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 Karen A. Yarbrough  
 Cook County Recorder of Deeds  
 Date: 09/24/2013 02:57 PM Pg: 1 of 23

Certificate as Keeper of  
 Records, Files and Seals

STATE OF ILLINOIS )  
 ) §  
 COUNTY OF COOK )


I, RODNEY GREENE, 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 35-R-13 A RESOLUTION Authorizing the Mayor of the City of Evanston to Execute a Highway Authority Agreement and associated Addendum to Highway Authority Agreement with Ventura Realty, Ltd.

PIN # 11-18-317-004-0000  
 11-18-317-005-0000

all of which appear 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

30th day of May, 20 13

  
 Hon. Rodney Greene, City Clerk

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5/21/2013

## 35-R-13

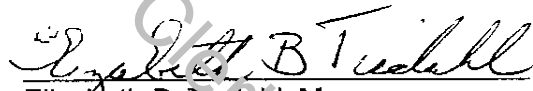
### A RESOLUTION

**Authorizing the Mayor of the City of Evanston to Execute a Highway Authority Agreement and associated Addendum to Highway Authority Agreement with Ventura Realty, Ltd.**


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

**SECTION 1:** That the Mayor is hereby authorized to execute the Highway Authority Agreement attached as Exhibit A and incorporated herein and the Addendum to the Highway Authority Agreement attached as Exhibit B and incorporated herein by reference.

**SECTION 2:** That this Resolution 35-R-13 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: May 28, 2013



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## Illinois Environmental Protection Agency

Bureau of Land • 1021 N. Grand Avenue E. • P.O. Box 19276 • Springfield • Illinois • 62794-9276

### HIGHWAY AUTHORITY AGREEMENT

This Agreement is entered into this 28 day of May, 2013 pursuant to 35 Ill. Adm. Code 742.1020 by and between the (1) Ventura Realty, Ltd ("Property Owner") [or, in the case of a petroleum leaking underground storage tank (UST), the owner/operator of the tank ("Owner/Operator")] and (2) City of Evanston [Name of Entity in Control of the Right-of-Way] ("Highway Authority"), collectively known as the "Parties."

[Use this paragraph for sites with petroleum leaking underground storage tank(s)]  
 WHEREAS, Ventura Realty, Ltd is the owner or operator of one or more leaking underground storage tanks presently or formerly located at 1459-1463 Elmwood Avenue, Evanston, Illinois ("the Site");

[Use this paragraph for sites that do not have petroleum leaking USTs]  
 WHEREAS, \_\_\_\_\_ is the owner of the property located at \_\_\_\_\_ ("the Site");

WHEREAS, as a result of one or more releases of contaminants from the above referenced USTs ("the Release(s)"), soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742;

WHEREAS, the soil and/or groundwater contamination exceeding Tier 1 residential remediation objectives extends or may extend into the Highway Authority's right-of-way;

WHEREAS, the Owner/Operator or Property Owner is conducting corrective action in response to the Release(s);

WHEREAS, the Parties desire to prevent groundwater beneath the Highway Authority's right-of-way that exceeds Tier 1 remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access;

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. [Use this paragraph if IEMA has issued an incident number] The Illinois Emergency Management Agency has assigned incident number(s) 20120368 to the Release(s).
3. Attached as Exhibit A is a scaled map(s) prepared by the Owner/Operator that shows the Site and surrounding area and delineates the current and estimated future extent of soil and groundwater contamination above the applicable Tier 1 residential remediation objectives as a result of the Release(s).  
 [Use the following sentence if either soil or groundwater is not contaminated above applicable Tier 1 residential remediation objectives: \_\_\_\_\_ is not contaminated above the applicable Tier 1 residential remediation objectives.]
4. Attached as Exhibit B is a table(s) prepared by the Owner/Operator that lists each contaminant of concern that exceeds its Tier 1 residential remediation objective, its Tier 1 residential remediation objective and its concentrations within the zone where Tier 1 residential remediation objectives are exceeded. The locations of the concentrations listed in Exhibit B are identified on the map(s) in Exhibit A.

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5. Attached as Exhibit C is a scaled map prepared by the Owner/Operator showing the area of the Highway Authority's right-of-way that is governed by this agreement ("Right-of-Way"). Because Exhibit C is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines.
6. ~~Use this paragraph if samples have not been collected within the Right-of-Way, sampling within the Right-of-Way is not practical, and contamination does not extend beyond the Right-of-Way.~~ Because the collection of samples within the Right-of-Way is not practical, the Parties stipulate that, based on modeling, soil and groundwater contamination exceeding Tier 1 residential remediation objectives does not and will not extend beyond the boundaries of the Right-of-Way.
7. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the Right-of-Way.
8. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier 1 residential remediation objectives.
9. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of-Way exceeding Tier 1 residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-of-Way, and make all existing permits for work in the Right-of-Way, subject to the following or a substantially similar condition:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

