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600 Peachtree Street NE, Suite 3000  
Atlanta, GA 30308-2216

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**Andrea L. Rimer**  
D. 404.885.3265  
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August 1, 2019

**BY ELECTRONIC MAIL**

Barrett Fischer  
Response & Remediation Program  
Georgia Environmental Protection Division  
2 Martin Luther King Jr. Drive, SE, Suite 1054  
Atlanta, Georgia 30334

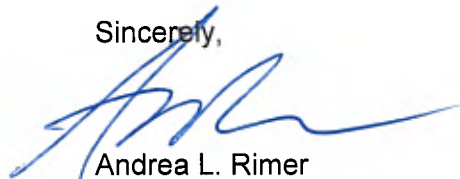
**Re: Filed Environmental Covenant  
Whitaker Oil Warehouse Property, 1587 Marietta Road, Atlanta, GA**

Dear Barrett:

In accordance with the Uniform Environmental Covenants Act, enclosed is the final Environmental Covenant for the above-referenced property, filed with the Fulton County Clerk of Superior Court on July 3, 2019.

Please feel free to call or email me if you have any questions or need additional information.

Sincerely,



Andrea L. Rimer

Enclosure

After Recording Return to:  
Andrea L. Rimer  
Troutman Sanders LLP  
600 Peachtree Street, Suite 3000  
Atlanta, Georgia 30308

Tax Parcel ID # 17022400610011

**CROSS-REFERENCE:**  
County: Fulton  
Deed Book: \_\_\_\_\_  
Page(s): \_\_\_\_\_

### **Environmental Covenant**

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 *et seq.*, as may be amended from time to time (hereinafter "Act"). This Environmental Covenant is entered into by the entities executing this Environmental Covenant as part of an environmental response project to address regulated substances released into the environment that have migrated in the groundwater onto the Property identified below. This Environmental Covenant restricts the use of groundwater on the Property to prevent humans from coming into contact with regulated substances.

**Fee Simple Owner(s)/Grantor(s):**

Whitaker Properties, Ltd.  
1557 Marietta Road, NW  
Atlanta, GA 30318

**Grantee/Holder with the  
power to enforce:**

Whitaker Properties, Ltd.  
1557 Marietta Road, NW  
Atlanta, GA 30318

**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

**Persons with Interests  
Other than Fee Simple:**

Branch Banking and Trust Company  
200 West Trade Street  
Winston-Salem, NC 27101-4019

The City of Atlanta, Georgia  
55 Trinity Avenue  
Atlanta, Georgia 30303  
Attn: Law Department, The City of Atlanta  
Department of Watershed Management  
72 Marietta Street 5<sup>th</sup> Floor  
Atlanta, Georgia 30303

Georgia Power Company  
241 Ralph McGill Blvd NE, Bin 10180  
Atlanta, GA 30308-3374

### **Property Subject**

The property subject to this Environmental Covenant is a tract of approximately 5.48 acres of real property located at 1587 Marietta Road NW, Atlanta, Fulton County, Georgia, which is further identified by the tax parcel ID number(s) below (hereinafter "Property"). The Property was conveyed on July 29, 2013; January 2, 2013; May 17, 2004; September 2, 2003 and May 7, 2003 to Whitaker Properties, Ltd.; such conveyances are recorded in Deed Book 52918, Page 674; Deed Book 52091, Page 356; Deed Book 37575, Page 151; Deed Book 35861, Page 581 and Deed Book 34874, Page 357 of the Fulton County deed records. The Property is located in Land Lot 223 and 224 of the 17th District of Fulton County, Georgia.

The tax parcel of the Property is 17022400010011 of Fulton County, Georgia.

A legal description of the Property is attached as Exhibit A.

### **Environmental Covenant Runs with the Land and is Perpetual**

Pursuant to the Act, this Environmental Covenant shall run with the land and shall be perpetual unless terminated or amended pursuant to terms herein or in accordance with provisions of the Act. This Environmental Covenant shall be binding upon Whitaker Properties, Ltd., and all successors, assigns and transferees of any interest in the Property or any portion thereof.

### **Administrative Records**

This Environmental Covenant imposes activity and/or use limitations and other requirements on the Property that arise under an environmental response performed and/or being performed at the M&J Solvents Site, HSI Site #10096. Records pertaining to this corrective action are available at the following EPD location(s):

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

### **Activity and Use Limitations.**

The use or extraction of groundwater beneath the Property for drinking water or other potable uses shall be prohibited. The use or extraction of groundwater for any other purpose besides site characterization is prohibited unless conducted under a plan approved in writing by EPD.

