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1 Oversized Prot

1412078

## Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 27th day of June, 2014, by NNN Solutions Indiana, LLC c/o Systems Solutions, Inc., 3630 Commercial Avenue, Northbrook, Illinois 60062.

WHEREAS: Owner is the fee owner of certain real estate in the County of St. Joseph, Indiana, which is located at 4444 Western Avenue, South Bend, Indiana 46619 and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed and recorded on December 29, 2011, as Deed Record 1135043, in the Office of the Recorder of St. Joseph County, Indiana. The Real Estate consists of approximately 1.07 acres and has also been identified by the county as parcel identification number[s] 71-08-09-302-001.000-026 and 71-08-09-301-008.000-026. The Real Estate, to which the restrictions in this Covenant apply, is depicted on the ALTA Land Title Survey map attached hereto as Exhibit A.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the Former Rush Hour Food Mart/Citgo Gas Station. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 200807513, and the relevant facility identification number is 1636.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater and soil of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented to protect human health and the environment. These COCs are BTEX and PNAs.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently [www.in.gov/idem/](http://www.in.gov/idem/)).

NOW THEREFORE, NNN Solutions Indiana, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

### I. RESTRICTIONS

#### 1. Restrictions. The Owner:

- (a) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption,

gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.

- (b) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Risk Integrated System of Closure ("RISC") Technical Resource Guidance Document. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws; and disposal of such soils must also be done in accordance with all applicable federal and state laws.

## II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- 3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
- 4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records
- 5. Written Notice of the Presence of Contamination. Owner agrees to include in



any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED MAY 27 2014, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY ON MAY 29, 2014, INSTRUMENT NUMBER (or other identifying reference) 1412078 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

### III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

### IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant,

Owner shall record such amendment, modification, or termination with the Office of the Recorder of St. Joseph County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

#### V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:  
Mr. Zulfi Sayla\_  
NNN Solutions Indiana, LLC\_  
c/o System Solutions, Inc.\_  
3630 Commercial Avenue\_  
Northbrook, Illinois 60062\_

To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Chief, Leaking Underground Storage Tank Program

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.


IN WITNESS WHEREOF, NNN Solutions Indiana, LLC, the said Owner of the Real Estate described above, has caused this Environmental Restrictive Covenant to be executed on this 27<sup>th</sup> day of MAY, 2014.

  
Mr. Zulfi Sayla

STATE OF Indiana <sup>IL</sup> ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared ZULFI SAYLA, the MANAGER of the Owner, NNN SOLUTIONS INDIANA LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 27 day of May, 2014.

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

Residing in Cook County,

4/16/2016  
My Commission Expires:



This instrument prepared by:  
Environmental Protection Industries  
16650 South Canal Street  
South Holland, Illinois 60473

**I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law:**

**Robert L. Mankowski**  
**Vice President-Technical Services**  
16650 South Canal Street  
South Holland, Illinois 60473

EXHIBIT A

ALTA SURVEY and LEGAL DESCRIPTION OF REAL ESTATE



1412078

RECORDED AS PRESENTED ON  
05/29/2014 12:18:58PM

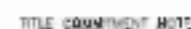
PHILLIP G. DOTSON  
ST. JOSEPH COUNTY

RECORDER

PAGES: 8 FEES: \$31.00



A.L.T.A./A.C.S.M. LAND TITLE SURVEY

[illegible]

10045 1 0 TONES - BILLS NOT REPLY, SURELY NOT IN A HURRY.  
 10046 1 0 CONVICTIONED PRISONERS WHO ARE BEING HELD - 10/11/02  
 10047 7 A-EMIS ALL OF SUBJECT PRISONER - NOT FURTHER  
 10048 7 ASSESSMENT OF STATUS, PACE, AND INFORMATION. BUT 01/11/02  
 10049 7 AFFECTS ALL OF SUBJECT PRISONER - NOT FURTHER  
 10050 0 0 INFORMATION OF SUBJECT PRISONER - NOT FURTHER  
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3) BUREAU SETBACK LINES, RESTRICTED CONTAINING SUBMERGENCE INSTRUCTIONS, CORING OR OTHER DRAINAGE REGULATIONS, OTHER THAN THAT SHOWN ON THE DESIGNS PLAN.

