

**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:

**Facility Name:** Creel Street Property  
**Address:** 100 Creel Street  
St Marys, Pleasants County, WV

**Lot 3-- Book 258, Page 412.**

Exhibit A presents a copy of the deed for the Site and Exhibit B presents a site plan,

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:

- Extraction of groundwater at the site for any use except for ground water monitoring and/or remediation.

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

Charles Matson  
3142 Hebron Road  
St. Marys, WV 26170-7016

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:

Charles Matson  
3142 Hebron Road  
St. Marys, WV 26170-7016

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

The Site is adjacent to a loading dock with a pipeline that extends from the Ohio River to St Marys Refining Company, St Marys, West Virginia, approximately 0.2 mile from the subject Site. Petroleum hydrocarbon impacts to groundwater were observed on the subject Site and may be related to the pipeline. No soil concentrations above the West Virginia De Minimis values were identified on the Subject site. Dissolved-phase groundwater concentrations of possible

Constituents of Concern including benzene, 1,2,4 trimethylbenzene, 1,3,5 trimethylbenzene, ethylbenzene, naphthalene, and toluene were identified as potential constituents of concern in the December 2011 Risk Assessment prepared by RBR Consulting. No Light Non-Aqueous Phase Liquid (LNAPL), i.e., separate phase petroleum materials/product, was identified at the site. Residential exposure assumptions were used to comply with the remediation standard. Depth to groundwater at the site is approximately 15 feet below ground surface and unsaturated zone soil has concentrations below soil direct contact screening levels.

For information related to site remediation activities, please contact Mark Himberger of Shell Oil Products U.S.; 910 Louisiana, Houston TX 77002; (713)-241-7035.

Remedial activities for groundwater included:

- *Soil Vapor Extraction/Bio-venting (SVEB)*
- *Enhanced Anaerobic Bio-remediation*

The remedial standards selected for the Site are:

- *Human Health Standard:*

*Soil- Site- WVDEP Residential De Minimis Soil Values*

*Groundwater – Site-Specific Standard- includes a Land Use Covenant herein restricting groundwater usage.*

- *Ecological: De Minimis Ecological Screening Evaluation indicating no adverse effect.*

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 one (1) time per year during the fourth quarter, 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 offices of West Virginia Department of Environmental Protection (WVDEP) located at 601 57th Street, S. E. Charleston WV 25304 and is entitled Creel Street Property VRP #09846.

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.

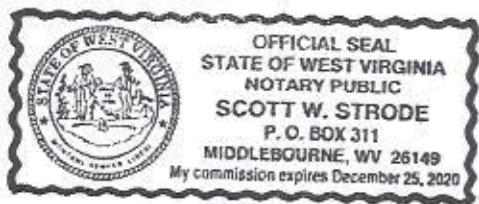
IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

Charles Watson  
SIGNED:

7/16/12  
Date:

I, SCOTT W. STRODE, a Notary Public in and for the County of PLEASANTS, 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 16th day of July, 2012.  
My commission expires DECEMBER 25, 2020.



Scott W. Strode  
Notary Public

Ru Ellis, Director  
Secretary, WV Department of Environmental Protection

August 6, 2012  
Date

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 6<sup>th</sup> day of August, 2012.

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, WV 25304



BOOK 263 PAGE 578

DEED # 09846  
 REGISTERED BY 06/15/06  
 REGISTERED DATE 06/15/06  
 REGISTERED TIME 09:10  
 BOOK PAGE 263 578  
 RECORDING FEE \$10.00  
 COUNTY TAX \$25.00

THIS DEED made and entered into this 15<sup>th</sup> day of June, 2006, by and between **JAMES A. POWELL** and **KATHI R. POWELL**, his wife, and **JASON M. POWELL** and **SUSAN K. POWELL**, his wife, parties of the first part and grantors herein, and **MICHELLE J. GORDON** and **JOYCE A. MATSON**, as their interests hereinafter appear, parties of the second part and grantees herein.

