

LAW OFFICES OF
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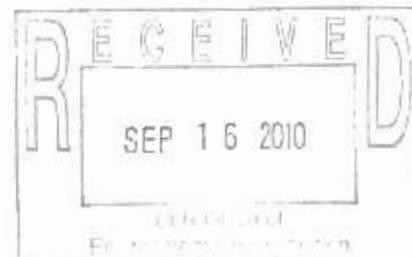
JAMES V. CANN

GREGORY A. MORGAN

JAMES CANN (1970)

LLOYD H. YOUNG (1978)

September 15, 2010



Mr. Ken Ellison, Director
WVDEP, Division of Land Restoration
601 57th Street
Charleston, WV 25304

Re: Land Use Covenant for former Adamston Glass
Adams Avenue and North Street, Clarksburg
Harrison County, VRP #08442

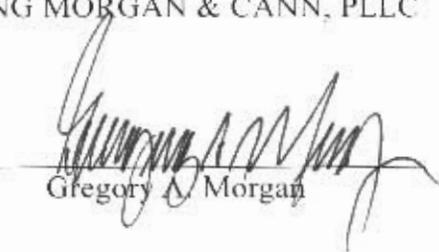
Dear Mr. Ellison:

Enclosed is a copy of the Land Use Covenant regarding the above-referenced matter.

Very Truly Yours,

YOUNG MORGAN & CANN, PLLC

By _____


Gregory A. Morgan

GAM/pjs

Enclosure

cc:w/encl.:

Martin Howe, City Manager

G:\DOC\CITY\BRNFIELD\ELLISON\LOI.DOC

Susan J Thomas
HARRISON County 11:18:25 AM
Instrument No 201000033541
Date Recorded 09/13/2010
Document Type CVR
Book-Page 1455-50
Recording Fee \$7.00
Additional \$6.00

BK 1455 PG0050

Applicant: City of Clarksburg
VRA Project # 08442

LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

As shown in the attached Plat of Survey and Legal Description (5.6 acres).

Activities on and uses of the above describe property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- a) Residential use as defined in Chapter 22 Article 22 of the WV Code, including housing of human beings, schools, day care centers, nursing homes, or other residential-style facilities or recreational areas,
- b) The extraction of groundwater for any use other than monitoring.
- c) Excavation, trenching, drilling, or other intrusive activities without the use of a Project Specific Health and Safety Plan (HASp) and a soil management plan.
- d) Disturbance of soil within the capped containment areas labeled Removal Area "B" and Removal Area "A" as indicated in the drawing titled "Figure 1. Location of "No Dig" Areas and Institutional Controls, Former Adamston Flat Glass Property, WV DEP VRP Project#08442" being attached herein and made a part of this Land Use Covenant, without the approval and guidance of a West Virginia Licensed Remediation Specialist and the use of a project specific soil management plan.
- e) Structures shall be limited to slab-on-grade construction only. Basements shall not be installed without the approval and guidance of a West Virginia Licensed Remediation Specialist and the use of a project specific soil management plan.

The current owners of record of the property, and their contact information, are:

City of Clarksburg, West Virginia
222 W. Main Street
Clarksburg, WV 26301

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following are all of the holders of this covenant:

City of Clarksburg, West Virginia
222 W. Main Street
Clarksburg, WV 26301

YOUNG MORGAN AND CANN, PLLC
363 LEE AVENUE
CLARKSBURG, WV 26301-3757

The facts regarding the remediation response project at this property are:

Former glass manufacturing operations on the site left residual soil contamination consisting of heavy metals and groundwater contamination consisting of both semi-volatile organic compounds (SVOCs) and heavy metals.

Assessment of the residual contamination at the site using non-residential standards determined the present contaminants of concern (COCs) to be Arsenic and Lead for soils and the following list of contaminants for groundwater: Arsenic, Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(k)fluoranthene, Benzo(a)pyrene, Dibenzo(a,h)anthracene.

Restrictions on the use of groundwater at the site through this Land Use Covenant are sufficient to limit the risk of exposure to groundwater COCs.

Previous U.S. EPA approved mitigation measures have placed contaminated soils within capped or sealed containment areas.

The risks of exposure to contaminated soils (metals) through incidental ingestion and inhalation remain above acceptable and approved risk levels for on and off-site commercial workers.

Maintaining the previously capped soils and adherence with this Land Use Covenant are considered sufficient to reduce the risk of exposure below the acceptable risk levels.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

The owner shall conduct inspections of the property to monitor compliance with this Land Use Covenant at least 1 time per year, and shall submit two (2) signed copies of the inspection monitoring report to the WVDEP, DLR headquarters in Charleston, within thirty (30) days of the inspection.

This covenant relieves the applicant and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant was issued.