10. This agreement shall be referenced in the Agency's no further remediation determination issued for the Release(s).
11. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this agreement as if the transferee were an original party to this agreement. The transferee's agreement to be bound by the terms of this agreement shall be memorialized at the time of transfer in a writing ("Rider") that references this Highway Authority Agreement and is signed by the Highway Authority, or subsequent transferor, and the transferee.
12. This agreement shall become effective on the date the Agency issues a no further remediation determination for the Release(s). It shall remain effective until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for this agreement, or until the agreement is otherwise terminated or voided.
13. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this agreement or may, in its sole discretion, declare this agreement null and void if any of the Parties or any transferee violates any term of this agreement. The Parties or transferee shall be notified in writing of any such declaration.
14. This agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the agreement.
15. This agreement supersedes any prior written or oral agreements or understandings between the Parties on the subject matter addressed herein. It may be altered, modified or amended only upon the written consent and agreement of the Parties.
16. Any notices or other correspondence regarding this agreement shall be sent to the Parties at following addresses:

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Manager, Division of Remediation Management  
Bureau of Land  
Illinois Environmental Protection Agency  
P.O. Box 19276  
Springfield, IL 62974-9276

Property Owner or Owner/Operator

Name Ventura Realty, Ltd.

Address 210 Kilpatrick Avenue

City Wilmette

State IL

Zip Code 60091

City of Evanston

(Contact at Highway Authority)

Address 2100 Ridge Avenue

City Evanston

State IL

Zip Code 60201

IN WITNESS WHEREOF, the Parties have caused this agreement to be signed by their duly authorized representatives.

~~[NAME OF LOCAL GOVERNMENT]~~ City of Evanston

Date: 5-29-13

By:

Elizabeth Tidball

Its:

Property Owner or Owner/Operator

Date: 5/28/2013

By:

Randall Colvin, Pres. Sent

Title

Property of Cook County Clerk's Office

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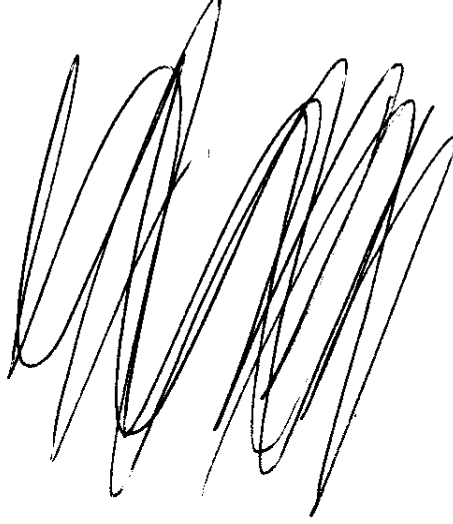
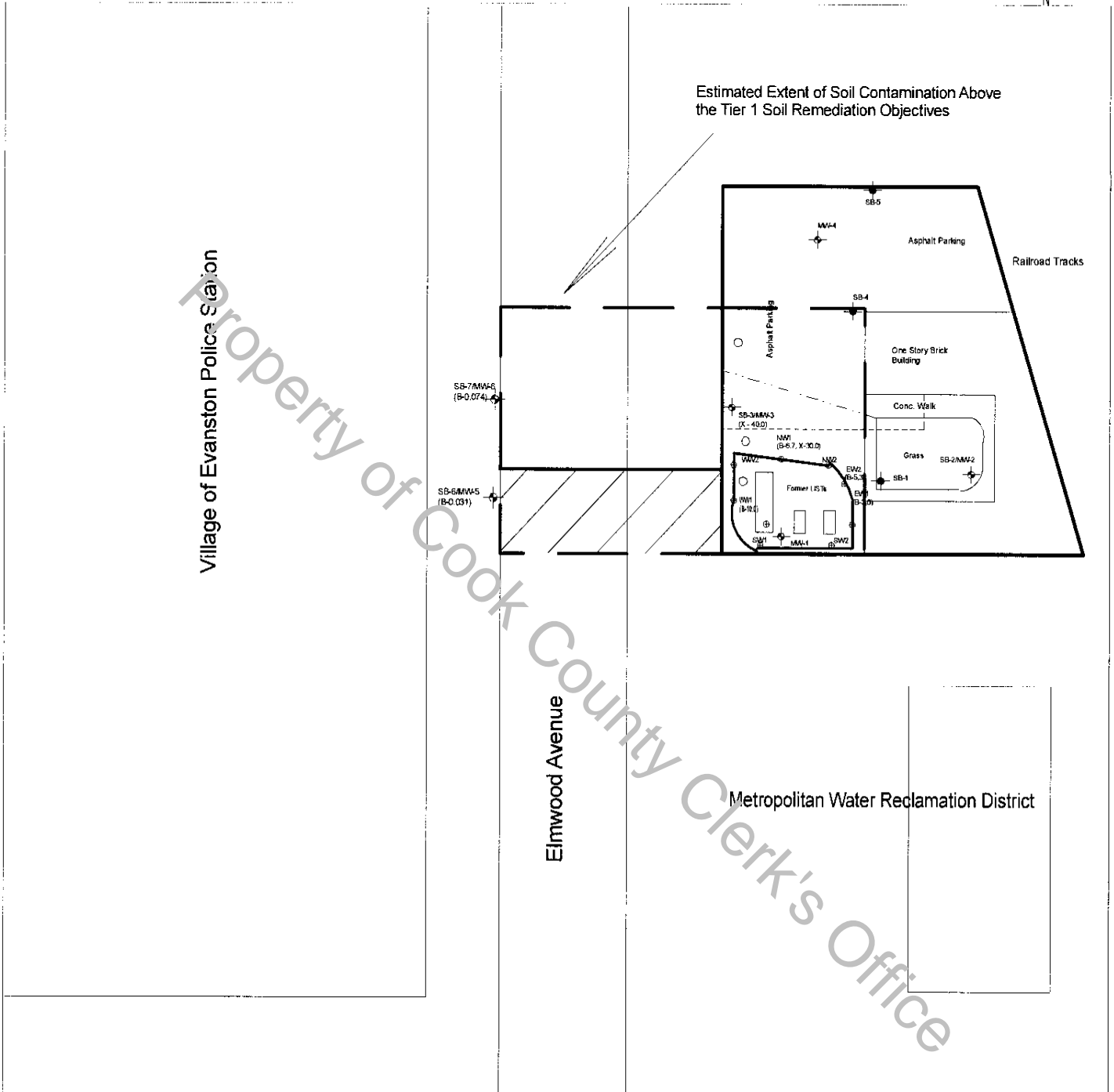


