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PREPARED BY:

Doc#: 0701222033 Fee: \$60.50
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 01/12/2007 08:56 AM Pg: 1 of 19

Name: Focus Development Inc./Sherman Plaza Partners, LLC
Attn: Justin Pelej

Address: 820 Davis Street, Suite 151
Evanston, Illinois 60201

RETURN TO:

Name: Focus Development Inc./Sherman Plaza Partners, LLC
Attn: Justin Pelej

Address: 820 Davis Street, Suite 151
Evanston, Illinois 60201

(THE ABOVE SPACE FOR RECORDER'S OFFICE)

LEAKING UNDERGROUND STORAGE TANK ENVIRONMENTAL NOTICE

THE OWNER AND/OR OPERATOR OF THE LEAKING UNDERGROUND STORAGE TANK SYSTEM(S) ASSOCIATED WITH THE RELEASE REFERENCED BELOW, WITHIN 45 DAYS OF RECEIVING THE NO FURTHER REMEDIATION LETTER CONTAINING THIS NOTICE, MUST SUBMIT THIS NOTICE AND THE REMAINDER OF THE NO FURTHER REMEDIATION LETTER TO THE OFFICE OF THE RECORDER OR REGISTRAR OF TITLES OF COOK COUNTY IN WHICH THE SITE DESCRIBED BELOW IS LOCATED.

Illinois EPA Number: 0310815143.

LUST Incident No.: 20021436 & 20021437.

Sherman Plaza Venture, LLC, the owner and/or operator of the leaking underground storage tank system(s) associated with the above-referenced incident, whose address is 820 Davis Street, Suite 151, Evanston, Illinois 60201, has performed investigative and/or remedial activities for the site identified as follows and depicted on the attached Site Base Map:

1. Legal Description or Reference to a Plat Showing the Boundaries: (see attached).
2. Common Address: 801-823 Davis Street, Evanston, Illinois 60201.
3. Real Estate Tax Index/Parcel Index Number: (see attached).
4. Site Owner: Sherman Plaza Venture, LLC.
5. Land Use Limitation: There are no land use limitations.
6. See the attached No Further Remediation Letter for other terms.

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Legal Description and Property Index Numbers

Legal Description:

The legal description includes the southernmost 145 feet of the included Chicago Title Insurance Company description of Parcel 3 of the subject site (see attached).

Property Index Numbers (PINs) for the site:

11-18-304-030-0000

11-18-304-031-0000

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CHICAGO TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE SCHEDULE A (CONTINUED)

ORDER NO.: 1401 008359361 D2

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 2 IN THE AMENDED AND RESTATED SHERMAN PLAZA SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PLAT WAS RECORDED AUGUST 24, 2006 AS DOCUMENT NUMBER 0623632062.

PARCEL 2:

PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 4, AS DESCRIBED AND DEFINED IN SECTION 9, OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404085.

PARCEL 3:

LEASEHOLD ESTATE AS CREATED BY THE LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA VENTURE, L.L.C., (AS DISCLOSED OF RECORD BY THE MEMORANDUM THEREOF RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404088), AS ASSIGNED TO SHERMAN PLAZA PARTNERS, LLC, BY ASSIGNMENT AND ASSUMPTION OF AGREEMENTS RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404089, WHICH DEMISES AND LEASES THE FOLLOWING DESCRIBED PORTION OF LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID, FOR A TERM COMMENCING AND EXPIRING AS THEREIN DEFINED:

THAT PART OF LOT 1, AFORESAID, LYING ABOVE GROUND TIER FINISHED FLOOR ELEVATION OF 600.8, MORE OR LESS, AND BELOW SECOND TIER RAMP AND PARKING AREA FINISHED FLOOR ELEVATIONS RANGING FROM 609.83 THROUGH 623.58, MORE OR LESS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 21 MINUTES 30 SECONDS WEST ALONG THE WEST LINE F SAID LOT 1, A DISTANCE OF 44.55 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST 2.69 FEET FOR THE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 14.45 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 44 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 23 MINUTES 04 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.94 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 28 MINUTES 08 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 39 MINUTES 06 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE

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CHICAGO TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE SCHEDULE A (CONTINUED)

ORDER NO.: 1401 008359361 D2

*Legal
Description
Continued

NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 01 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 11 MINUTES 41 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.50 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.30 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 2.17 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 1.08 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 6.90 FEET; THENCE SOUTH 34 DEGREES 57 MINUTES 00 SECONDS EAST, 16.32 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 47.82 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 15.00 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 13.71 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 1.00 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.08 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 37.70 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 23 SECONDS EAST, 26.40 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.33 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.60 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 6.47 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 19.36 FEET; THENCE SOUTH 89 DEGREES 36 MINUTES 33 SECONDS WEST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 19.58 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.04 FEET; THENCE SOUTH 27 DEGREES 41 MINUTES 23 SECONDS WEST, 19.40 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 10.43 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.29 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 4.00 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.67 FEET; THENCE SOUTH 89 DEGREES 20 MINUTES 58 SECONDS WEST, 0.29 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 14.58 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.29 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 3.17 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.04 FEET; THENCE SOUTH 89 DEGREES 33 MINUTES 59 SECONDS WEST, 0.04 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.21 FEET; THENCE NORTH 06 DEGREES 39 MINUTES 58 SECONDS WEST, 0.38 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 12.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 1.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 36.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 1.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 2.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 1.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 2.04 FEET; THENCE NORTH 86

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CHICAGO TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE SCHEDULE A (CONTINUED)

ORDER NO.: 1401 008359361 D2

DEGREES 50 MINUTES 50 SECONDS WEST, 0.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 20.75 FEET TO THE PLACE OF BEGINNING.

*End of
Legal
Description

PARCEL 4:
PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 3 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 3 OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404085.

PARCEL 5:
LEASEHOLD ESTATE AS CREATED BY THE RETAIL PARKING LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA PARTNERS, LLC, RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404092 WHICH DEMISES AND LEASES THE FOLLOWING FOR A TERM COMMENCING ON THE COMMENCEMENT DATE AS DEFINED THEREIN AND TERMINATING UPON THE 40TH ANNIVERSARY THEREOF:

SUFFICIENT UNASSIGNED AND UNRESERVED AUTOMOBILE PARKING SPACES TO COMPLY WITH THE CITY OF EVANSTON'S ZONING ORDINANCE, AS THAT ORDINANCE MAY BE MODIFIED FROM TIME TO TIME, LOCATED AT THE PLANNED NEW PUBLIC PARKING GARAGE LOCATED ON LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID.

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32-O-98

2/27/98

**An Ordinance
Amending Section 7-12-3
of the City Waterworks System Ordinance
Regarding Connection to the Public Water System**

NOW, THEREFORE, Be It Ordained by the City Council of the City of Evanston, Cook County, Evanston, Illinois:

SECTION 1: That Section 7-12-3 of the Evanston City Code of 1979, as amended, be and it hereby is further amended by renumbering existing subsections 7-12-3 (A) through 7-12-3 (C) as 7-12-3 (F) through 7-12-3 (D) respectively, and by adding a new subsection 7-12-3 (A), to read as follows:

7-12-3 (A) **Public Water Main Connection Required:** The water distribution of any building in which plumbing fixtures are installed shall be connected to a public water main. The drilling of wells for use as a potable or non-potable water source, including for irrigation, is prohibited within the City.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: March 9, 1998

Adopted: March 23, 1998

Approved: March 26, 1998

Lorraine H. Norton
Mayor

ATTEST:

Mary J. Morris
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

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Certificate as Keeper of Records, Files and Seal

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

I, **MARY P. MORRIS**, City Clerk of the City of Evanston in the County of Cook and State aforesaid, and Keeper of the Records, Files and Seal of said City, do hereby certify that attached hereto is a true and correct copy of Ordinance 32-0-98, an Ordinance amending section 7-12-3 of the City Waterworks System Ordinance regarding connection to the Public Water System

