

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2017 010538

2017 FEB 17 PM 1:47

MICHAEL B. BROWN  
RECORDER

**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 8<sup>th</sup> day of February, 2017, by Sahib Isher LLC (7237 Vale Drive, Schererville, IN 46375).

WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 3501 Broadway Street, Gary, Indiana 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 on January 5, 2016, and recorded on March 4, 2016, as Deed Record 2016013456, in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 0.37 acres and has also been identified by the county as parcel identification number 45-08-22-351-001.000-004.

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 Shell Retail Station. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 1999-02-512, and the relevant facility identification number is 585.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater 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 COC is benzene.

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/)).

DULY ENTERED FOR TAXATION SUBJECT  
FINAL ACCEPTANCE FOR TRANSFER

FEB 17 2017

JOHN E. PETALAS  
LAKE COUNTY AUDITOR

21234

NOW THEREFORE, Sahib Isher 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) Prior to the construction of new buildings on the Real Estate, the then-current owner of Real Estate shall either:
  - i. Confirm that there is no unacceptable exposure risk resulting from vapor migration of VOCs or SVOCs from subsurface conditions. Such analysis shall be presented to the Department for its concurrence with the findings in accordance with then-applicable remediation guidance, regulation or law; or
  - ii. In lieu of 1(c)(i) above or if unacceptable exposure risks are determined by the Department to exist following the investigation identified in 1(c)(i), the then-current owner of the Real Estate shall install, operated and maintain a vapor mitigation system (consistent with U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment EPA 542-R-08-00, March 2008, or other appropriate and applicable guidance or regulation ) within the human-occupied building on the Real Estate.

## 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 February 8 2017, RECORDED IN THE OFFICE OF THE RECORDER OF Lake COUNTY ON February 17, 2017, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_ 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

Lake 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, guidance, 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:  
Sahib Isher LLC  
7237 Vale Dr.  
Schererville, Indiana, 46375

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, *Sahib Isher LLC*, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 2<sup>nd</sup> day of February, 2017.

*Manspal Singh*  
*Sahib Isher LLC*

STATE OF Indiana )  
 ) SS:  
COUNTY OF Lake )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared *Manspal Singh*, the \_\_\_\_\_ of the Owner, \_\_\_\_\_, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 2<sup>nd</sup> day of February, 2017.



*Darrell S. Dortch Jr.*  
Darrell S. Dortch Jr., Notary Public  
Residing in Lake County, IN

My Commission Expires: 10/23/2021

This instrument prepared by:  
Galina Georgiew, AECOM Technical Services, 100 S. Wacker Drive, Suite 500, Chicago, Illinois 60606

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:  
Galina Georgiew, AECOM Technical Services, 100 S. Wacker Drive, Suite 500, Chicago, Illinois 60606

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2016 013456

2016 MAR -4 AM 11:28

MICHAEL B. BROWN  
RECORDER

*(Onfile)*  
Mail Tax Bills To:

SAHIB ISHER LLC  
7237 Vale Drive  
Schererville, IN 46375

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**SPECIAL WARRANTY DEED**

*15025 4/10/16*

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration received, LUKE LAND, LLC, an Indiana limited liability company ("Grantor"), does hereby convey to SAHIB ISHER LLC, an Indiana limited liability company ("Grantee"), the following described real property situated in Lake County, Indiana, and all of Grantor's interest in any rights and privileges solely appurtenant thereto:

Lots 43 to 48, both inclusive, except the West 17 feet of said Lots, (for the use of the public for a street) by Quit Claim Deed recorded October 5, 1908 in Deed Record 141 page 512, in Block 1, in South Broadway Addition to Gary, as per plat thereof, recorded in Plat Book 7 page 8, in the Office of the Recorder of Lake County, Indiana.

Commonly known as: 3501 Broadway, Gary, IN  
PIN: 45-08-22-351-001.000-004

(the "Property");

SUBJECT TO: the permitted exceptions set forth on Exhibit A attached hereto and by this reference made a part hereof.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title with respect to matters arising from Grantor's actions during the period in which Grantor has owned the Property and no other, subject to the matters set forth on Exhibit A.

CHICAGO TITLE INSURANCE COMPANY

DULY ENTERED FOR TAXATION SUBJECT  
FINAL ACCEPTANCE FOR TRANSFER

MAR 04 2016

JOHN E. PETALAS  
LAKE COUNTY AUDITOR

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**EXHIBIT "A"**

**Permitted Exceptions**

1. Covenants, easements, conditions, and restrictions of record; public and utility easements and roads and highways, if any; and all applicable zoning and land use laws and restrictions.
2. Special taxes or assessments for improvements not yet completed; any unconfirmed special tax or assessment; and installments not due as of the date hereof of any special tax or assessment for improvements heretofore completed.
3. Any and all unpaid general taxes.
4. Matters arising from acts or omissions of persons other than Grantor and persons claiming under Grantor (excluding Grantee and/or persons claiming under Grantee).