



MAR 20 2017

March 16, 2017

Response and Remediation Program

David Brownlee

Georgia Environmental Protection Division 2 Martin Luther King, Jr. Dr. Atlanta, GA 30334

Subject: HSI 10899 Letter of Transmittal of File-stamped Copy of Environmental Covenant and Affidavit

Dear Mr. Brownlee:

Please accept the enclosed file-stamped copy of the environmental covenant and affidavit for the Toyoko Inn Atlanta, LLC, property, Hazardous Site Index (HSI) site number 10899.

Sincerely,

Lindsay N Wallace, MS Project Manager NewFields

Enclosure (1)

cc: Bruce White, Barnes & Thornburg, LLP Tom Brodell, EPD

Deed Book 57228 Pg 668
Filed and Recorded Feb-24-2017 08:30am
2017-0041446
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

After Recording Return to:

Georgia Environmental Protection Division Response and Remediation Program 2 Martin Luther King, Jr. Drive, SE Suite 1462 East Atlanta, Georgia 30334

Environmental Covenant

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, OCGA § 44-16-1, et seq. This Environmental Covenant subjects the Property identified below to the activity and/or use limitations specified in this document. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded in accordance with OCGA § 44-16-8(a).

Fee Owner of Property/Grantor:

Toyoko Inn Atlanta, LLC

20 North Wacker Dr. Suite 1839

Chicago, IL 60606

Grantee/Holder:

Toyoko Inn Atlanta, LLC

20 North Wacker Dr, Suite 1839

Chicago, IL 60606

Grantee/Entity with

express power to enforce:

State of Georgia

Department of Natural Resources Environmental Protection Division 2 Martin Luther King Jr. Drive, SE

Suite 1456 East Tower Atlanta, GA 30334

Parties with interest in the Property:

Toyoko Inn Atlanta, LLC

20 North Wacker Dr. Suite 1839

Chicago, IL 60606

Property:

The property subject to this Environmental Covenant is the parcel at the corners of Forsyth and Luckie Streets in Atlanta, Georgia (hereinafter "Property"), located on 90-94 Forsyth Street and 85 Luckie Street in Atlanta, Fulton County, Georgia. This tract of land was conveyed from Selig Enterprises, Inc, a Georgia corporation to Toyoko Inn Atlanta, LLC, on April 8, 2008. The transaction was recorded in Deed Book 46608, Page 276, Fulton County Records. The area is located in Land Lot 78 of the 14th District of Fulton County, Georgia. The property is a 13,500 square foot paved asphalt parking lot. A complete legal description of the Property is attached as Exhibit A and a map of the Property is attached as Exhibit B.

Tax Parcel Number(s):

14-00-7800120574, Fulton County, Georgia

Name and Location of Administrative Records:

The corrective action at the Property that is the subject of this Environmental Covenant is described in the following document[s]:

• Revised Voluntary Remediation Program Application for The Hazardous Waste Site Index (HIS) Site Number 10899

These documents are available at the following locations:

Georgia Environmental Protection Division Response and Remediation Program 2 MLK Jr. Drive, SE, Suite 1054 East Tower Atlanta, GA 30334 M-F 8:00 AM to 4:30 PM excluding state holidays

Description of Contamination and Corrective Action:

This Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.

This Declaration of Covenant is made pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 et seq. by Toyoko Inn Atlanta, LLC, its successors and assigns, and the State of Georgia, Department of Natural Resources, Environmental Protection Division (hereinafter "EPD"), its successors and assigns. This Environmental Covenant is required because a release of the following substances occurred on the Property:

2,6-Dinitrotoluene
Benzo(a)anthracene
Benzo(a)pyrene
Benzo(b)fluoranthene
Benzo(k)fluoranthene
Carbon disulfide
Chrysene
Indeno(1,2,3-cd)pyrene

These compounds are "regulated substances" as defined under the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq., and the rules promulgated thereunder (hereinafter "HSRA" and "Rules", respectively). The Corrective Action consists of the installation and maintenance of engineering controls including an asphalt cap and institutional controls (limiting use to non-residential activities) to protect human health and the environment.