**Other Requirements.** The Property is subject to the following additional requirements.

- A. Notice of Limitations and Requirements in Future Conveyances. Each instrument hereafter conveying any interest in the Property or any portion thereof that may affect the activity and use limitations described herein shall include a statement that the Property is subject to this Environmental Covenant (and any amendments thereto), the location (County, Deed Book and Page) in the deed records where this Environmental Covenant (and any amendments thereto) is recorded.
- B. Termination or Modification: The Environmental Covenant shall remain in full force and effect in accordance with O.C.G.A. § 44-5-1 et seq., unless and until the Director determines that the Property is in compliance with the Type 1 or 2 Risk Reduction Standards for groundwater, as defined in Section 391-3-19-.07 of the Georgia Rules of Hazardous Site Response, whereupon the Environmental Covenant may be terminated in accordance with O.C.G.A. § 44-16-1 *et seq.*

### **Environmental Covenant Does Not Authorize Use Otherwise Prohibited**

Pursuant to the Act, this Environmental Covenant shall not be construed to authorize a use of the Property that is otherwise prohibited by zoning, ordinance, local law or general law or by a recorded instrument that has priority over this Environmental Covenant.

### **Rights of Access/Compliance**

Grantor(s) shall provide reasonable access to authorized representatives of EPD and Whitaker Properties, Ltd. to verify compliance with the terms of this Environmental Covenant.

This Environmental Covenant shall be enforceable by EPD, Whitaker Properties, Ltd. and other parties as provided in the Act. Such rights of access and enforcement herein shall not limit EPD's authority under other applicable law.

### **No Interest in Real Property in EPD**

EPD's rights under this Environmental Covenant and the Act shall not be considered an interest in real property.

### **Recording of Environmental Covenant and Service on Other Persons**

Within thirty (30) days after execution of this Environmental Covenant by the Director of EPD, Whitaker Properties, Ltd. shall record the Environmental Covenant in every county in which any portion of the Property is located in accordance with the law governing the recording and priority of interests in real property. Upon recording of the Environmental Covenant, Whitaker Properties, Ltd. shall provide in a manner deemed acceptable by EPD a copy of the executed, recorded Environmental Covenant to each of the persons or entities identified in O.C.G.A. § 44-16-7.

### **Representations and Warranties by Grantor(s).**

Grantor(s) represents and warrants that all of the following are true and correct:

- A. Whitaker Properties, Ltd. holds fee simple title to the Property.

- B. Whitaker Properties, Ltd. has the authority to enter into this Environmental Covenant, has the authority to grant any rights granted by it within, has the ability to carry out the obligations described within and, based upon information and belief after reasonable inquiry, does not know of any anticipated material change in the practices, ownership, or authority of Whitaker Properties, Ltd. that will alter this representation and warranty.
- C. The execution and delivery of this Environmental Covenant and carrying out the obligations described within will not conflict with any of the provisions of the organizational documents, operating agreement of Whitaker Properties, Ltd. nor will it violate, contravene and/or constitute a breach or default under any agreement, contract, order or instrument to which Whitaker Properties, Ltd. is a party or by which Whitaker Properties, Ltd. may be bound.
- D. Whitaker Properties, Ltd. has identified all persons with existing interests other than fee simple in the Property and has determined the type and status of their interests; for those interests where the type and/or status make it necessary, the person's agreement to and signature on this Environmental Covenant or subordination of the interest has been obtained; and the aforementioned information regarding all interests other than fee simple in the Property has been provided to EPD;
- E. At least thirty (30) days prior to presenting this Environmental Covenant to EPD for execution, a copy of the proposed final text of this Environmental Covenant was served on all persons or entities required to be noticed in accordance with O.C.G.A. § 44-16-7.

#### **EPD's Environmental Covenants Registry**

This Environmental Covenant and any amendment thereto or termination thereof may be included in EPD's registry for environmental covenants.

#### **Severability**

Should any provision of this Environmental Covenant be found by a court of competent jurisdiction to be invalid and/or unenforceable in any respect, the remaining provisions shall continue in full force and effect.

#### **Effective Date**

This Environmental Covenant shall be effective on the date the fully executed Environmental Covenant is recorded in accordance with O.C.G.A. § 44-16-8(a).