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all of which appears from the records and files in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of Evanston this 11th day of June 1998

Mary P. Morris
City Clerk

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MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF EVANSTON

AND THE

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY REGARDING THE USE OF A LOCAL GROUNDWATER OR WATER WELL ORDINANCE AS AN ENVIRONMENTAL INSTITUTIONAL CONTROL

I. PURPOSE AND INTENT

- A. This Memorandum of Understanding ("MOU") is entered into between the City of Evanston and the Illinois Environmental Protection Agency ("Illinois EPA") for the purpose of satisfying the requirements of 35 Ill. Adm. Code 742.1015 for the use of groundwater or water well ordinances as environmental institutional controls. The Illinois EPA has reviewed the groundwater or water well ordinance of the City of Evanston adopted on March 26, 1998 "An ordinance amending section 7-12-3 of the City Waterworks System Ordinance regarding connection to the Public Water System" (Attachment A) and determined that the ordinance prohibits the use of groundwater for potable purposes and/or the installation and use of new potable water supply wells by private entities but does not expressly prohibit those activities by the unit of local government itself. In such cases, 35 Ill. Admin. Code 742.1015(a) provides that the unit of local government may enter into an MOU with the Illinois EPA to allow the use of the ordinances as an institutional control.
- B. The intent of the Memorandum of Understanding is to specify the responsibilities that must be assumed by the unit of local government to satisfy the requirements for MOU as set forth at 35 Ill. Adm. Code 742.1015(i).