Grantor, Toyoko Inn Atlanta LLC (hereinafter "Toyoko"), hereby binds Grantor, its successors and assigns to the activity and use restriction(s) for the Property identified herein and grants such other rights under this Environmental Covenant in favor of Toyoko and EPD. EPD shall have full right of enforcement of the rights conveyed under this Environmental Covenant pursuant to HSRA, O.C.G.A. § 12-8-90 et seq., and the rules promulgated thereunder. Failure to timely enforce compliance with this

Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict EPD from exercising any authority under applicable law.

Toyoko makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, pursuant to O.C.G.A. § 44-16-5(a); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to O.C.G.A. § 44-16-9 and 10; and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereinafter "Owner"). Should a transfer or sale of the Property occur before such time as this Environmental Covenant has been amended or revoked then said Environmental Covenant shall be binding on the transferee(s) or purchaser(s).

The Environmental Covenant shall inure to the benefit of EPD, Tokoyo and their respective successors and assigns and shall be enforceable by the Director or his agents or assigns, Toyoko or its successors and assigns, and other party(ies) as provided for in O.C.G.A. § 44-16-11 in a court of competent jurisdiction.

Activity and/or Use Limitation(s)

- 1. <u>Registry.</u> Pursuant to O.C.G.A. § 44-16-12, this Environmental Covenant and any amendment or termination thereof, may be contained in EPD's registry for environmental covenants.
- 2. Notice. The Owner of the Property must give thirty (30) days advance written notice to EPD of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Corrective Action. The Owner of the Property must also give thirty (30) days advance written notice to EPD of the Owner's intent to change the use of the Property, apply for building permit(s), or propose any site work that would affect the Property.
- 3. Notice of Limitation in Future Conveyances. Each instrument hereafter conveying an interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of the Environmental Covenant.
- 4. Monitoring. Annually, in late March/early April, the Owner shall visually inspect the asphalt cap for cracks greater than ¼ inch in width or three feet in length, or for other pavement conditions which may compromise the asphalt cap.
- 5. Periodic Reporting. The owners shall inspect the property and applicable property instruments at least annually to ensure compliance with the covenant, as specified in the VRP application dated May 22nd, 2015 and approved by EPD in December 2015. Semi-annual progress reports will be submitted every six months. In addition, commencing after a Compliance Status Report (CSR) has been approved by the EPD, the Owner should complete and submit to EPD an Annual Property Evaluation Report no later than June 16th. Report should include photographs of the property, detail maintenance and inspection activities, certify non-residential use of the Property, and affirm that the activity and use limitations in this Environmental Covenant are being abided by Toyoko.
- 6. <u>Activity and Use Limitation(s)</u>. The Property shall be used only for non-residential uses, as defined in Section 391-3-19-.02 of the Rules and defined in and allowed under Fulton County's zoning regulations as of the date of this Environmental Covenant. Any residential use on the Property shall

be prohibited. Any activity on the Property that may result in the release or exposure to the regulated substances that were contained as part of the Corrective Action, or create a new exposure pathway, is prohibited. With the exception of work necessary for the maintenance, repair, or replacement of engineering controls, activities that are prohibited in the capped areas include, but are not limited to the following: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