**WITNESSETH:** That for and in consideration of the sum of ten dollars (\$10.00) cash in hand paid and other good and valuable considerations, receipt of which is hereby acknowledged, said parties of the first part do hereby grant and convey with covenants of **GENERAL WARRANTY** unto the said **MICHELLE J. GORDON** and **JOYCE A. MATSON**, as tenants in common and not as joint tenants with the right of survivorship, all that certain lot of real estate situate in The City of St. Marys, County of Pleasants and State of West Virginia, bounded and described as follows:

Beginning at the Ohio River on the south side of Creel Street; thence with line of said Creel Street and binding thereon East 250 feet, more or less, to Alley A; thence with the westerly edge of said alley in a southerly direction 200 feet, more or less, to the line of property of The City of St. Marys, known as the "Pump Station Property"; thence with the line of said St. Marys property in a westerly direction 250 feet, more or less, to the Ohio River; thence with the waters of the Ohio River approximately 200 feet to the place of beginning.

Being the same real estate conveyed unto the grantors, James A. Powell and Jason M. Powell, by deed from Kitty L. Gorrell, et vir, bearing date the 15<sup>th</sup> day of June, 2004, of record in Deed Book No. 258, at page 412, in the office of the Clerk of the County Commission of Pleasants County, West Virginia.

This conveyance is made subject to all exceptions, reservations, restrictions and conveyances as set forth of record in prior instruments hereto and to the following covenants and restrictions which are part of the consideration for this conveyance and which by their acceptance and recordation of this deed the said parties

WHEENEY LAW FIRM  
 PLEASANTS COUNTY  
 CHARLESTON, WV  
 26030  
 1001 6th Street  
 1001 6th Street

Exhibit A  
Property Deed for  
VRP #09846

of the second part, for and on behalf of themselves, their heirs and assigns, agree to keep as covenants running with the land, to-wit: There shall be no gambling or gaming activity or establishments nor shall there be any pornography/adult entertainment business or related activity conducted on the hereinabove described real estate.

The grantors hereby declare that the total consideration for the property transferred by this instrument is one hundred sixty-five thousand dollars (\$165,000.00).

**WITNESS** the following signatures and seals:

 (SEAL)  
JAMES A. POWELL

 (SEAL)  
KATHI R. POWELL

 (SEAL)  
JASON M. POWELL

 (SEAL)  
SUSAN K. POWELL

BOOK 263 PAGE 580

STATE OF WEST VIRGINIA

COUNTY OF PLEASANTS, TO-WIT:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 2006, by **JAMES A. POWELL** and **KATHI R. POWELL**, his wife. My commission expires 7/15/08

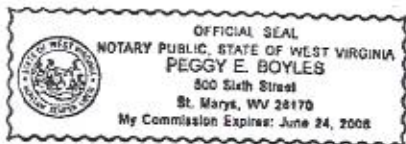


*Katrina L. Britton*  
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF PLEASANTS, TO-WIT:

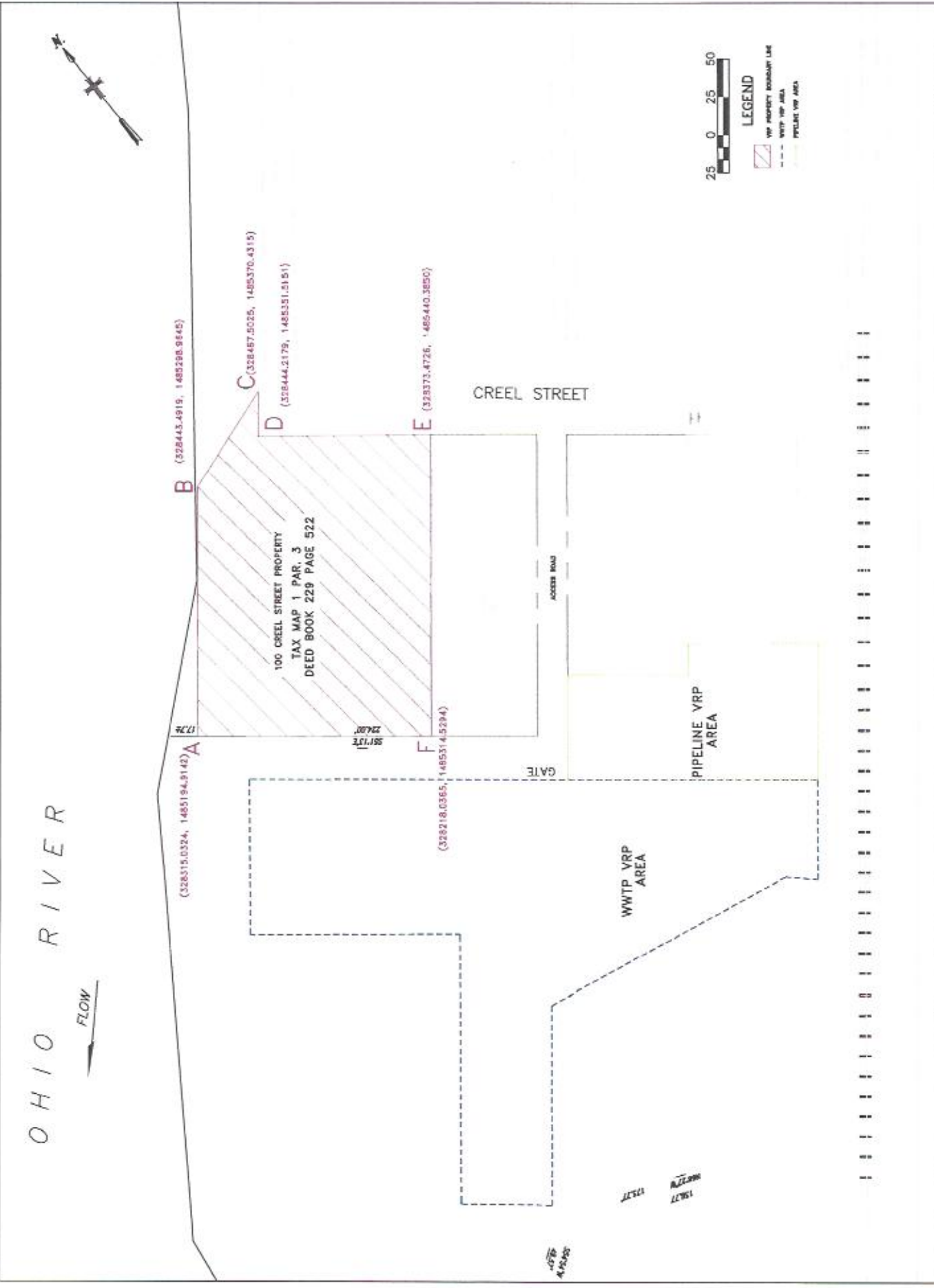
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 2006, by **JASON M. POWELL** and **SUSAN K. POWELL**, his wife. My commission expires June 24, 2008



*Peggy E. Boyles*  
Notary Public

This instrument was prepared by Timothy L. Sweeney.

**LAST PAGE**



 <p>ARCADIS MALCOLM PIRNIE Infrastructure Water Environment &amp; Energy</p>	<p>100 CREEL STREET PROPERTY ST. MARY'S, WEST VIRGINIA 26170</p>	<p>AREA FOR VOLUNTARY REMEDIATION AGREEMENT CERTIFICATE OF COMPLETION VRP</p> <p>SCALE: APPROXIMATELY AS SHOWN      COORDINATE SYSTEM : NAD 83</p>	<p>ARCADIS U.S., INC. <b>EXHIBIT B</b> JULY 2012</p>
---	--	--	--



### Acknowledgement

As current property owner of 100 Creel Street, I acknowledge the reporting requirements related to the Land Use Covenant signed by me on July 16, 2012.

Charles Matson July 16, 2012

Charles Matson

Sue E. Morgan  
PLEASANTS County 01:20:53 PM  
Instrument No 598784  
Date Recorded 08/08/2012  
Document Type AGREEMENT  
Pages Recorded 9  
Book-Page 287-405

LAST PAGE