

**VOLUNTARY REMEDIATION AGREEMENT  
ROUTING SLIP**

**SITE/FACILITY NAME:** Walgreens-Pea Ridge

**DATE:** 03/18/10

**LOCATION:** US Route 60 (Pea Ridge Road), Barboursville, Cabell County, WV

**VRA PROJECT NUMBER:** 09165

**PROJECT MANAGER:** Ruth Porter

**Electronic version of VRA compared to template:**       Yes     No  
**Sections / Paragraphs that deviate from template:**

The restrictions placed upon the property were determined to be needed through the Risk Assessment in order to protect Human Health and the Environment.

**PROJECT MANAGER'S COMMENTS:**

This document is ready for signature.

**SIGNATURE & DATE:**  3/18/10

**ASSISTANT DIRECTOR SIGNATURE & DATE:** \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DIRECTOR SIGNATURE & DATE:**  3/18/10



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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  
Randy C. Huffman, Cabinet Secretary  
[www.wvdep.org](http://www.wvdep.org)

March 18, 2010

Jennifer Bell  
Hogan Property Development 11, LLC  
420 W. Liberty Street  
Louisville, KY 40202

Fed Ex Priority # 7933 5797 8348

RE: Land Use Covenant for Walgreens- Pea Ridge  
US Route 60 (Pea Ridge Road), Barboursville, Cabell County, VRP # 09165

Dear Ms. Bell:

Enclosed please find the signed and notarized Land Use Covenant for the subject parcel.

Please make arrangements to have the land use covenant properly recorded with the Cabell County Clerk, and request the Clerk to return a copy of the recorded instrument to my attention:

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

The Land Use Covenant will become a part of the Certificate of Completion to be issued for the subject site, once the Final Report is completed and approved.

Thank you for your attention to this matter, and please feel free to contact Assistant Director Don Martin (304-926-0499, ext. 1275) or me if you have any questions.

Sincerely,

Ken Ellison  
Director

Enclosure

cc: Paul Becks, Bureau Veritas, 520 S. Main Street, Suite 2444, Akron, OH 44311 w/out enclosure  
Don Martin, Assistant Director  
Ruth Porter, Project Manager  
File: 09165

## 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:

The property subject to the covenant is located at the northeast corner of US Route 60 and Pea Ridge Road in Barboursville, West Virginia. See Attachment A for the Legal Property Description.

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) Extraction of groundwater for any use except groundwater monitoring.
- b) Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to use of the property to house a school, day care center, nursing home, or other residential style facility.

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

Hogan Property Development 11, LLC  
420 W. Liberty Street, Louisville, Kentucky 40202

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:

Hogan Property Development 11, LLC  
420 W. Liberty Street, Louisville, Kentucky 40202

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

Petroleum related constituents of concern were detected in several soil samples collected from the western portion of the site at concentrations above the Migration to Groundwater De Minimis Levels). This area of the site was historically utilized as a gasoline filling station and automotive repair. In addition, benzene and methyl tertiary butyl ether (MTBE) were detected in one groundwater sample at concentrations above the WVDEP De Minimis Groundwater Levels.

Tetrachloroethene (PCE) was detected above the Migration to Groundwater WVDEP De Minimis Levels in several soil samples collected from the western portion of the site (former automotive

repair operations). However, PCE was not detected at concentrations above the WVDEP De Minimis Groundwater Levels in the groundwater samples collected from the property.

A Human Health and Ecological Risk Assessment report was prepared for the property to evaluate the pathways of exposure of the chemicals detected during the Site Characterization. Non-residential exposure assumptions were utilized. The concentrations of benzene and MTBE were identified as a direct contact concern for groundwater beneath the subject property. Groundwater beneath the site is not currently used as a source of drinking water or for any non-potable uses. In addition, the depth to groundwater at the site (a minimum of 32 feet below ground surface) precludes direct contact with groundwater even for construction workers involved in subsurface excavation activities. The remedy included the placement of institutional controls on the property. Furthermore, modeling demonstrated that the groundwater contamination would not migrate off of the property at concentrations above the De Minimis Groundwater 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(s) shall conduct inspections of the property to monitor compliance with this Land Use Covenant at least once 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. The written report shall describe the inspection performed, the observations made, and any corrective actions taken.