- 7. <u>Groundwater Limitation</u>. The use or extraction of groundwater beneath the Property for drinking water or for any other non-remedial purposes shall be prohibited.
- 8. <u>Permanent Markers.</u> Permanent markers on each side of the Property shall be installed and maintained that delineate the restricted area as specified in Section 391-3-19-.07(10) of the Rules. Disturbance or removal of such markers is prohibited.
- 9. <u>Right of Access.</u> In addition to any rights already possessed by EPD and/or Toyoko, the Owner shall allow authorized representatives of EPD and/or Toyoko, the right to enter the Property at reasonable times for the purpose of evaluating the Corrective Action; to take samples, to inspect the Corrective Action conducted at the Property, to determine compliance with this Environmental Covenant, and to inspect records that are related to the Corrective Action.
- 10. Recording of Environmental Covenant and Proof of Notification. Within thirty (30) days after the date of the Director's signature, the Owner shall file this Environmental Covenant with the Recorders of Deeds for each County in which the Property is located, and send a file stamped copy of this Environmental Covenant to EPD within thirty (30) days of recording. Within that time period, the Owner shall also send a file-stamped copy to each of the following: (1) Toyoko, (2) each person holding a recorded interest in the Property subject to the covenant, (3) each person in possession of the real property subject to the covenant, (4) each municipality, county, consolidated government, or other unit of local government in which real property subject to the covenant is located, and (5) each owner in fee simple whose property abuts the property subject to the Environmental Covenant.
- 11. <u>Termination or Modification</u>. The Environmental Covenant shall remain in full force and effect in accordance with O.C.G.A. § 44-5-60, unless and until the Director determines that the Property is in compliance with the Type 1, 2, 3, or 4 Risk Reduction Standards, as defined in Georgia Rules of Hazardous Site Response (Rules) Section 391-3-19-.07 and removes the Property from the Hazardous Site Inventory, whereupon the Environmental Covenant may be amended or revoked in accordance with Section 391-3-19-08(7) of the Rules and O.C.G.A. § 44-16-1 *et seq*.
- 12. <u>Severability.</u> If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 13. No Property Interest Created in EPD. This Environmental Covenant does not in any way create any interest by EPD in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way create any interest by EPD in the Property in accordance with O.C.G.A. § 44-16-3(b).

Representations and Warranties

Grantor hereby represents and warrants to the other signatories hereto:

- a) That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- b) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;

- c) That the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's intention to enter into this Environmental Covenant;
- d) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document or instrument to which Grantor is a party, by which Grantor may be bound or affected;
- e) That the Grantor has served each of the people or entities referenced in Activity 10 above with an identical copy of this Environmental Covenant in accordance with O.C.G.A. § 44-16-4(d).
- f) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property; and
- g) That this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.

Notices

Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

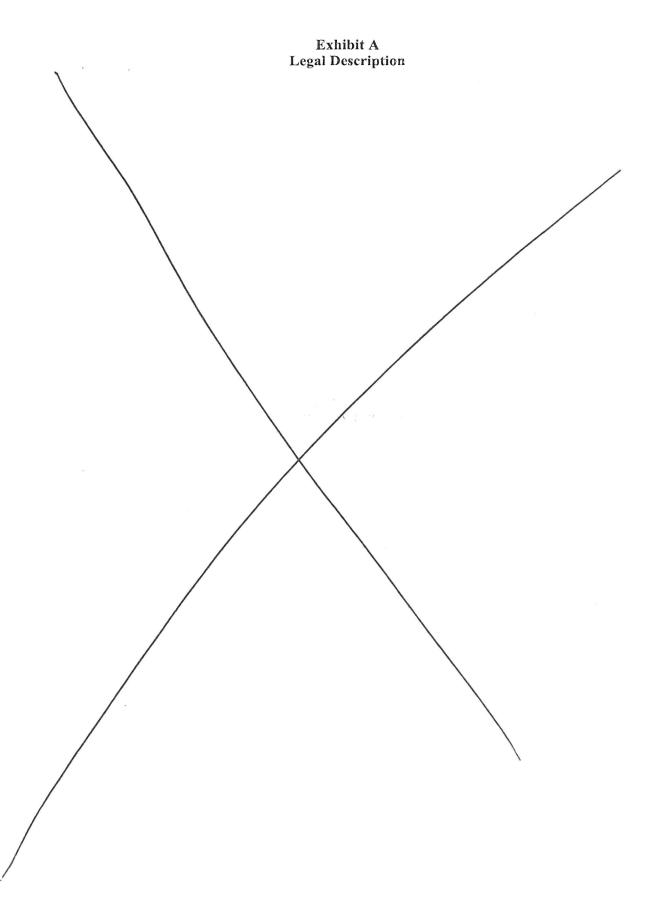
Georgia Environmental Protection Division Branch Chief Land Protection Branch 2 Martin Luther King Jr. Drive SE Suite 1054 East Tower Atlanta, GA 30334