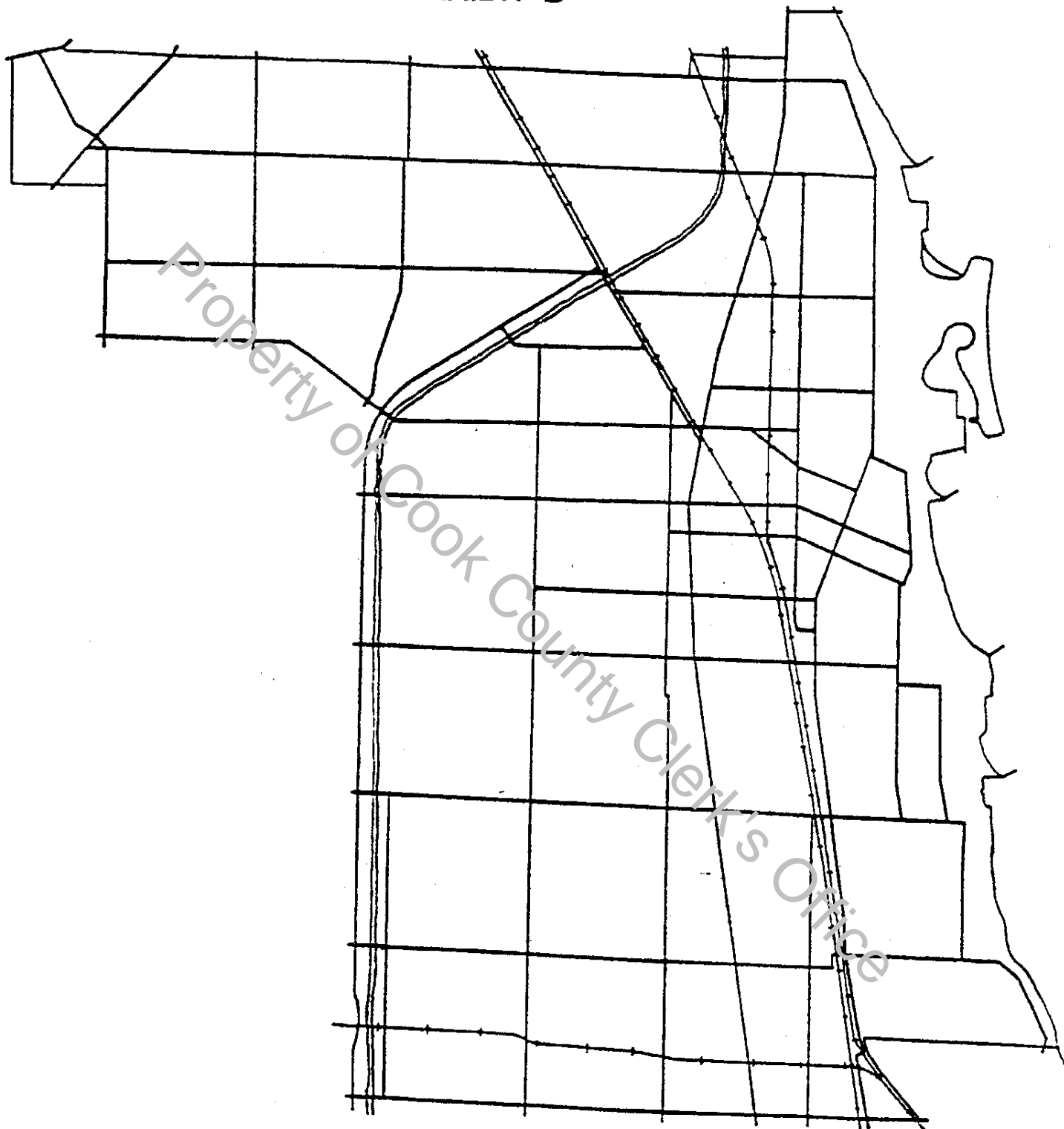
II. DECLARATIONS AND ASSUMPTION OF RESPONSIBILITY

In order to ensure the long-term integrity of the groundwater or water well ordinance as an environmental institutional control and that risk to human health and the environment from contamination left in place in reliance on the groundwater or water well ordinance is effectively managed, the City of Evanston hereby assumes the following responsibilities pursuant to 35 Ill. Adm. Code 742.1015(i);

- A. City of Evanston will notify the Illinois EPA Bureau of Land of any proposed ordinance changes or requests for variance at least 30 days prior to the date the local government is scheduled to take action on the proposed change or request (35

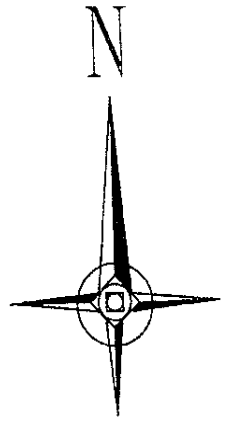
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EXHIBIT B