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 Cabell 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 office and is entitled Walgreens- Pea Ridge, Barboursville, VRP #09165.

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:

Date:

[Signature]  
(Hogan Property Development II, LLC)

Ken Ellison, Director  
Secretary, Department of Environmental Protection

I, JENNIFER NEIL, a Notary Public in and for the County of JEFFERSON, State of KENTUCKY, do hereby certify that W. GREN HOGAN whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 18th day of March, 2010.  
My commission expires FEB. 18 2010.

[Signature]  
Notary Public

I, Rhonda F. McGlothlin, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Ken Ellison, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 18th day of March, 2010.  
My commission expires April 26, 2010.

Rhonda F. McGlothlin  
Notary Public

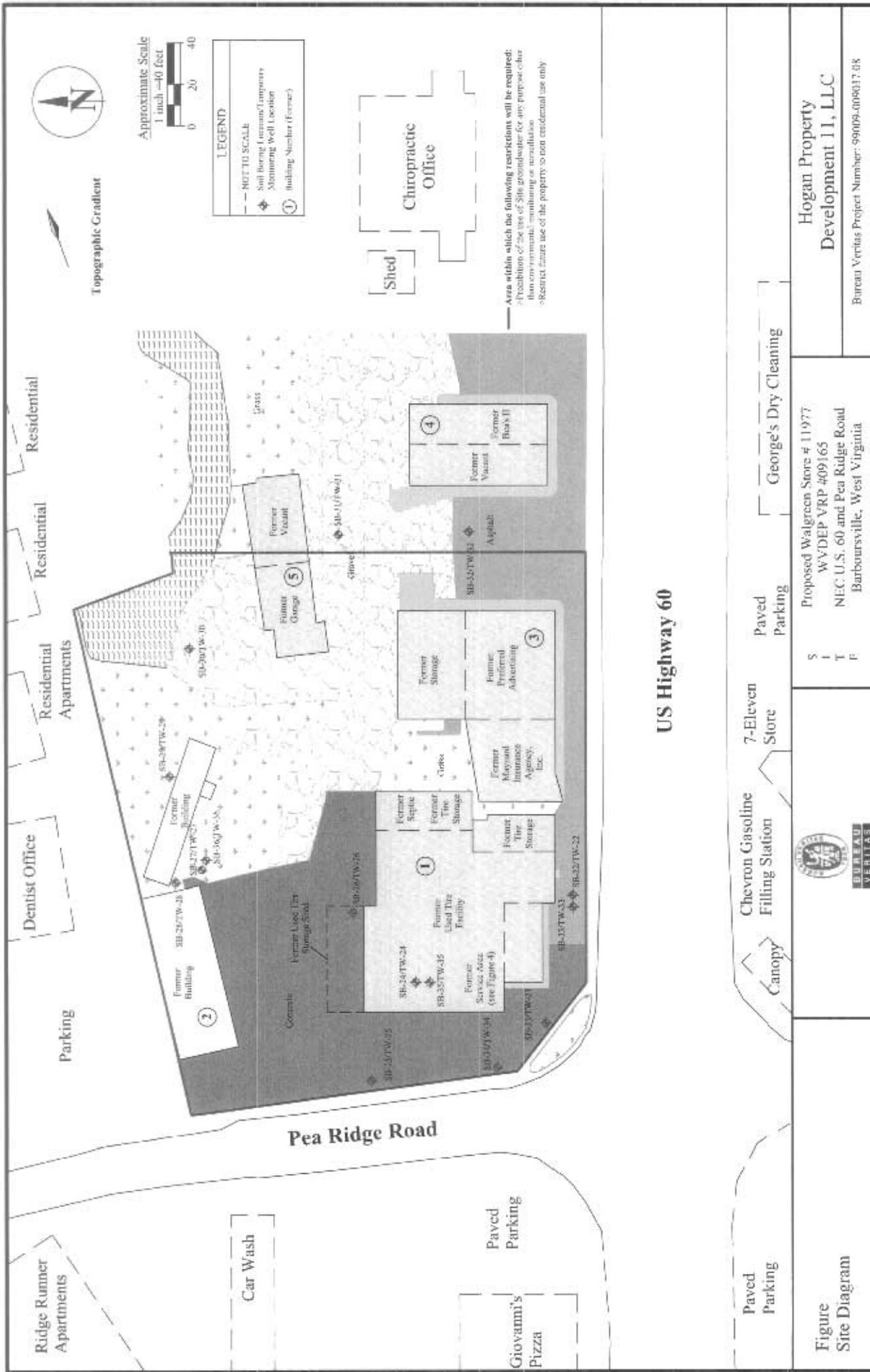
The Clerk will return the recorded document to:  
Mr. Ken Ellison, Director  
WVDEP, DLR  
601 57<sup>th</sup> Street  
Charleston, WV 25304