Toyoko Inn Atlanta, LLC 20 North Wacker Dr, Suite 1839 Chicago, IL 60606

Grantor has caused this Environmental Coven Environmental Covenants Act, on the _/1/Lday	ant to be executed pursuant to The Georgia Uniform of TAUNT, 20/7
Signed, sealed, and delivered in the presence of:	For the Grantor Toyoko Inn Atlanta, Inc:
Unofficial Witness (Signature)	Name of Grantor (Print)
Unofficial Witness Name (Print)	Grantor's Authorized Representative (Signature) (Seal)
579 Slaine Street Batavia, All 60510	Authorized Representative Name (Print)
Unofficial Witness Address (Print)	Title of Authorized Representative (Print)
Notary Public (Signature) My Commission Expires: 9 1 2 20	Dated: XMULM 11, 2017 (NOTARY SEAL)
	OFFICIAL SEAL JAMIE MUELLER NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES:09/12/17
Signed, sealed, and delivered in the presence of:	For the Holder Toyoko Inn Atlanta, Inc:
Unofficial Witness (Signature)	Toyoko Inn Atlanta, Inc: Oyoko Towa Arlanta Name of Holdor (Print)
Susan A Morale	Toyoko Inn Atlanta, Inc:
Unofficial Witness (Signature) SUSAN A MOODY Unofficial Witness Name (Print) 529 Blank Sheet Ballwar IL 100510	Toyoko Inn Atlanta, Inc: Name of Holdor (Prim) (Seal)
Unofficial Witness (Signature) SUSAN A. MOOU Unofficial Witness Name (Print) 529 Blum Shut	Name of Holdor (Print) Holder's Authorized Representative (Signature) (Seal)
Unofficial Witness (Signature) SUSAN A MOODY Unofficial Witness Name (Print) 529 Blank Sheet Ballwar IL 100510	Toyoko Inn Atlanta, Inc: Name of Holdor (Print) Holder's Authorized Representative (Signature) Authorized Representative Name (Print) Authorized Representative Name (Print)
Unofficial Witness (Signature) SUSAN A MOOD Unofficial Witness Name (Print) STI Blum Sheet Sulum L 20510 Unofficial Witness Address (Print) Notary Public (Signature)	Toyoko Inn Atlanta, Inc: Name of Holdor (Print) Holdor's Authorized Representative (Signature) Authorized Representative Name (Print) Title of Authorized Representative (Print)
Unofficial Witness (Signature) SUSAN A MOOD Unofficial Witness Name (Print) STI Blum Sheet Sulum L 20510 Unofficial Witness Address (Print) Notary Public (Signature)	Toyoko Inn Atlanta, Inc: Name of Holdor (Print) Holdor's Authorized Representative (Signature) Authorized Representative Name (Print) Title of Authorized Representative (Print)

William A A A WALLER

(Seal)