This covenant shall not be amended, modified or terminated except by written instrument executed in accordance with W. Va. Code § 22-22B-10, by and between the Owner at the time of the proposed amendment, modification or termination, the Secretary of the West Virginia Department of Environmental Protection, and the holders of this covenant. 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 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 administrative record for the environmental response project reflected in this covenant is maintained in the West Virginia Department of Environmental Protection, Division of Land Restoration, 601 57th Street, Charleston, WV 25304, 304-926-0455, and is entitled "Adamston Glass, WVDEP VRP Project # 08442".

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control.

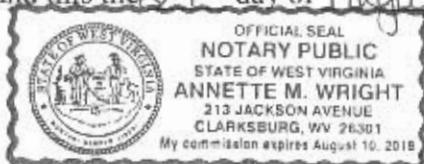
IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED: *Martin Howe* Date: 8/24/10
Property Owner – City of Clarksburg

I, Annette M. Wright, a Notary Public in and for the County of Hamison, State of West Virginia, do hereby certify that the holder(s) whose (name is) (names are) signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder(s).

Given under my hand this the 24th day of August, 2010.

Notary Public



WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

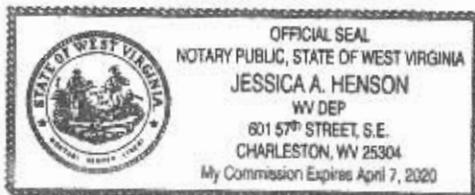
SIGNED *Ken Ellison* Date: September 8, 2010

Ken Ellison, Director, Division of Land Restoration

I, Jessica Henson, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that the holder(s) whose (name is) (names are) signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder(s).

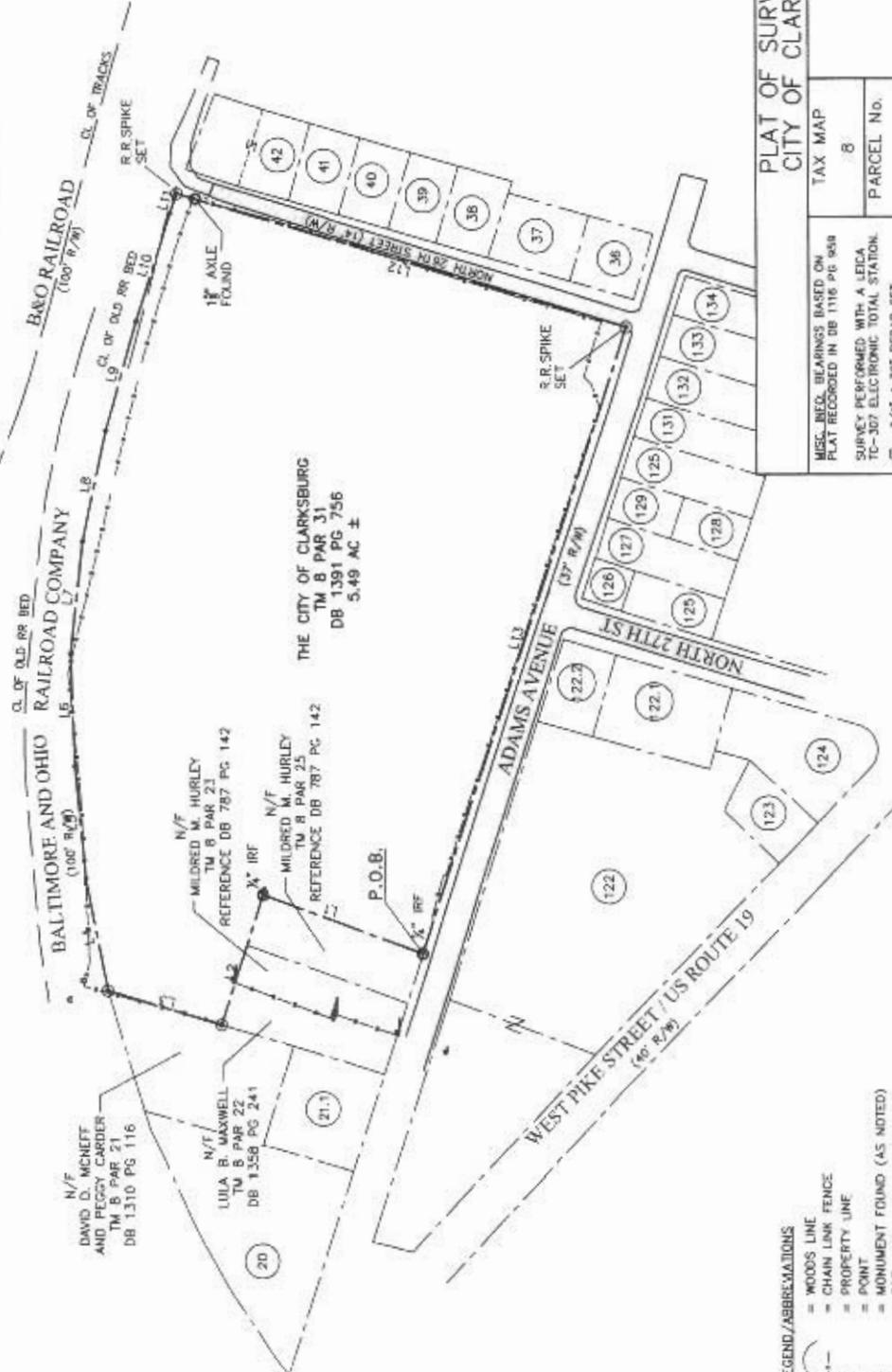
Given under my hand this the 8th day of September, 2010.