EXHIBIT A – FIGURES SHOWING EXTENT OF SOIL AND GROUNDWATER  
CONTAMINATION

Property of Cook County Clerk's Office

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Village of Evanston Police Station

Elmwood Avenue

Metropolitan Water Reclamation District

Lake Street

Scale: 1 inch = 40 Feet

**Legend**

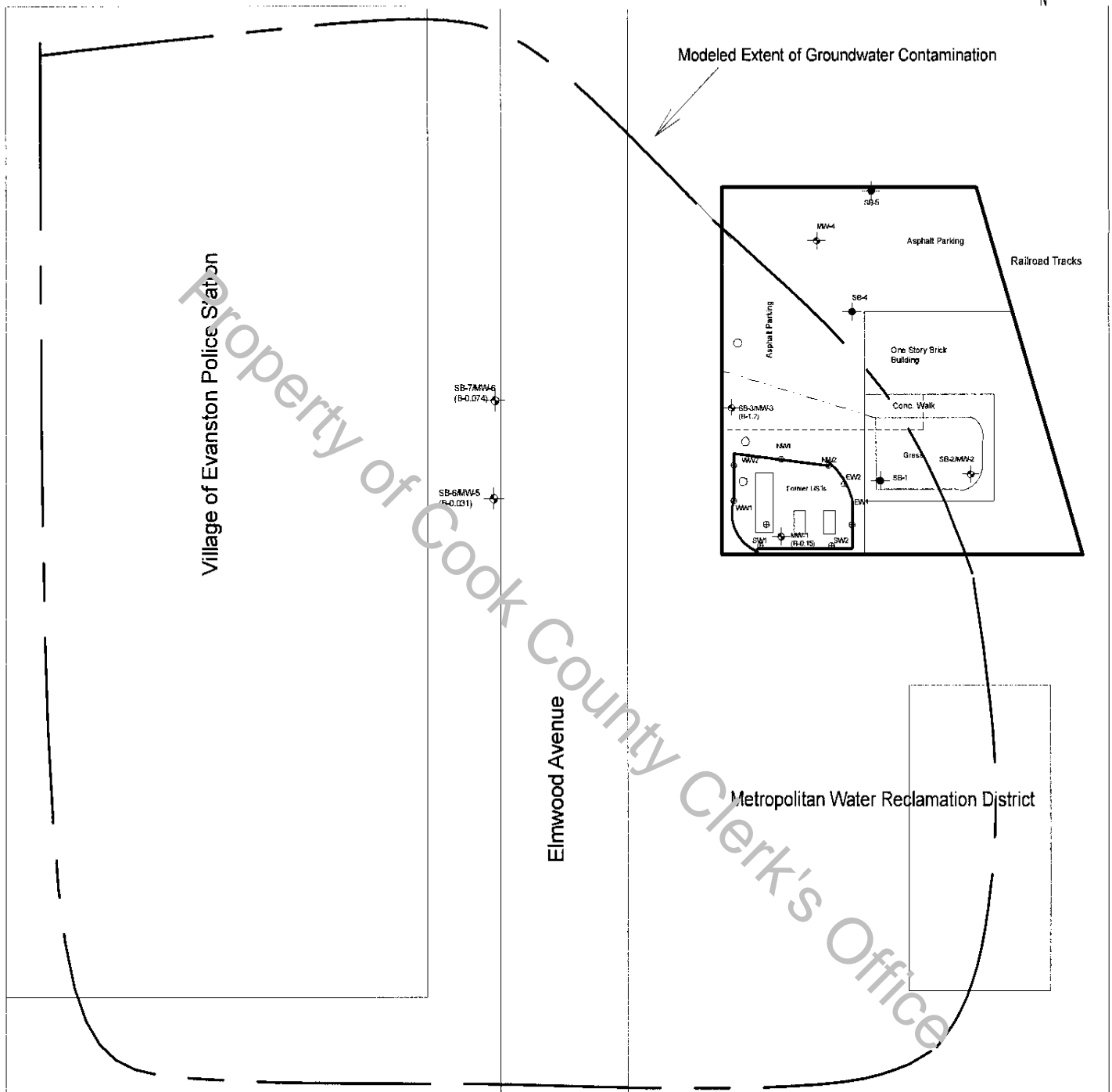
- |  |                  |  |                             |        |  |
|--|------------------|--|-----------------------------|--------|--|
|  | Sewer Manhole    |  | Tank Excavation Soil Sample | B-3.0  | Benzene Concentration mg/kg  |
|  | Natural Gas Line |  | Soil Boring                 | X-30.0 | Xylenes Concentration mg/kg  |
|  | Water Main       |  | Monitoring Well             |        | Extent of Offsite Soil Concentrations Above the Soil Ingestion and Inhalation Route which Requires an Engineered Barrier |

