

**LAND USE COVENANT**

The Raleigh County Commission on Aging, Inc. 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 1614 South Kanawha Street, Beckley, in Town District, Raleigh County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Raleigh County, West Virginia. Paragraph VII of the Agreement requires The Raleigh County Commission on Aging, Inc., as the owner of said property, to file a Land Use Covenant with the Clerk of the Raleigh 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 Raleigh 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 The Raleigh County Commission on Aging, Inc., 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. Development of the site for residential use and ownership; and
  - b. The extraction of ground water for any use except for ground water monitoring.
3. The Owner shall restrict the uses of the property to:  
Non-residential use only.

BETTY RIFFE  
 RALEIGH COUNTY 09:44:05 AM  
 Instrument No 50193920  
 Recorded Date 09/20/2005  
 Document Type MISC/R  
 Book-Page 5019-3920  
 Rec/Add Fee 0.00 0.00  
 Transfer Tax 0.00

KEN ELLISON  
 601 57TH STREET SE  
 CHARLESTON, WV 25304-2345

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 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.

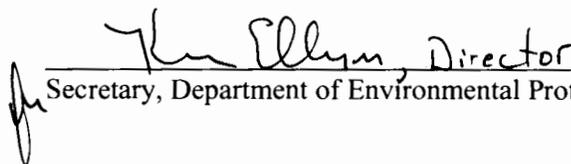
11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the Secretary of the West Virginia Department of Environmental Protection, or his successor in 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 Raleigh 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 19<sup>th</sup> day of September, 2005

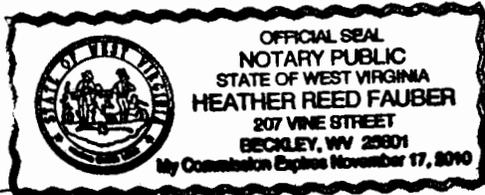
SIGNED:

  
\_\_\_\_\_  
Property Owner

  
\_\_\_\_\_  
Secretary, Department of Environmental Protection

I, Heather Reed Fauber Notary Public in and for the State and County aforesaid, do hereby certify that Jack Tanner, whose name is signed to the writing above, bearing date the 19<sup>th</sup> day of September, 2005, has this day acknowledged same to be his true act and deed.

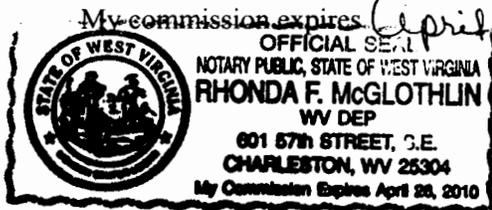
Given under my hand this the 19<sup>th</sup> day of September, 2005  
My commission expires 11/17/2010



Notary Public Heather Reed Fauber

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 19<sup>th</sup> day of September, 2005, has this day acknowledged same to be his true act and deed.

Given under my hand this the 19<sup>th</sup> day of September, 2005  
My commission expires April 26, 2010



Rhonda F. McGlothlin  
Notary Public

Please return the recorded document to the Secretary of the WVDEP, Attn: Wilma Pomeroy, Office of Environmental Remediation, West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, WV 25304.

## ATTACHMENT NO. 1

**BOUNDARY DESCRIPTIONS****Tract One**

Subject property being Parcels 50.0, 51.0, 52.0 and 53.0, Tax Map 43, (Raleigh County Commission on Aging, Inc., Book 5012, page 6688,) also known as Lots 184, 185, 186, the eastern portion of Lot 194, Lots 195, 196, and 197, Map of Atkinsville (Map Book 3, page 40 D,) situate in the City of Beckley, Town District, Raleigh County, West Virginia, more particularly described as follows:

**BEGINNING** at a 1 3/4 inch diameter iron pipe (found,) the northeastern boundary corner of Parcel 49.0, Tax Map 43 (the western portion of Lot 194, Map of Atkinsville, Map Book 3, page 40 D, Childers Enterprises, Inc., D/B/A General Heating and Air Conditioning, Roll 42, page 2780,) being a point on the southern right-of-way line of South Kanawha Street (West Virginia State Route 210, paved/public right-of-way;) thence following the southern right-of-way line of said South Kanawha Street, South 62°41'18" East, 184.88 feet to a P.K. Nail (placed) at the intersection of the southern right-of-way line of said South Kanawha Street and the western right-of-way line of "H" Street (paved/public right-of-way;) thence leaving the southern right-of-way line of said South Kanawha Street and following the western right-of-way line of said "H" Street, South 25°56'00" West, 254.25 feet to a 5/8 inch diameter iron rebar (placed) at the intersection of the western right-of-way line of said "H" Street and the northern right-of-way line of Curtis Street (paved/public right-of-way;) thence leaving the western right-of-way line of said "H" Street and following the northern right-of-way line of said Curtis Street, North 64°30'00" West, 148.72 feet to a 5/8 inch diameter iron rebar (placed,) the southeastern boundary corner of Parcel 54.0, Tax Map 43 (Childers Enterprises, Inc., D/B/A General Heating and Air Conditioning, Roll 42, page 2780;) thence leaving the northern right-of-way line of said Curtis Street and following the eastern boundary line of said Parcel 54.0, North 25°01'11" East, 137.63 feet to a 3/4 inch diameter Steel Pin (found,) the northeastern boundary corner of said Parcel 54.0; thence following the northern boundary line of said Parcel 54.0, North 64°03'57" West, 29.99 feet to a 5/8 inch diameter iron rebar (placed,) the southeastern boundary corner of said Parcel 49.0; thence following the eastern boundary line of said Parcel 49.0, North 24°05'46" East, 122.28 feet to the point of **BEGINNING**, containing 0.975 acres more or less, as shown on a drawing entitled, "Boundary and Topographic Survey for:

Raleigh County Commission on Aging, Inc.," Project Number 05S-021, dated April 12, 2005, prepared by Jones & Jordan Engineering, Inc., Beckley, West Virginia.

#### **Tract Two**

Subject property being Parcel 82.0, Tax Map 43, (Raleigh County Commission on Aging, Inc., Book 5012, page 6688,) also being a portion of Block C, Map of Atkinsville (Map Book 3, page 40 D,) situate in the City of Beckley, Town District, Raleigh County, West Virginia, more particularly described as follows:

**BEGINNING** at a 5/8 inch diameter iron rebar (found,) a point on the eastern right-of-way line of "H" Street (paved/public right-of-way,) being the southwestern boundary corner of Parcel 85.0, Tax Map 43 (Lot 200, Map of Atkinsville, Map Book 3, page 40 D, Raleigh County Post No. 32 of the American Legion, Roll 4, page 2316;) thence leaving the eastern right-of-way line of said "H" Street and following the southern boundary lines of said Parcel 85.0, Parcel 84.0, Tax Map 43 (Lot 201 of said Map of Atkinsville, Raleigh County Post No. 32 of the American Legion, Roll 4, page 2316,) and Parcel 83.0, Tax Map 43 (Raleigh County Post No. 32 of the American Legion, Roll 4, page 2316,) South 62°26'47" East, 127.56 feet to a 5/8 inch diameter iron rebar (placed,) a point on the common boundary line with Parcel 81.0, Tax Map 43 (Louis Hoskins and Sarah Hoskins, Deed Book 431, page 246;) thence following the common boundary line of said Parcel 81.0 the following two (2) bearings and distances: 1) South 24°05'29" West, 75.00 feet to a 5/8 inch diameter iron rebar (placed,) 2) South 62°17'51" West, 132.52 feet to a P.K. Nail (placed,) the northwestern boundary corner of said Parcel 81.0, being a point on the eastern right-of-way line of said "H" Street; thence following the eastern right-of-way line of said "H" Street, North 27°53'09" East, 74.52 feet to the point of **BEGINNING**, containing 0.223 acres more or less, as shown on a drawing entitled, "Boundary Survey for: Raleigh County Commission on Aging, Inc.," Project Number 05S-021, dated April 12, 2005, prepared by Jones & Jordan Engineering, Inc., Beckley, West Virginia.



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west virginia department of environmental protection

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Division of Land Restoration  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
(304) 926-0455

Joe Manchin III, Governor  
Stephanie R. Timmermeyer, Cabinet Secretary  
www.wvdep.org

**September 19, 2005**

Mr. Jack Tanner  
Raleigh County Commission on Aging, Inc.  
422 City Avenue  
Beckley, WV 25801

RE: Certificate of Completion, VRA Project # 07259  
1614 South Kanawha Street, Beckley, Raleigh County

Dear Mr. Tanner:

I am pleased to provide you the accompanying Certificate of Completion for your site located at 1614 South Kanawha Street, Beckley, West Virginia. As you know, the certificate contains a provision relieving the persons who undertook the remediation, as well as subsequent successors and assigns, from all liability to the state as provided under Chapter 22 Article 22 of the West Virginia Code. This provision shall remain effective as long as the property complies with the applicable standards in effect at the time the certificate of completion was issued. This certificate is subject to the reopener provisions of section fifteen of the article, and includes land-use covenants as provided in section fourteen. In this manner, we trust that the property will remain in productive and protective use for the citizens of our State.

The Certificate of Completion issued for the subject site will become effective once the appended Land Use Covenant is recorded. Please make arrangements to have the land use covenant properly recorded with the Raleigh County Clerk, and request the Clerk to return a copy of the recorded instrument to my attention.

I thank you for your participation in the Voluntary Remediation program, and ask that you feel free to contact our staff or me if you have any questions or comments related to the process.

Sincerely,

Ken Ellison  
Director

Enclosure

cc: John Dempsey, Project Manager  
Don Martin  
File # 07259

Promoting a healthy environment.