Notary Public





NOTE: THIS SURVEY WAS CONDUCTED WITHOUT BENEFIT OF A LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHT-OF-WAYS, EASEMENTS OR RESTRICTIONS



LINE	BEARING	LENGTH
L1	N20°07'02"E	150.08
L2	N72°07'55"W	119.29
L3	N16°57'05"E	104.11
L4	N78°57'33"E	100.00
L5	N84°41'33"E	100.00
L6	N87°49'33"E	100.00
L7	S83°52'27"E	100.00
L8	S78°06'27"E	100.00
L9	S74°21'27"E	100.00
L10	S72°35'27"E	100.00
L11	S70°59'27"E	18.58
L12	S16°41'49"W	412.53
L13	N72°00'00"W	582.65

NOTE: NORTHERLY BOUNDARY LINE AS SHOWN ON VALUATION MAP V56.1/512b (V09-412)

NOTE: THE TRACT SHOWN BEING THE SAME LANDS CONVEYED TO CITY OF CLARKSBURG AS RECORDED IN DEED BOOK 1391 PAGE 756 AT THE OFFICE OF THE CLERK, HARRISON COUNTY, WEST VIRGINIA.

- LEGEND/ABBREVIATIONS**
- WOODS LINE
 - CHAIN LINK FENCE
 - PROPERTY LINE
 - POINT
 - MONUMENT FOUND (AS NOTED)
 - TOTAL
 - RIGHT-OF-WAY
 - POINT OF BEGINNING
 - P.D.B. TAX MAP NUMBER
 - PAR PARCEL NUMBER
 - P/O PART OF
 - N/F NOW OR FORMERLY
 - IRF REBAR FOUND (size as noted)
 - (S 45° 45' E 100.0') = DEED BEARING & DISTANCE



**PLAT OF SURVEY FOR
CITY OF CLARKSBURG**

SHOWING BOUNDARY SURVEY on the lands of CITY OF CLARKSBURG SITUA TE		HARRISON COUNTY NOVEMBER 2008	
TAX MAP 8	PARCEL No. 31	COAL-CITY DISTRICT SCALE: 1" = 100'	WEST VIRGINIA
MISC. BEARINGS BASED ON PLAT RECORDED IN DB 1116 PG 588		JOB. No. 50-3813	LAYOUT TAB. Made
SURVEY PERFORMED WITH A LEICA TC-307 ELECTRONIC TOTAL STATION. ± = 3/A" ± 30" REBAR SET		OWNER: CITY OF CLARKSBURG	CAO FILE: R:\090-3813\SURVEY\ADAMSTON FLAT GLASS 21
THRASHER ENGINEERING, INC. 30 COLUMBIA BLVD. CLARKSBURG, WV 26001 PHONE 304-624-4008		REFERENCE: DB 1391 PG 756	DRAWN: DBS SURVEY: RL BK: 08-63

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A DESCRIPTION OF SURVEY
for
THE CITY OF CLARKSBURG
on the lands of
THE CITY OF CLARKSBURG

A CERTAIN TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF CLARKSBURG (FORMERLY THE TOWN OF ADAMSTON), COAL-CITY DISTRICT, HARRISON COUNTY, WEST VIRGINIA, THE CENTER OF WHICH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at a ¼" iron rebar found at a corner common to City of Clarksburg (Tax Map 8 Parcel 31, Deed Book 1391 Page 756) and Mildred M. Hurley (Tax Map 8 Parcel 25, Reference Deed Book 787 Page 142) and on the northerly right-of-way line of Adams Avenue;

Thence, leaving said Adams Avenue and with said Mildred M. Hurley (Parcel 25), North 20 degrees 07 minutes 02 seconds East, a distance of 150.08 to a ¼" iron rebar found at a corner common to said City of Clarksburg and said Mildred M. Hurley (Parcel 25);