Yung Environmental, Inc.  
 6855 Didrikson Lane, Woodridge, IL 60517  
 (630)420-0913

**Figure 1: Site Map Showing Extent of Soil Contamination**

1459 - 1463 Elmwood Avenue  
 Evanston, Illinois

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Lake Street

Scale: 1 inch = 40 Feet

**Legend**

- Sewer Manhole
- Natural Gas Line
- - - Water Main
- Soil Boring
- ⊕ Tank Excavation Soil Sample
- ⊙ Monitoring Well
- B-0.15 Benzene Concentration mg/L

Yung Environmental, Inc.  
 6855 Didrikson Lane, Woodridge, IL 60517  
 (630)420-0913

Figure 2: Site Map Showing Modeled Extent of Groundwater Contamination

1459 - 1463 Elmwood Avenue  
 Evanston, Illinois



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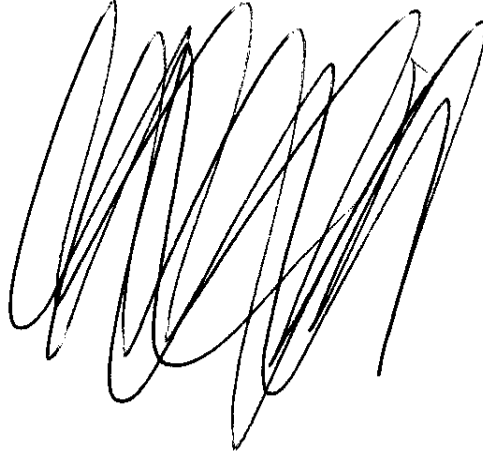


EXHIBIT B – TABLES OF ANALYTICAL RESULTS

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**Table 1: Analytical Results of Soil Samples (BTEX, MTBE and Lead) - May 16 and 17, 2012**

Analyte	Route Specific Values for Soil		Soil Component of Groundwater Ingestion Exposure Route Values		Soil Samples Collected From Tank Excavation						
	Ingestion	Inhalation	Class I	Class II	Floor 1 5/16/2012	W Wall 1 5/16/2012	S Wall 1 5/16/2012	Floor 2 5/16/2012	S Wall 2 5/16/2012	Floor 3 5/16/2012	N Wall 2 5/17/2012
Benzene	12	0.8	0.03	0.17	0.0057	10	< 0.0067	< 0.006	< 0.0049	< 0.005	0.0087
Toluene	16,000	650 / 42*	12	29	< 0.0055	0.035	< 0.0067	< 0.006	< 0.0049	< 0.005	< 0.006
Ethylbenzene	7,800	400 / 58*	13	19	< 0.0055	0.034	< 0.0067	< 0.006	< 0.0049	< 0.005	< 0.006
Xylenes, Total	16,000	320 / 5.6*	150	150	< 0.016	0.15	< 0.02	< 0.018	< 0.015	< 0.015	< 0.018
MTBE	780	8,800 / 140*	0.32	0.32	< 0.0055	< 0.0061	< 0.0067	< 0.006	< 0.0049	< 0.005	< 0.006
Lead	400	---			3.9	2.9	2.9	3.7	14	4.1	6.2

Note:

Concentrations in milligrams per kilogram (mg/kg)

Concentrations compared to IEPA Tiered Approach To Corrective Action Tier 1 soil remediation objectives, 35IAC Part 742

\* - Construction Worker Inhalation Objective from Appendix B, Table B

10: Concentration exceeds the most stringent Tier 1 soil remediation objective

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**Table 1: Analytical Results of Soil Samples (BTEX, MTBE and Lead) - May 16 and 17, 2012**

Analyte	Soil Samples Collected From Tank Excavation																	
	Route Specific Values for Soil		Soil Component of Groundwater Ingestion Exposure Route Values		N Wall 1 5/17/2012		W Wall 2 5/17/2012		E Wall 1 5/17/2012		E Wall 2 5/17/2012		Floor 4 5/17/2012		Floor 5 5/17/2012		Floor 6 5/17/2012	
	Ingestion	Inhalation	Class I	Class II														
Benzene	12	0.8	0.03	0.17	6.7	< 0.0051	3	5.3	< 0.0064	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0055	0.015
Toluene	16,000	650 / 42*	12	29	0.4	< 0.0051	0.034	0.44	< 0.0064	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0055	0.0085
Ethylbenzene	7,800	400 / 58*	13	19	11	< 0.0051	< 0.0051	< 0.26	< 0.0064	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0055	< 0.0057
Xylenes, Total	16,000	320 / 5.6*	150	150	30	< 0.015	< 0.015	< 0.78	< 0.019	< 0.016	< 0.019	< 0.016	< 0.016	< 0.019	< 0.016	< 0.016	< 0.016	< 0.017
MTBE	780	8,800 / 140*	0.32	0.32	< 0.0065	< 0.0051	< 0.051	< 0.26	< 0.0064	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0064	< 0.0055	< 0.0055	< 0.0055	< 0.0057
Lead	400	---			8	7	9.9	17	4	4.8	4	4.8	4.8	4	4.8	4.8	4.8	25