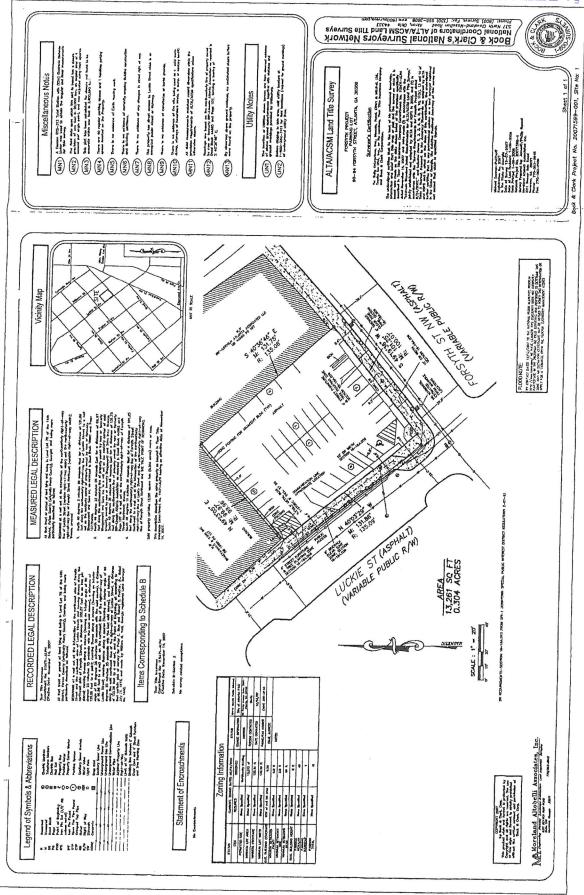
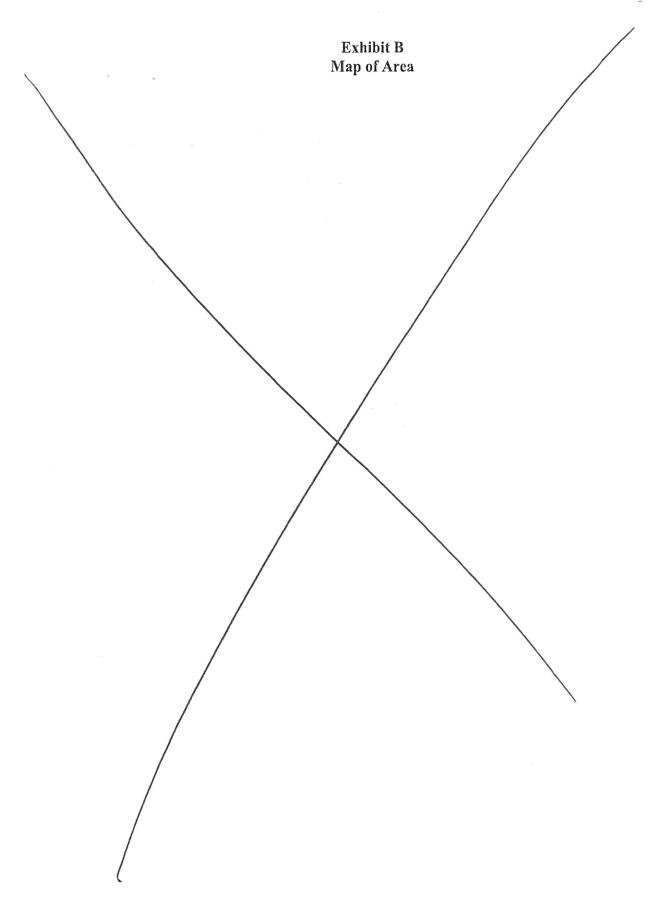
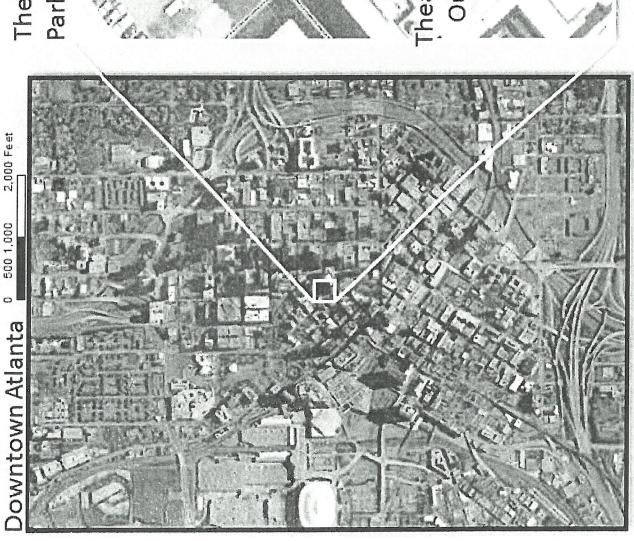
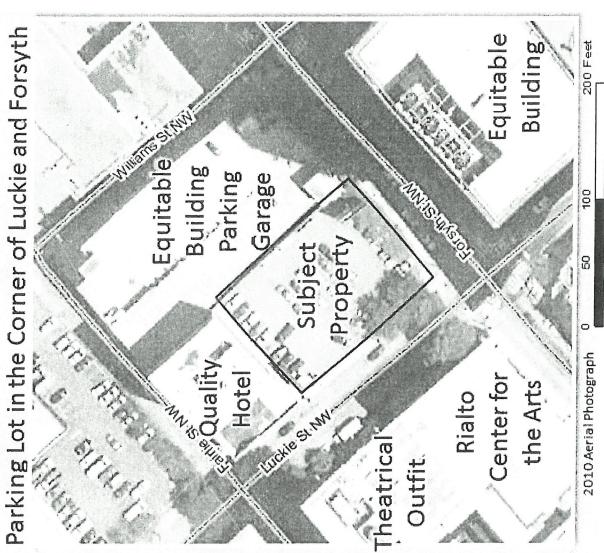


