



west virginia department of environmental protection

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

August 11, 2010

PAC Development Company, LLC  
c/o Mr. Mark A. Colantonio  
Frankovitch, Anetakis, Colantonio & Simon  
337 Penco Road  
Weirton, WV 26062

Certified mail # 91 7108 2133 3936 2979 6304

RE: Land Use Covenant for PAC Three Springs Drive  
Park Drive, Weirton, Brooke County, VRP # 09398

Dear Mr. Colantonio:

Enclosed please find the signed and notarized Land Use Covenant for the subject parcel. The Certificate of Completion issued for the subject site and dated August 11, 2010, will become effective once the Land Use Covenant is recorded.

Please make arrangements to have the land use covenant properly recorded with the Brooke 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

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

C: David Corsaro, LRS  
Jim Gaston, Project Manager  
Don Martin  
file

## 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, described as the PAC Development Company, LLC Lot, is located along Park Drive in the Three Springs Industrial and Business Park, Weirton, Brooke County, West Virginia, consisting of approximately 7.32 acres, more or less, particularly described in a deed of record, Deed Book 323 Page 662, in the office of the County Clerk of Brooke County, West Virginia. (See Attachment A, "Plan of Survey for Mark Colantino")*

Activities on and uses of the above described 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:

*Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to the use of the property to house a school, day care center, nursing home, or other residential-style facility or recreational area.*

The current Owner of record of the property, and contact information, is:

PAC Development, LLC  
c/o Mark Colantonio  
Frankovitch, Anetakis, Colantonio & Simon  
337 Penco Road  
Weirton, West Virginia 26062

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:

PAC Development, LLC  
c/o Mark Colantonio  
Frankovitch, Anetakis, Colantonio & Simon  
337 Penco Road  
Weirton, West Virginia 26062

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

*The site was approximately 7.32 acres in size and was located in the Three Springs Business Park in Weirton, Brooke County, West Virginia. The site consisted primarily of a vacant grassy lot to the west of a Wal-Mart Stores, Inc.*

*retail store. Historically, the site had been strip mined for coal in the 1950s. Next, the site was the home of the offices of Weirton Steel Corporation (Weirton Steel). PAC acquired the site from the West Virginia Economic Development Authority (WVEDA) in 2008.*

*An assessment of the property concluded that there was the potential for benzo(a)pyrene in the surface soil, and arsenic and benzene in the subsurface soil, to be present in concentrations greater than their respective de minimis Residential risk-based concentrations, but less than their respective de minimis Industrial risk-based concentrations.*

*Industrial exposure assumptions were used to comply with a site-specific remediation standard under the Voluntary Remediation and Redevelopment Act.*

*This Land Use Covenant prohibits residential uses of the site.*

The Owner 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.

This covenant relieves PAC Development, LLC and their 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, 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 Brooke 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 files of the West Virginia Department of Environmental Protection, 601 57<sup>th</sup> Street, SE, Charleston, West Virginia, 25304 and is entitled

PAC DEVELOPMENT, LLC  
PAC DEVELOPMENT COMPANY, LLC LOT  
WEIRTON, BROOKE COUNTY, WEST VIRGINIA  
WVDEP VRP #09398

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:

\_\_\_\_\_  
PAC Development Company, LLC

I, \_\_\_\_\_, a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
My commission expires \_\_\_\_\_.

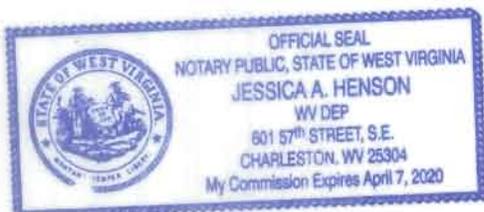
\_\_\_\_\_  
Notary Public

*fe* Ken Ellison, Director  
Secretary, Department of Environmental Protection

I, Jessica A. Henson, 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 as the representative of the agency, 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 11<sup>th</sup> day of August, 2010.  
My commission expires April 7, 2020.

Jessica A. Henson  
Notary Public



The Clerk will return the recorded document to:

Mr. Ken Ellison, Director

WVDEP, DLR

601 57<sup>th</sup> Street

Charleston, West Virginia 25304