Note:

Concentrations in milligrams per kilogram (mg/kg)  
 Concentrations compared to IEPA Tiered Approach To Corrective Action Tier 1 soil remediation objectives, 35IAC Part 742  
 \* - Construction Worker Inhalation Objective from Appendix B, Table B.  
 10 Concentration exceeds the most stringent Tier 1 soil remediation objective

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**Table 1: Analytical Results of Soil Samples - BTEX and MTBE (June 19, 2012)**

Analyte	Route Specific Values for Soil		Soil Component of Groundwater Ingestion Exposure Route Values		Soil Samples Collected On-site				
	Ingestion	Inhalation	Class I	Class II	Sample ID : Date Collected :	SB-1 (5'-7') 6/19/2012	SB-2 (3'-5') 6/19/2012	SB-2 (5'-7') 6/19/2012	SB-3 (3'-5') 6/19/2012
	12	0.8	0.03	0.17					
Benzene	16,000	650 / 42*	12	29		0.013	0.0083	0.0058	< 0.0065
Toluene	7,800	400 / 58*	13	19		< 0.0053	0.011	< 0.0058	< 0.0065
Xylenes, Total	16,000	320 / 5.6*	150	150		< 0.0053	< 0.0061	< 0.0058	< 0.0065
Methyl tert-butyl ether	780	8,800 / 140*	0.32	0.32		< 0.016	< 0.018	< 0.017	< 0.019
						< 0.0053	< 0.0061	< 0.0058	< 0.0062

**Notes:**

Soil Remediation Objectives - 35 IAC Part 742, Tiered Approach to Corrective Action Objectives for Residential Properties  
 Concentrations in milligrams per kilogram (mg/kg)

\* Soil Remediation Objective for Construction Worker Inhalation Route

\*\* The soil sample was collected from 7' to 10' and mistakenly entered in the COC form as 5' to 7'

40 Concentration exceeds the most stringent soil remediation objective

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IEMA# 20120368

1459-1463 Elmwood Avenue, Evanston, IL

**Table 1: Analytical Results of Soil Samples - BTEX and MTBE (June 19, 2012)**

Analyte	Route Specific Values for Soil		Soil Component of Groundwater Ingestion Exposure Route Values		Soil Samples Collected On-site			
	Ingestion	Inhalation	Class II		SB-3 (5'-7')	SB-4 (5'-7')	SB-5 (3'-5')	SB-5 (7'-10')**
			Class I	Class II				
Benzene	12	0.8	0.03	0.17	< 0.3	0.0057	< 0.0062	< 0.0077
Toluene	16,000	650 / 42*	12	29	< 0.3	< 0.0048	< 0.0062	< 0.0077
Ethylbenzene	7,800	400 / 58*	13	19	11	< 0.0048	< 0.0062	< 0.0077
Xylenes, Total	16,000	320 / 5.6*	150	150	<b>40</b>	< 0.015	< 0.019	< 0.023
Methyl tert-butyl ether	780	8,800 / 140*	0.32	0.32	< 0.3	< 0.0048	< 0.0062	< 0.0077

Notes:

Soil Remediation Objectives - 35 IAC Part 742, Tiered Approach to Corrective Action Objectives for Residential Properties  
 Concentrations in milligrams per kilogram (mg/kg)

\* Soil Remediation Objective for Construction Worker Inhalation Route

\*\* The soil sample was collected from 7' to 10' and mistakenly entered in the COC form as 5' to 7'

**40** Concentration exceeds the most stringent soil remediation objective

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1459-1463 Elmwood Avenue, Evanston, IL

IEMA # 20120368

**Table 2: Analytical Results of Groundwater Samples (June 20, 2012)**

Analyte	Units	Groundwater Samples Collected On-site					
		Sample ID :	MW-1	MW-2	MW-3	MW-4	
		Date Collected :	6/20/2012	6/20/2012	6/20/2012	6/20/2012	
		Groundwater Remediation Objective					
		Class I	Class II				
Benzene	mg/L	0.005	0.025	<b>0.15</b>	< 0.005	<b>1.2</b>	< 0.005
Toluene	mg/L	1.0	2.5	0.036	< 0.005	< 0.005	< 0.005
Ethylbenzene	mg/L	0.7	1.0	0.016	< 0.005	0.0053	< 0.005
Xylenes, Total	mg/L	10.0	10.0	0.082	< 0.015	0.019	< 0.015
Methyl tert-butyl ether	mg/L	0.07	0.07	< 0.005	< 0.005	< 0.005	< 0.005

## Notes:

Groundwater Remediation objectives - 35 IAC Part 742, Tiered Approach to Corrective Action Objectives

**0.15**

Concentration above the Groundwater Remediation Objective

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**Table 1: Analytical Results of Soil Samples - BTEX (October 31, 2012)**

Offsite Soil Borings (Parkway in front of City of Evanston Police Station)  
SB-6 (3-5) SB-6 (7-10) SB-6 (10-12) SB-7 (3-5) SB-7 (7-10) SB-7 (10-12)  
10/31/2012 10/31/2012 10/31/2012 10/31/2012 10/31/2012 10/31/2012