Thence, partially with said Mildred M. Hurley (Parcel 25) and Mildred M. Hurley (Tax Map 8 Parcel 23, Reference Deed Book 787 Page 142) and Lula B. Maxwell (Tax Map 8 Parcel 22, Deed Book 1358 Page 241), North 72 degrees 07 minutes 55 seconds West, a distance of 119.29 feet to a ¾" iron rebar set on the northwesterly corner of said Lula B. Maxwell and on the easterly line of David D. McNeff (Tax Map 8 Parcel 21, Deed Book 1310 Page 116);

Thence, leaving said Lula B. Maxwell and with said David D. McNeff, North 16 degrees 57 minutes 05 seconds East, a distance of 104.11 feet to a ¾" set on the southerly right-of-way line of the B&O Railroad (Plat WV 134B 07-13-93);

Thence, leaving said David D. McNeff and with said B&O Railroad for eight (8) lines, North 78 degrees 57 minutes 33 seconds East, a distance of 100.00 feet to a point;

Thence, North 84 degrees 41 minutes 33 seconds East, a distance of 100.00 feet to a point;

Thence, North 87 degrees 49 minutes 33 seconds East, a distance of 100.00 feet to a point;

Thence, South 83 degrees 52 minutes 27 seconds East, a distance of 100.00 feet to a point;

Thence, South 78 degrees 06 minutes 27 seconds East, a distance of 100.00 feet to a point;

Thence, South 74 degrees 21 minutes 27 seconds East, a distance of 100.00 feet to a point;

Thence, South 72 degrees 35 minutes 27 seconds East, a distance of 100.00 feet to a point;

Thence, South 70 degrees 59 minutes 27 seconds East, a distance of 18.58 feet to a rail road spike set on the westerly right-of-way line of North 26th Street;

Thence, leaving said B&O Railroad and with said North 26th Street, South 16 degrees 41 minutes 49 seconds West, a distance of 395.58 feet to a rail road spike set on the northerly right-of-way line of said Adams Avenue;

Thence, leaving said North 26th Street and with said Adams Avenue, North 72 degrees 00 minutes 00 seconds West, a distance of 582.65 feet to the **Place of Beginning**, containing 5.34 Acres, MORE OR LESS, as shown on a plat attached hereto and made part of this description.

The tract or parcel of land herein described being the same lands conveyed to City of Clarksburg as recorded in Deed Book 1391 Page 756 at the Office of the Clerk, Harrison County, West Virginia.

Michael R. Hyman, P.S. 983
November 2008

GRAPHIC SCALE



Land Use Restriction

Activities on an area of the shown property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. These activities and uses include, but are not limited to:

- a) Residential use as defined in Chapter 23, Article 22 of the WV Code, including housing of human beings, schools, day care centers, nursing homes, or other residential-type facilities or recreational areas.
- b) The extraction of groundwater for any use other than monitoring.
- c) Excavation, trenching, drilling, or other invasive activities without the use of a Project Specific Health and Safety Plan (PSHSP) and a soil management plan.
- d) Disturbance of soil within the capped containment areas labeled Removal Area "B" and Removal Area "A" without the approval and guidance of a West Virginia Licensed Remediation Specialist and the use of a project specific soil management plan.
- e) Structures shall be limited to sub-grade construction only. Basements shall not be installed without the approval and guidance of a West Virginia Licensed Remediation Specialist and the use of a project specific soil management plan.

Figure 1. Location of No Dig Areas, and Institutional Controls Former Adamston Flat Glass Property WV DEP VRP Project#08442

MEC. INFO. BEARINGS BASED ON
 PLAN RECORDED IN DB 1716 PG 399
 SURVEY PERFORMED WITH A LEICA
 TC-307 ELECTRONIC TOTAL STATION
 @ = 3/4" = 30' REBAR SET

THRASHER
 ENGINEERING
 30 COLUMBIA BLVD.
 CLARKSBURG, WV 26301
 PHONE 304-624-4100

TAX MAP	SHOWING
B	BOUNDARY SURVEY
PARCEL No.	on the lands of
31	CITY OF CLARKSBURG
JOB. No.	SITUATE
50-3813	WEST VIRGINIA
OWNER: CITY OF CLARKSBURG	COAL-CITY DISTRICT
REFERENCE: DB 1391 PG 756	HARRISON COUNTY
	SCALE: 1" = 100'
	JULY 2010
	DRAWN:
	SURVEY:

LEGEND
 NOTE: Removal Areas "A" and "B" are considered "NO DIG" areas. Excavation in these areas is prohibited without written approval of a WV Licensed Remediation Specialist.

RETURN TO:

YOUNG, MORGAN & CANN, PLLC
 363 Lee Avenue
 Clarksburg, WV 26301