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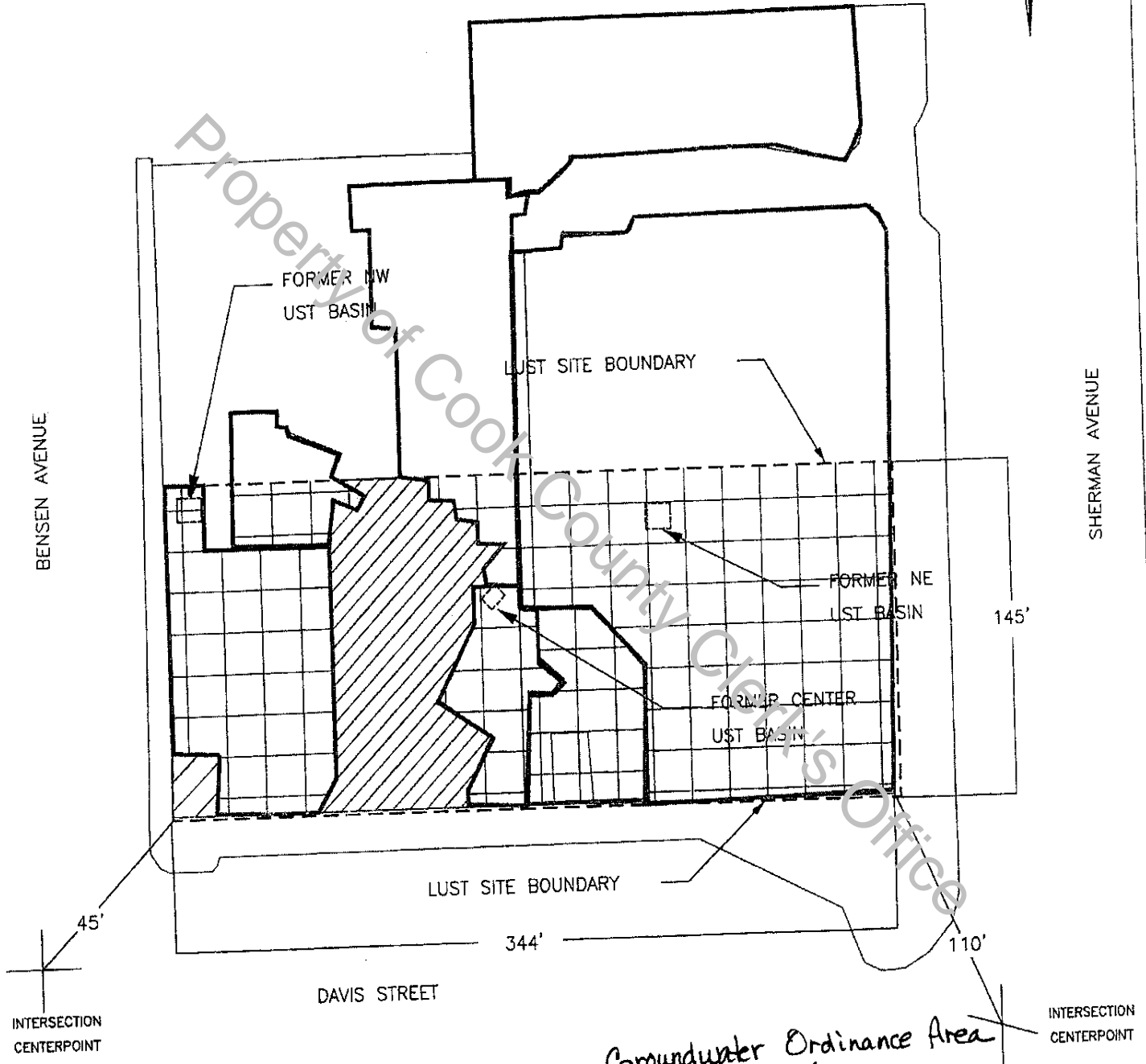
SITE BASE MAP
0310815145-- COOK COUNTY
EVANSTON/SHERMAN PLAZA VENTURE LLC.
LEAKING UNDERGROUND STORAGE TANK PROGRAM
INC# 20021436 + 20021437



CHURCH STREET

BENSEN AVENUE

SHERMAN AVENUE



LEGEND - Groundwater Ordinance Area
- Worker Caution



BUILDING AS ENGINEERED BARRIER



PAVEMENT AS ENGINEERED BARRIER



FORMER UST BASIN

CCA Carnow, Conibear & Assoc., Ltd.

300 WEST ADAMS STREET, SUITE 1200
CHICAGO, IL 60606

APPENDIX D - IEPA BASE MAP
SHERMAN PLAZA
801-823 DAVIS STREET
EVANSTON, ILLINOIS

DRAWN BY: MD

DATE: 11/09/2006

CHECKED BY: DK

SCALE: 1" = 70'

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Ill. Adm. Code 742.1015(I)(4));

- B. City of Evanston will maintain a registry of all sites within its corporate limits that have received "No Further Remediation" determinations from the Illinois EPA (35 Ill. Adm. Code 742.1015(I)(5)), provided that Illinois EPA provides notice to the City of Evanston of such determinations. Notices should be sent to: Dennis Marino, Assistant Director for Planning, 2100 Ridge Avenue, Evanston, Illinois 60201.
- C. City of Evanston will review the registry of sites established under paragraph II.B. prior to siting public potable water supply wells within the area covered by the ordinance (35 Ill. Adm. Code 742.1015(I)(6)(A));
- D. City of Evanston will determine whether the potential source of potable water has been or may be affected by contamination left in place at the sites tracked and reviewed under paragraphs II.B. and C. (35 Ill. Adm. Code 742.1015(I)(6)(B)); and
- E. City of Evanston will take action as necessary to ensure that the potential source of potable water is protected from contamination or treated before it is used as a potable water supply (35 Ill. Adm. Code 742.1015(I)(6)(C)).