Analyte	Soil Component of Groundwater Ingestion Exposure Route Values	
	Ingestion	Inhalation
Benzene	12	0.8
Toluene	16,000	650 / 42*
Ethylbenzene	7,800	400 / 58*
Xylenes, Total	16,000	320 / 5.6*

Analyte	Soil Component of Groundwater Ingestion Exposure Route Values					
	Class I	Class II	Class I	Class II	Class I	Class II
Benzene	< 0.0065	< 0.0071	< 0.0053	< 0.0055	< 0.0056	< 0.0065
Toluene	< 0.0065	< 0.0071	< 0.0053	< 0.0055	< 0.0056	< 0.0065
Ethylbenzene	< 0.0065	< 0.0071	< 0.0053	< 0.0055	< 0.0056	< 0.0065
Xylenes, Total	< 0.02	< 0.021	< 0.016	< 0.016	< 0.017	< 0.019

**Notes:**

Concentrations in milligrams per kilogram (mg/kg)  
Tier I soil remediation objectives for residential properties, 35 IAC Part 742

\* - Construction Worker Inhalation Objective from Appendix B, Table B.

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1459-63 Elmwood Avenue, Evanston, IL

Site Investigation Completion Report  
IEMA# 20120368

**Table 2: Analytical Results of Groundwater Samples (November 1, 2012)**

		Offsite Monitoring Wells (Parkway - In front of City of Evanston Police Station)			
		Sample ID :		MW-5	MW-6
		Date Collected :		11/01/2012	11/01/2012
		Groundwater Remediation Objective			
Analyte	Units	Class I	Class II		
Benzene	mg/L	0.005	0.025	<b>0.031</b>	<b>0.074</b>
Toluene	mg/L	1.0	2.5	< 0.005	< 0.005
Ethylbenzene	mg/L	0.7	1.0	< 0.005	< 0.005
Xylenes, Total	mg/L	10.0	10.0	< 0.015	< 0.015

Note:

Class I and Class II groundwater remediation objectives, 35 IAC Part 742

**0.031**

Concentration above Class I and Class II groundwater remediation objectives



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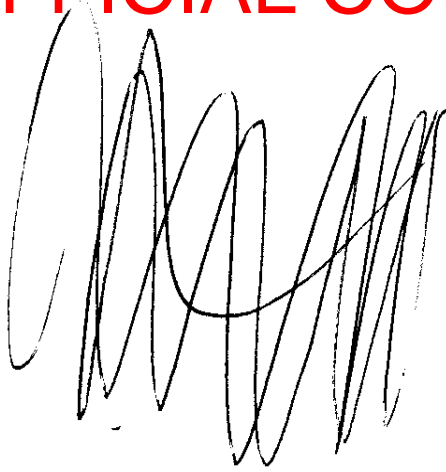
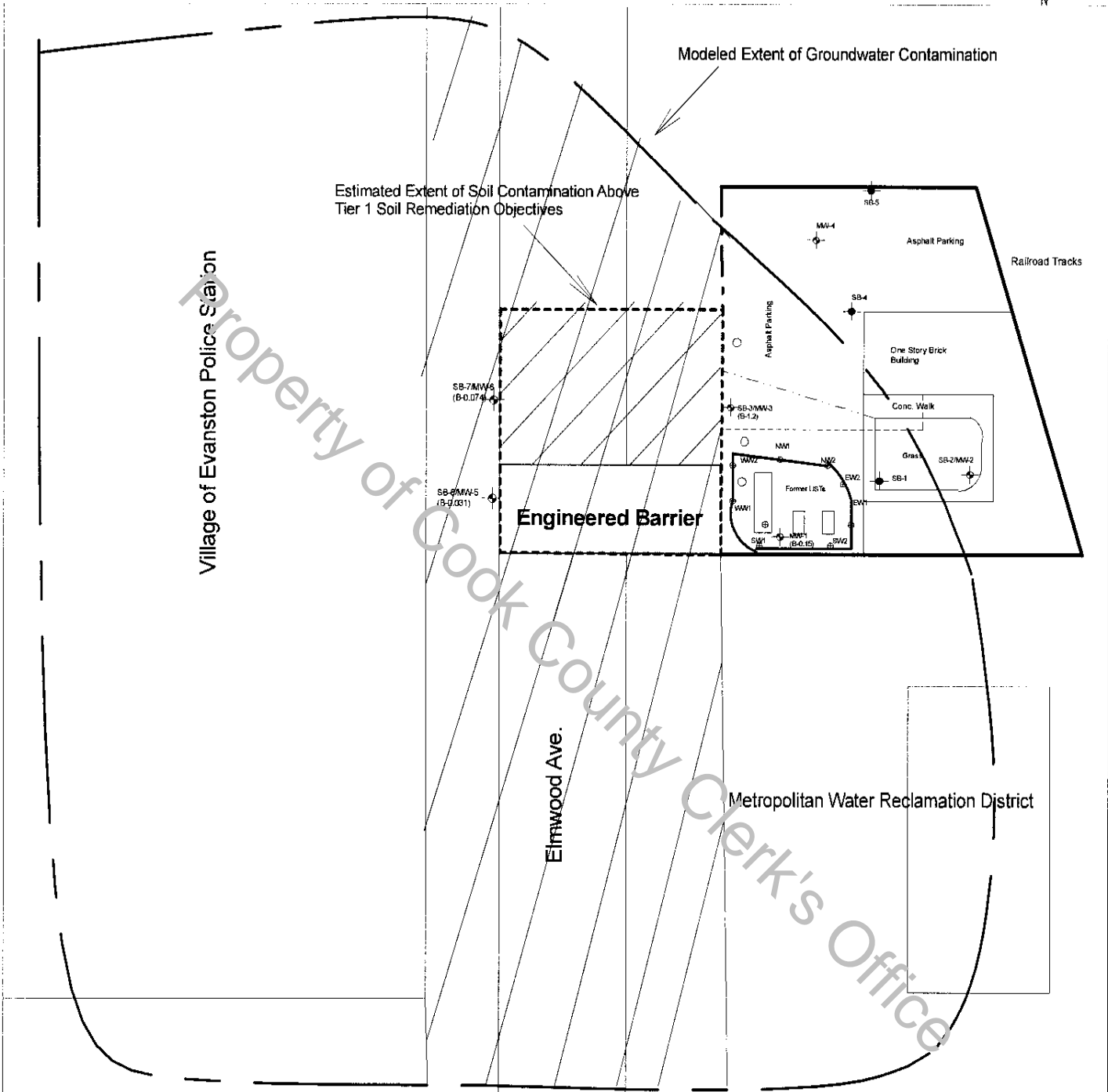