2.) THIS SUMMARY DOES NOT ADDRESS THE EXISTENCE, IF ANY, OF ITEMS THAT WOULD REQUIRE AN INTERPRETATION BY THE DIRECTOR, (U.S. COMMERCE WITH ALL THINGS NEGOTIATIONS); EXISTENCE OF ITEMS BEYOND THE JURISDICTION OF S-HAWK (i.e. Technology, Commercial Matters,) AND ITEMS NOT COVERED DURING A REASONABLE INSPECTION OF SDC (AND COVERED BY, LABORERS AND PASSENGER (4149))

A.E.T.A./C.S.U. OPTIONAL TABLE "A" ITEM NOTES

(U) (P) 20800 - PER TX TO: JUSMUN [COUN/SQUAD BOMB BUILDING] "DEAFENED"  
 (57473)-4554, THE SUBJECT PROBABLY IS CURRENTLY WITH THE, COUNCIL/UNIT/STATION  
 OUTSIDE THE BUILDING BEING SEARCHED FOR BY THE AND THE BOMBING OF WHICH IS

FOOT OF WALL 1, SECTION OF ALONG ONE, DRIFT STAIRS.  
UNION FRONT AND NO. 2  
UNION DEC. 1950 C. 100  
UNION DEC. 1950 C. 100

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MINIMUM HIDE WALL TO POOL
MINIMUM HIDE RESIDENTIAL BUFFER (W3): 20 FEET
MINIMUM TOLLING HEIGHT: 30 FEET
MINIMUM FLOOR SPACE AREA RESTRICTION: NONE LISTED
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THESE ARE NOT GRANTED INTERNATIONAL WARRANTIES FOR THE PARTS, COM ASH AND  
BLACKS CAPACITIES FOR FURTHER INFORMATION.  
THESE PARTS ARE NOT GRANTED AND ARE NOT GRANTED.  
THESE ARE NOT GRANTED AND ARE NOT GRANTED.

ITEM 9) PARKING AREA, STREETS, NUMBER OF SPACES AND TYPE ARE SHOWN HEREON.  
ITEM 11) THE LOCATION OF UTILITIES AS SHOWN HEREON ARE BASED ON ABOVE GROUND  
STREETS, RAIL, ROAD LOCATIONS AS LOCATED BY IT RESPECTIVE UTILITY COMPANIES LOCATED  
AT THE TIME OF THE SURVEY. LOCATIONS OF UNAPPROVED UTILITIES ARE SHOWN FOR INFORMATION.

FROM VISIBLE EVIDENCE OF ANY LESION, ADDITIONAL CLINICAL TESTS/STRUCTURES MAY BE CONSIDERED, NO ATTEMPT HAS BEEN MADE AS A PART OF THIS SURVEY TO OBTAIN DATA CONCERNING SIZE, DEPTH, LOCATION, DURATION OF ANY LESIONS LOCATED WITHIN THE PERIODS SURVEYED ON SKIN OF THE PATIENT, NO EXAMINATION OF PROBES WERE MADE

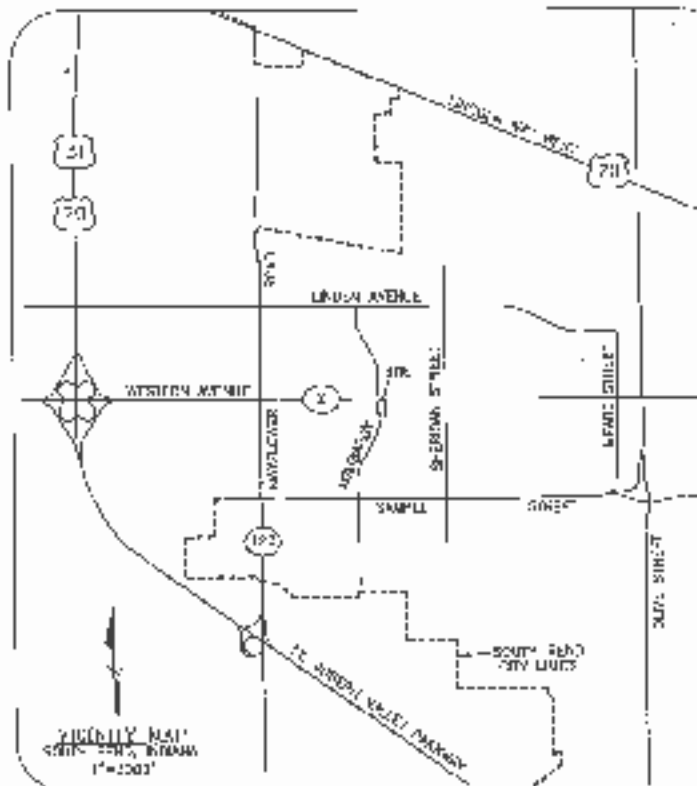
ITEM 12) THERE WAS NO VISIBLE EVIDENCE OF CURRENTLY ACTIVE OR RECENT CONSTRUCTION ON ANYTHING.