NOTE: Notification under paragraph II.A. above or other communications concerning this MOU should be directed to:

Manager, Division of Remediation Management
 Bureau of Land
 Illinois Environmental Protection Agency
 P. O. Box 19276
 Springfield, IL 62794-9276

III. SUPPORTING DOCUMENTATION

The following documentation is required by (35 Ill. Adm. Code 742.1015(I)) and is attached to this MOU:

- A. Attachment A: A copy of the groundwater or water well ordinance certified by the City clerk or other official as the current, controlling law (35 Ill. Adm. Code 742.1015(I)(3));
- B. Attachment B: Identification of the legal boundaries within which the ordinance is applicable (certification by city clerk or other official that the ordinance is applicable everywhere within the corporate limits; if ordinance is not applicable throughout the entire city or village, legal description and map of area showing sufficient detail to determine where ordinance is applicable) (35 Ill. Adm. Code 742.1015(I)(2));

IN WITNESS WHEREOF, the lawful representatives of the parties have caused this MOU

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to be signed as follows:

FOR: City of Evanston
(Name of city or village)

BY: *Roger D. Crum*

DATE: 6/11/98

BY: Roger D. Crum, City Manager
(Name and title of signatory)

DATE: 6/11/98

FOR: Illinois Environmental Protection Agency

BY: *Gary P. King*
(Name and title of signatory)
Manager, Remediation Management

DATE: 7/29/98

CMLP

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276 – (217) 782-3397
 JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 – (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECORDING REQUIREMENTS FOR NO FURTHER REMEDIATION LETTERS

Introduction

The Illinois Environmental Protection Agency's (Illinois EPA) Bureau of Land/Leaking Underground Storage Tank Section issues a No Further Remediation (NFR) Letter after a demonstration of compliance with Title XVI of the Environmental Protection Act and applicable regulations is made. The NFR Letter signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with, (2) all corrective action concerning the remediation of the occurrence has been completed, and (3) no further corrective action concerning the occurrence is necessary so long as the site is used in accordance with the terms and conditions of the NFR Letter.

Significance

When properly recorded, the NFR Letter holds legal significance for all applicable parties outlined at Section 57.10(d) of the Environmental Protection Act. (See 415 ILCS 5/57.10(d).) If not properly recorded, the Illinois EPA *will* take steps to void the NFR Letter in accordance with the regulations.

Duty to Record

The duty to record the NFR Letter is *mandatory*. You *must* submit the NFR Letter, with a copy of any applicable institutional controls proposed as part of a corrective action completion report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located *within 45 days after receipt of the NFR Letter*. You must record the NFR Letter and any attachments. The NFR Letter shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title to ensure current and future users of the property will be informed of the conditions and terms of approval including level of remediation; land use limitations; and preventive, engineering, and institutional controls. A certified or otherwise accurate and official copy of the NFR Letter and any attachments, as recorded, must be submitted to the Illinois EPA. Failure to record the NFR Letter in accordance with the regulations will make the NFR Letter voidable.

For More Information

Please refer to Tiered Approach to Corrective Action Objectives (TACO) Fact Sheet 3 available from the Illinois EPA by calling 1-888-299-9533 or by accessing it on the Illinois EPA Web site at <http://www.epa.state.il.us/land/taco/3-no-further-remediation-letters.html>.