EXHIBIT C – FIGURE SHOWING AREA OF HIGHWAY AUTHORITY AGREEMENT

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Lake Street

Scale: 1 inch = 40 Feet

**Legend**

- |                  |                             |   |
|------------------|-----------------------------|---|
| Sewer Manhole    | Soil Boring                 | B-0.15 Benzene Concentration mg/L   |
| Natural Gas Line | Monitoring Well             | Area of Highway Authority Agreement   |
| Water Main       | Tank Excavation Soil Sample | Area which limitation on access to soil applies to excavations at a depth greater than three feet |

Yung Environmental, Inc.  
 6855 Didrikson Lane, Woodridge, IL 60517  
 (830)420-0913

**Figure 3: Site Map Showing Highway Authority Agreement**

1459 - 1463 Elmwood Avenue  
 Evanston, Illinois

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## ADDENDUM TO HIGHWAY AUTHORITY AGREEMENT

This agreement is entered into this 28 day of May, by and between Ventura Realty, Ltd. ("Property Owner") and the City of Evanston ("City") (collectively known as the "Parties"):

**WHEREAS**, the City is a home rule municipality pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois and is authorized to exercise and perform any function pertaining to its government and affairs;

**WHEREAS**, Property Owner is the owner of property located at 1459-1463 Elmwood Avenue, Evanston, Illinois, (the "Site");

**WHEREAS**, as a result of one or more releases of contaminants at the above referenced Site ("the Release"), soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 Ill. Admin. Code Part 742;

**WHEREAS**, the soil and groundwater contamination exceeding Tier 1 residential remediation objectives may extend into the City's right-of-way(s), as described in Exhibit C of the Highway Authority Agreement ("HAA") attached hereto as Attachment 1 (the "Right-of-Way(s)");

**WHEREAS**, Property Owner has requested that the City enter into an Illinois Environmental Protection Agency ("IEPA") approved HAA attached hereto as Attachment 1;

**WHEREAS**, the City is under no obligation to enter into a Highway Authority Agreement with Property Owner;

**WHEREAS**, the City has determined that the additional protections in this Addendum to the HAA (the "Addendum") are in the public interest, and will tend to promote the public health, safety, morals, comfort, convenience and general welfare of the citizens of the City;

**WHEREAS**, Section 734.632 of the IEPA Leaking Underground Storage Tank Regulations, 35 IAC 734.632, addresses reimbursement of costs the City may incur in connection with contamination at the Site after the NFR Letter for the Site is issued, by providing in part as follows:

[T]he following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter .... (d)The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed Tier 1 residential property remediation objectives, if industrial/commercial property remediation objectives were used [to obtain the NFR Letter] and the owner or operator demonstrates that the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred ..." (hereafter "Section 734.632 of the LUST Regulation").

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**WHEREAS**, Property Owner entering into the Addendum is a condition precedent to City entering into the HAA;

**WHEREAS**, Property Owner requests the City enter into the HAA;

**WHEREAS**, the HAA would restrict access to soil within the Right-of-Way(s), so that human health and the environment are protected during and after any access;

**WHEREAS**, the Parties agree and consent that this Addendum will serve to supplement the HAA by conferring additional obligations, protections and benefits to the Parties and is not intended to conflict with terms and conditions of the HAA;

**WHEREAS**, the Parties acknowledge and agree that the HAA must be approved by the IEPA as an Institutional Control, as defined by the regulations of the Illinois Pollution Control Board ("IPCB");

**WHEREAS**, the Parties acknowledge and agree that the HAA must be approved by the IEPA as a condition of the HAA becoming effective;

**WHEREAS**, Property Owner agrees to record at its expense the HAA and this Addendum with the County Recorder on the property records relating to the Site within thirty (30) days after receiving the no further remediation determination for the Release(s) and IEPA incident number(s) referenced in the HAA;

**WHEREAS**, in the HAA the City stipulates it has jurisdiction over the Right-of-Way(s) that gives the City sole control over access to the soil located within or beneath the Right-of-Way(s);

**WHEREAS**, the City is designated a third party beneficiary of the HAA and the City may enforce the HAA as if a party thereto.