CELLS: THERE WAS NO VISIBLE EVIDENCE OF THE SUBJECT RACED 2 BEING USED AS A  
SOLID ASSET DURING, SINCE IN SANITARY JUNK PILE.

THE FOLLOWING USE OF ENHANCEMENTS WITH THE OPTION OF THIS SURFACER AND  
SHOULD NOT BE INTERPRETED AS COMPLETE LISTING.

1.1 U.S. DEPARTMENT OF JUSTICE ATTORNEY TO THE SOUTHERN BUILDING PROJECTS UP IN  
22 WEST OF THE WEST LINE OF LOT 1.

2012.11.16 星期三



SHANGHAI RENJIAO

THEORY OF INFORMATION THIS SURVEY IS BASED ON A PRIOR DATA ALTA/ACRUM. LATEST TITLE SURVEYS OF THE SUBJECT PARCELS, AND RECENTLY, LAST REPORTS 1/4/84 AND 5/19/84 DATED 7/2/81. INFORMATION FROM THIS SURVEY HAS BEEN FOUND AT THE SUBJECT PARCEL NUMBER AND APPROX 10% OF THE ROAD AS SHOWN IN THE RECORD EVIDENCE FOR THE ROAD AND ROAD SURVEY. SEE ALSO THE SURVEY OF THE ROAD AND ROAD SURVEY. FOR DETAILS AND UNDERSTANDING IN ESTABLISHING THE THEORY OF INFO.

21. MAGNETICITY AND SCHEMATIC OF RESIDENCE WORKING: LESS  
MAGNETIC STATION ON THIS PLAN, FOUR WORKING WERE LOCATED  
ON ONE BEACH, IN GOOD LOCATION, AND OF HIGHLY STAY  
WAS USED FOR THE FIRST OF THE FIRST OF THE FIRST OF THE FIRST  
WAS USED IN A NORTH-SOUTH DIRECTION AND 1.7 IN A WEST-EAST  
DIRECTION.

2) UNIFORMITY OF RESULTS DUE TO SUBSTANTIAL OVERLAP  
COLLECTION ON INCREASING LINES AND AS FOLLOWS: THE FOLLOWING  
RESULTS WERE OBTAINED ON 11/11/71: THE SUBJECT PARTICIPANTS AND  
STUDY DESIGN: 1) PARTICIPATING CANDIDATES ATTACHED TO THE STUDY  
BUILDING PROVIDED BY THE 12' WIDE OF THE WEST LINE OF LOT 1.

11) THE SPATIAL POSITIONAL ACCURACY (DUE TO RANDOM ERRORS IN IMAGE REGISTRATION) OF THE CLASSIFIED MAPS OF SUBURBANE AND

PROCESSED WITHIN 72 HOURS (CAL) / 24 HRS (D)  
 100% OF THE DATA IS USED FOR THE 1-12-72

TABLE 1. *Summary of the 1997-1998 season*

TO: KUN CONCRETE INDUSTRIES, L.C., PROJECTS DEVELOPMENT, INC., AN  
ILLINOIS CORPORATION, ONE-THIRD SOUTH ZEEB, P.O. BOX 11000, CHICAGO  
LIBRARY COMPANY AND CHICAGO LIFE & TRUST COMPANY

IT IS TO CERTIFY THAT THIS MAP OR PLAN AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 NEW YORK SCHOENBERG DATA SPECIFICATIONS FOR ALTA/ACSM LAND TITLE SURVEYS.

IDENTIFY ESTIMATE AND ADJUST BY AGE AND SEX, AND INCLUDE  
TERMS 1 2 3 1 0(0) 7(0) 8 9 11(0) 13 14 AND 17 C 10717 A  
+ 10718 + 10719 + 17, THAT YOU HAVE ANY ESTIMATE IN  
ADDITIONAL TO THE 1000 1-12 (1000 12)

THE FOLLOWING WAS COMPLETED ON SEPTEMBER 2, 1961.

GLENN E. BOWEN  
GLENN E. BOWEN PUBLISHING, INC. 201500338

DATE OF PUBLICATION: 2011

**Plumb  
Tuckett  
& Associates**  
SURVEYORS • ENGINEERS • ARCHITECTS  
84 West 37th Street • Merrifield, VA 22060

NOT RECORDED

A.L.T.A./A.C.S.  
LAND TITLE  
SYSTEM

444 WESTERN  
AVENUE  
SOUTH BEND, IN.

1

2-ET: 1 CF: 1

JTB VOL. 511550  
 PROJECT: 20123  
 EPOCH: 9-57 5