ROCKFORD – 4302 North Main Street, Rockford, IL 61103 – (815) 987-7760 • DES PLAINES – 9511 W. Harrison St., Des Plaines, IL 60016 – (847) 294-4000
 ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5463
 BUREAU OF LAND - PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 278-5800
 SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINSVILLE – 2009 Mall Street, Collinsville, IL 62234 – (618) 346-5120
 MARION – 2309 W. Main St., Suite 116, Marion, IL 62959 – (618) 993-7200

UNOFFICIAL COPY**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
 JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL**7004 2510 0001 8585 9753**

Originally Issued: November 30, 2006

Revised:

DEC 28 2006

Focus Development Inc./Sherman Plaza Partners, LLC

Attn: Justin Pelej

820 Davis Street, Suite 151

Evanston, Illinois 60201

Re: LPC # 0310815145 -- Cook County
 Evanston/Sherman Plaza Venture, LLC
 801-823 Davis Street
 Incident #20021436 & 20021437
 LUST Technical File

Dear Mr. Pelej:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Completion Report submitted for the above-referenced incident. This information was dated May 28, 2003 and November 10, 2006 and was received by the Illinois EPA on June 6, 2003 and November 14, 2006. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Corrective Action Completion Report and the Professional Engineer Certification submitted pursuant to Section 57.6 of the Act indicate the remediation objectives have been met.

Based upon the certification by Anthony Negri, a Licensed Professional Engineer, and pursuant to Section 57.10 of the Act (415 ILCS 5/57.10), your request for a no further remediation determination is granted under the conditions and terms specified in this letter.

Issuance of this No Further Remediation Letter (Letter), based on the certification of the Licensed Professional Engineer, signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with; (2) all corrective action concerning the remediation of the occurrence has been completed; and (3) no further corrective action concerning the occurrence is necessary for the protection of human health, safety, and the environment. Pursuant to Section 57.10(d) of the Act, this Letter shall apply in favor of the following parties:

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
 ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
 BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
 SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
 MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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1. Sherman Plaza Venture, LLC, the owner or operator of the underground storage tank system(s).
2. Any parent corporation or subsidiary of such owner or operator.
3. Any co-owner or co-operator, either by joint tenancy, right-of-survivorship, or any other party sharing a legal relationship with the owner or operator to whom the Letter is issued.
4. Any holder of a beneficial interest of a land trust or inter vivos trust whether revocable or irrevocable.
5. Any mortgagee or trustee of a deed of trust of such owner or operator.
6. Any successor in-interest of such owner or operator.
7. Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest.
8. Any heir or devisee of such owner or operator.

This Letter and all attachments, including but not limited to the Leaking Underground Storage Tank Environmental Notice, must be filed within 45 days of receipt as a single instrument with the Office of the Recorder or Registrar of Titles in the county in which the above-referenced site is located. In addition, the Groundwater Ordinance (photocopy attached) must be filed as an attachment of this Letter with the Office of the Recorder or Registrar of Titles of the applicable county. This Letter shall not be effective until officially recorded by the Office of the Recorder or Registrar of Titles of the applicable county in accordance with Illinois law so it forms a permanent part of the chain of title for the above-referenced property. Within 30 days of this Letter being recorded, an accurate and official copy of this Letter, as recorded, shall be obtained and submitted to the Illinois EPA. For recording purposes, it is recommended that the Leaking Underground Storage Tank Environmental Notice of this Letter be the first page of the instrument filed.

CONDITIONS AND TERMS OF APPROVAL

LEVEL OF REMEDIATION AND LAND USE LIMITATIONS

1. The remediation objectives for the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, were established in accordance with the requirements of the Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) rules.

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2. As a result of the release from the underground storage tank system(s) associated with the above-referenced incident, the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter, shall not be used in a manner inconsistent with the following land use limitation: There are no land use limitations.
3. The land use limitation specified in this Letter may be revised if:
 - a. Further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use; and
 - b. A new No Further Remediation Letter is obtained and recorded in accordance with Title XVII of the Act and regulations adopted thereunder.

PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS

4. **Preventive:** Prior to commencement of any future excavation and/or construction in or near the contaminated zone of the remediation site, a safety plan for this remediation site is required that is consistent with the National Institute for Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities; Occupational Safety and Health Administration regulations, particularly in 29 CFR 1910 and 1926; state and local regulations; and other U.S. EPA guidance as provided. At a minimum, the plan should address possible worker exposure if any future excavation and construction activities occur within the contaminated soil.

