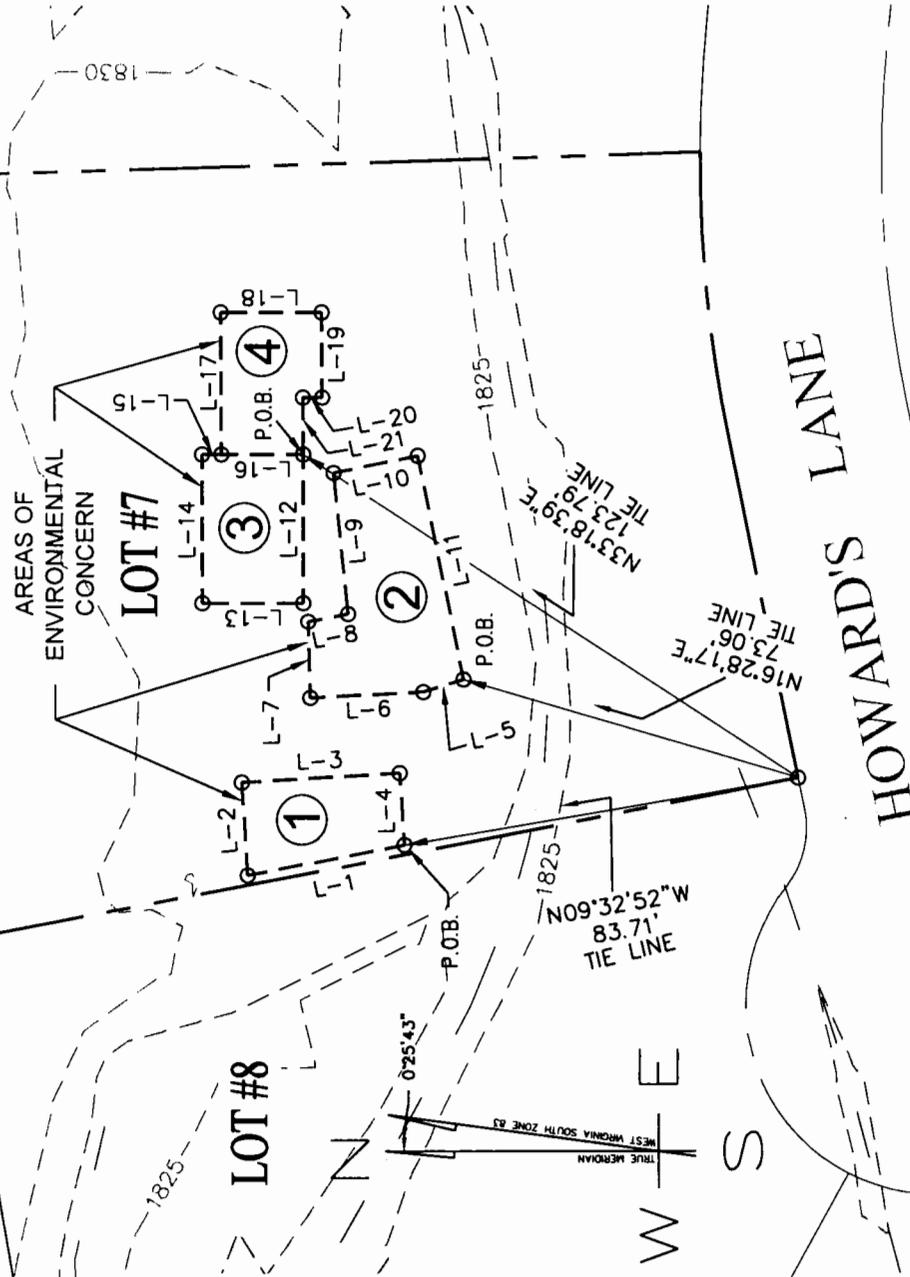
DRAWN DLD  
CHECKED LWK

SCALE 1" = 100'  
DATE 04-29-05

PLAN NO. L-B00118-28G

REMEDIATION PARCEL  
LOT NO. 7

TAX MAP 26, PARCEL 1  
CSX HOTELS, INC.  
D.B. 206, PG. 541



1. TOPOGRAPHY SHOWN HEREON IS AS PER DAA FIELD TOPO DATED 10-26-01, PLAN NUMBER B00118-28.
2. BOUNDARY INFORMATION FOR "AREAS OF ENVIRONMENTAL CONCERN" PROVIDED BY OTHERS.
3. SUBDIVISION PLAT AND DEED INFORMATION FOR OLD WHITE COTTAGES ON HOWARD'S CREEK NEIGHBORHOOD RECORDED IN THE GREENBRIER COUNTY COURTHOUSE IN DEED BOOK 496 AT PAGE 451 MAP BOOK 5, CABINET NO. B-174.



AREAS OF ENVIRONMENTAL CONCERN

- ① AREA 1 - 0.013 ACRE
- ② AREA 2 - 0.026 ACRE
- ③ AREA 3 - 0.015 ACRE
- ④ AREA 4 - 0.013 ACRE

LINE TABLE		
LINE	LENGTH	BEARING
L-1	33.28	N 10°55'01" W
L-2	19.37	N 86°35'00" E
L-3	33.00	S 03°25'00" E
L-4	15.03	S 86°35'00" W
L-5	8.81	N 17°27'37" W
L-6	23.61	N 02°56'34" W
L-7	16.09	N 88°33'43" E
L-8	8.47	S 10°59'50" E
L-9	29.67	N 84°13'20" E
L-10	17.91	S 11°27'29" E
L-11	47.87	S 78°32'31" W
L-12	31.15	N 90°00'00" W
L-13	21.00	N 00°00'00" E
L-14	31.15	N 90°00'00" E
L-15	4.01	S 00°00'00" E
L-16	16.99	S 00°00'00" E
L-17	30.00	N 90°00'00" E
L-18	21.00	S 00°00'00" E
L-19	18.00	N 90°00'00" W
L-20	4.01	N 00°00'00" E
L-21	12.00	N 90°00'00" W

EXHIBIT B  
AREAS OF ENVIRONMENTAL CONCERN #1, #2, #3, AND #4

OLD WHITE COTTAGES ON  
HOWARD'S CREEK NEIGHBORHOOD  
REVISED 06-01-2005

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Richmond, VA  
2206 South Main Street  
Blacksburg, VA 24060  
540-552-0444 Fax: 540-552-0291

DRAWN	DLD	SCALE	1" = 40'
CHECKED	LWK	DATE	04-29-05

PLAN NO. L-B00118-28GB