**NOW THEREFORE**, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. This Addendum is not binding upon the City until it is executed by the undersigned representatives of the Parties and the HAA is also executed by the respective representatives.
3. The HAA and this Addendum shall be null and void should the IEPA not approve the HAA or should the HAA not be referenced in a "No Further Remediation" determination for the Site within two (2) years of the date of the HAA. The City shall not unreasonably deny a written request by Owner for additional time, beyond the two (2) years specified above, to obtain IEPA approval of the HAA or reference of the HAA in a "No Further Remediation" determination for the Site. In the event that IEPA does not approve the HAA due to an objection to any provision in this Addendum, the Parties will in good faith attempt to amend this Addendum in order to address and resolve IEPA's objection(s).

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4. The Parties reserve any and all causes of action they may have against one another and persons not a party to this agreement, whether in contribution or cost recovery, including causes of action arising under any law, statute or regulation whatsoever, including the Act, common law, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., CERCLA, 42 U.S.C. 9601, et seq.
5. This Addendum shall be binding upon and inure to the benefit of all successors in interest to the City. A successor in interest of the City would include a highway authority to which the City would transfer jurisdiction over the highway.
6. Violation of the terms of this Addendum by the Property Owner or the City will not be grounds for avoidance or termination of the Addendum and the HAA, unless: (1) the IEPA has determined in writing that the violation is grounds for IEPA's avoidance of the HAA; and, (2) the violation has not been cured within such time as IEPA has granted to cure the violation.
7. Pursuant to Section 9 of the HAA, the City may conduct certain work upon the Right-of-Way(s) and remove or dispose of contaminated soil and groundwater from the Right-of-Way(s) in accordance with applicable environmental laws and regulations. Prior to taking any such action, the City will first give Property Owner no less than ten days (10) written notice, unless there is an immediate threat to the health or safety to any individual or to the public, that it intends to perform work in the Right-of-Way(s) which may involve removing and disposing of contaminated soil or groundwater. During this period, which may be extended by agreement of the parties (such agreement not to be unreasonably withheld), the City and Property Owner will in good faith attempt to agree upon a consensus approach to managing the impacted soil and groundwater in the Right-of-Way(s). The final decision for management will be in the reasonable discretion of the City. Failure of the City to give notice is not a violation of this Addendum.
8. (a) In the event that the City conducts work upon the Right-of-Way(s) and the soil and/or groundwater in the Right-of-Way(s) is not contaminated, Property Owner will have no obligation to the City under this paragraph of this Addendum.  
  
(b) In the event that the City conducts work upon the Right-of-Way(s) and the soil and/or groundwater in the Right-of-Way(s) is contaminated, Property Owner and the City shall in good faith cooperate in an attempt to apply for and obtain, for the benefit of the City, reimbursement of all costs incurred by the City for all corrective action activities incurred in connection with work upon the Right-of-Way(s) and the removal or disposal of soil and groundwater from the Right-of-Way(s) to the extent the cost of such corrective action activities are reimbursable under Section 734.632 of the LUST Regulations. Property Owner's cooperation includes the execution of all forms and documents necessary to make an application for reimbursement under Section

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734.632 of the LUST Regulations, and the prompt payment to the City of any funds received by Property Owner as a consequence of an application for reimbursement of costs incurred by the City under Section 734.632 of the LUST Regulations. Unless otherwise agreed, Property Owner's cooperation does not include expending funds or entering into an obligation that requires or may require Property Owner to expend its funds. Property Owner's cooperation therefore specifically does not include, unless otherwise agreed: contracting for goods or services relating to the removal or disposal of soil and groundwater from the Right-of-Way(s); contracting for goods or services relating to an application for reimbursement under Section 734.632 of the LUST Regulations; incurring costs or advancing funds for the cost of corrective action activities incurred in connection with work upon the Right-of-Way(s) and the removal or disposal of soil and groundwater from the Right-of-Way(s); or incurring costs or advancing funds for costs incurred in the course of making an application for reimbursement under Section 734.632 of the LUST Regulations. Property Owner shall have no further obligations under this paragraph of this Addendum in the event such costs are not reimbursable under Section 734.632 of the LUST Regulation.

9. Notwithstanding Paragraph 4 of the Addendum, the parties, their agents, contractors, employees and its successors in interest waive all claims against one another, in either law or equity, arising under the HAA.
10. Property Owner stipulates that the City has an inadequate remedy at law for Property Owner's breach of the Addendum and may file for injunctive relief in Circuit Court of County, Illinois to enforce the Addendum.

**[SEPARATE SIGNATURE PAGES TO FOLLOW]**

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IN WITNESS WHEREOF, the City has caused this Addendum to be signed by its Mayor, a duly authorized representative, and to be binding upon it, its successors and assigns.

City of Evanston, Illinois

By: *Elizabeth Tisdell*  
The Honorable  
Its: Mayor

Date: 5-29-13

IN WITNESS WHEREOF, Ventura Realty, Ltd. has caused this Addendum to be signed by its president, a duly authorized representative, and to be binding upon it, its successors and assigns.

By: *Randall Cole*  
Its: President

Date: 5/28/2013

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