Engineering: A building and concrete/asphalt barrier that is sufficient in thickness to inhibit the inhalation and ingestion of the contaminated media must remain over the contaminated soil as outlined in the attached Site Base Map. This building and concrete/asphalt barrier is to be properly maintained as an engineered barrier to inhibit inhalation and ingestion of the contaminated media.

Institutional: This Letter shall be recorded as a permanent part of the chain of title for the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter.

Groundwater Use Ordinance

The MOU between the City of Evanston and the Illinois EPA effectively prohibits the installation of potable water supply wells (and the use of such wells) and is an acceptable institutional control under the following conditions:

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Each affected or potentially affected (as shown through contaminant modeling) property owner and the City of Evanston must receive written notification from the owner or operator desiring to use the ordinance as an institutional control that groundwater remediation objectives have been approved by the Illinois EPA. Written proof of this notification shall be submitted to the Illinois EPA in accordance with 35 Ill. Adm. Code 742.1015(b) and (c) within 45 days from the date this Letter is recorded. The notification shall include:

- a. The name and address of the unit of local government;
- b. The citation of the ordinance used as an institutional control in this Letter;
- c. A description of the property being sent notice by adequate legal description or by reference to a plat showing the boundaries;
- d. A statement that the ordinance restricting the groundwater use was used by the Illinois EPA in reviewing a request for groundwater remediation objectives;
- e. A statement as to the nature of the release and response action with the name, address, and Illinois EPA inventory identification number; and
- f. A statement as to where more information may be obtained regarding the ordinance.

The following activities shall be grounds for voidance of the ordinance as an institutional control and this Letter:

- a. Modification of the reference ordinance to allow potable uses of groundwater.
- b. Approval of a site-specific request, such as a variance, to allow use of groundwater at the site.
- c. Violation of the terms of a recorded institutional control.

As a part of its corrective action, the leaking underground storage tank site has relied upon the MOU between the City of Evanston and the Illinois EPA that prohibits potable uses of groundwater as defined therein.

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5. Failure to establish, operate, and maintain controls in full compliance with the Act, applicable regulations, and the approved corrective action plan, if applicable, may result in voidance of this Letter.

OTHER TERMS

6. Any contaminated soil or groundwater removed or excavated from, or disturbed at, the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, must be handled in accordance with all applicable laws and regulations under 35 Ill. Adm. Code Subtitle G.
7. Further information regarding the above-referenced site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:

Illinois Environmental Protection Agency
 Attention: Freedom of Information Act Officer
 Bureau of Land - #24
 1021 North Grand Avenue East
 Post Office Box 19276
 Springfield, IL 62794-9276

8. Pursuant to 35 Ill. Adm. Code 732.704, should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide Notice of Voidance to the owner or operator of the leaking underground storage tank system(s) associated with the above-referenced incident and the current title holder of the real estate on which the tanks were located, at their last known addresses. The notice shall specify the cause for the voidance, explain the provisions for appeal, and describe the facts in support of the voidance. Specific acts or omissions that may result in the voidance of this Letter include, but shall not be limited to:
 - a. Any violation of institutional controls or industrial/commercial and use restrictions;
 - b. The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;
 - c. The disturbance or removal of contamination that has been left in-place in accordance with the Corrective Action Plan or Completion Report;
 - d. The failure to comply with the recording requirements for the Letter;
 - e. Obtaining the Letter by fraud or misrepresentation; or

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- f. Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment.

Submit an accurate and official copy of this Letter, as recorded, to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Valerie Davis, at 217-785-7492.

Sincerely,



Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

CLW:VAD\

Attachments: Leaking Underground Storage Tank Environmental Notice
Groundwater Ordinance 32-O-98
Legal Description
Site Map

c: Carnow, Conibear & Assoc., LTD.
BOL File