## Attachment A Legal Property Description

A certain parcel of land located in Barboursville, Cabell County, West Virginia, at the northeasterly intersection of US 60 and East Pea Ridge Road, and being the a portion of the real property conveyed to Hogan Property Development 11, LLC, as recorded in Deed Book 1199, Page 242, Tax Map 8P, Parcel 6, in the office of the Clerk of Cabell County, West Virginia, and more particularly described as follows;

Beginning at a MAG Nail with a brass washer stamped "985" set in the northerly right of way of US 60, said MAG Nail being located South 77 degrees 21 minutes 28 seconds West, 100.64 feet from a point forty feet left of US. 60 Station 473+31, and a corner to the RJ2, LLC property (Deed Book 1074, Page 111); thence with the northerly right of way of US 60, South 77 degrees 21 minutes 28 seconds West, (said basis of bearings being Grid North, West Virginia State Plane Coordinate System, South Zone) 219.36 feet to a MAG Nail with a brass washer stomped "985" set, forty feet left of US 60 Station 470+11; thence leaving the northerly right of way of US 60, and with the easterly right of way of East Pea Ridge Rood (40' right of way) for two calls, North 64 degrees 15 minutes 12 seconds West, 56.46 feet to a MAG Nail with a brass washer stamped "985" set; thence North 20 degrees 32 minutes 53 seconds West, 163.95 feet to a MAG Nail with, a brass washer stomped "985" set at the southwesterly corner of the SE2 Investments Limited Partnership (Deed Book 930, Page 34); thence with said line North 64 degrees 05 minutes 17 seconds East, 255.99 feet to a five eighths inch diameter steel rein forcing bar with plastic cap stamped "985" set in the easterly line of Lot No. 13 of Pancake Realty Company's Pea Ridge Road Subdivision, as recorded in Map Book 5, Page 80, titled in the name of John C. Workman and Linda Sue Workman (Deed Book 933, Page 92); thence with said line for two calls, South 32 degrees 52 minutes 32 seconds East, 53.33 feet to a five eighths inch diameter steel reinforcing bar with plastic cap stamped "985" set; thence North 69 degrees 14 minutes 19 seconds East, 10.20 feet to a five eighths inch diameter steel reinforcing bar with plastic cap stamped 985 set in the southerly line of said Lot no 13 and being the common corner between tracts 1 and 2 thence with the common line between tracts 1 and 2 South 14 degrees 58 minutes 27 seconds East, 207.79 feet to the point of beginning, and containing 1.385 acres, more or less, subject to all recorded, implied, and prescriptive easements and rights of way, by physical survey performed by Mark L. Willmoth, West Virginia Registered Land Surveyor No. 985 on May 1, 2008.



**Hogan Property Development 11, LLC**

Bureau Veritas Project Number: 99009-009017-03

Proposed Walgreen Store # 11977  
 WV/DEP VRP #09165  
 NEC U.S. 60 and Pea Ridge Road  
 Barboursville, West Virginia

**Figure Site Diagram**

**S I T F**