Exhibit A Legal Description





The Subject Property:



ACTION BY THE SOLE MEMBER OF TOYOKO INN ATLANTA, LLC BY WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING

June 15, 2016

The undersigned, being the sole member of Toyoko Inn Atlanta, LLC, a Delaware limited liability company (the "Company"), hereby waives all notice, and hereby votes for, consents to, ratifies and adopts the following actions as if the same had been duly voted for, consented to, ratified, and adopted at a duly called special meeting of the sole member of the Company:

WHEREAS, that the Company plans to submit various documents to the Department of Natural Resources, Georgia Environmental Protection Division, in connection with the Voluntary Remedial Program relating to the property located at 90-94 Forsyth and Luckie Streets, Atlanta, Georgia (the "VRP").

BE IT RESOLVED, that Bruce White, Esq., an attorney with Barnes & Thornburg, LLP, counsel to the Company, is hereby authorized and empowered to take such further actions and to execute and deliver the Environmental Covenant, Affidavit and all such further instruments and documents on behalf of the Company, as in his judgment will be necessary, proper, or advisable in connection with the VRP and to effectuate the intent of the foregoing resolution.

IN WITNESS WHEREOF, the undersigned, being the sole member of the Company, has executed this consent, effective as of June 15, 2016.

Toyoko Inn USA, Inc.

Name: Takao Endo Title: President

AFFIDAVIT OF ALAN BRUCE WHITE

The Affiant, after first being duly sworn states as follows:

- 1. I, Alan Bruce White an adult citizen and resident of the State of Illinois.
- 2. I am the attorney for Toyoko Inn Atlanta LLC's ("TOYOKO") facility located in Atlanta, Georgia and have been authorized by the Sole Member of the LLC to submit this Affidavit on its behalf.
- 3. One of my responsibilities in working for TOYOKO is the oversight of the Voluntary Investigation and Remediation Plan/Voluntary Remediation Program at TOYOKO's property, HIS Site No. 10899, located at 90-94 Forysth Street and 85 Luckie Street, in Atlanta, Fulton County, Georgia, (Tax Parcel No. 14 0078001 20574) ("Property").
- 4. I hereby state that this Property has been listed on the state's hazardous waste site inventory and has been designated as needing corrective action due to the presence of hazardous wastes hazardous constituents, or hazardous substance regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act <u>and the Voluntary Remediation Program Act</u>.

5.	Further Affiant sayeth naugh	Alan Bruce White, Affiant
STAT	E OF ILLINOIS)	
COUN) NTY OF COOK)	
day of	Subscribed and sworn to be ally appeared the following the sworn to be ally appeared the sworn to be all the sworn the sworn to be all the sworn	fore me, a Notary Public, in and for said County and State , Affiant, and executed the foregoing this 5 Notary Public
	OFFICIAL SEAL SUSAN A MOODY NOTARY PUBLIC - STATE OF ILLINOIS	

MY COMMISSION EXPIRES:09/20/16