Grantor/Grantee

Whitaker Properties, Ltd.

Colie B. Whitaker III  
(Signature)

Signed in the presence of:

Mr. Colie B. Whitaker, III, President

Dot R White  
Unofficial Witness (signature)  
VICTORIA WHITAKER  
Unofficial Witness (print name)

State of ~~Georgia~~ Florida  
County of ~~Fulton~~ Collier

This instrument was acknowledged before me this 27<sup>th</sup> day of March, 2019, by Mr. Colie B. Whitaker, III.

Personally Known  
 Produced Identification

Cynthia I. Ferro  
Notary Public (Signature)

My Commission Expires: 10/21/22

(NOTARY SEAL) \_\_\_\_\_



For the Environmental Protection Division, Department of Natural Resources, State of Georgia, this 15<sup>th</sup> day of May, 2019:

Richard E. Dunn  
(Signature)

Mr. Richard E. Dunn  
Director, Environmental Protection Division

Signed in the presence of:

[Signature]  
Unofficial Witness (signature)

Sydney Brogden  
Unofficial Witness (print name)

State of Georgia  
County of Fulton

This instrument was acknowledged before me this 15 day of May, 2019, by Mr. Richard E. Dunn.

Personally Known  
 Produced Identification

Tamara C. Fischer  
Notary Public (Signature)

My Commission Expires: 7-27-2022

(NOTARY SEAL)

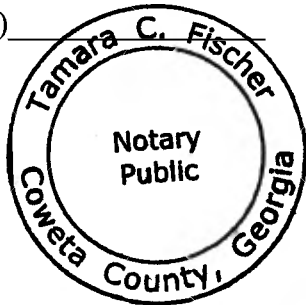


Exhibit A  
Legal Description of Property

All that tract or parcel of land and being in Land Lots 223 and 224 of the 17<sup>th</sup> District of Fulton County, Georgia and being more particularly described as follows:

Commencing at the intersection of the easterly Right-of-Way line of Marietta Road (being a 40-Foot Right-of-Way) and the southerly Right-of-Way line of Pine Street (being a 40-Foot Right-of-Way), said point being the POINT OF BEGINNING;

Thence running along said southerly Right-of-Way line of Pine Street North 60 Degrees 41 Minutes 21 Seconds East for a distance of 161.03 feet to a point;

Thence continuing along said southerly Right-of-Way line of Pine Street North 60 Degrees 41 Minutes 21 Seconds East for a distance of 420.56 feet to a point located on the westerly Right-of-Way line of CXS Railroad;

Thence leaving said southerly Right-of-Way line of Pine Street and running along said westerly Right-of-Way line of CXS Railroad along a curve to the right for a distance of 447.23 feet, said curve having a radius of 1,187.21 feet and being subtended by a chord bearing and distance of South 14 Degrees 02 Minutes 53 Seconds East 444.60 Feet, to a point;

Thence leaving said westerly Right-of-Way line of CXS railroad and running South 60 Degrees 41 Minutes 21 Seconds West for a distance of 118.67 feet to a point;

Thence running South 29 Degrees 18 Minutes 39 Seconds East for a distance of 11.50 feet to a point;

Thence running South 60 Degrees 41 Minutes 21 Seconds West for a distance of 359.33 feet to a point located on the easterly Right-of-Way line of Marietta Road;

Thence running along said easterly Right-of-Way line of Marietta Road North 28 Degrees 14 Minutes 07 Seconds West for a distance of 40.06 feet to a point;

Thence continuing along said easterly Right-of-Way line of Marietta Road North 29 Degrees 21 Minutes 42 Seconds West for a distance of 194.21 feet to a point;

Thence continuing along said easterly Right-of-Way line of Marietta Road North 25 Degrees 44 Minutes 21 Seconds West for a distance of 206.56 feet to a point, said point being the intersection of the easterly Right-of-Way line of Marietta Road (being a 40-Foot Right-of-Way) and the southerly Right-of-Way line of Pine Street (being a 40-Foot Right-of-Way) and the POINT OF BEGINNING.

Together with and subject to Covenants, Easements, and Restrictions of Record, said property contains 238,894 Square feet or 5.48 Acres more or less.



CROSS-REFERENCE:  
Deed Book 53709, Page 620;  
Deed Book 53709, Page 625;  
Deed Book 53709, Page 629;  
Deed Book 53709, Page 633;  
Deed Book 53709, Page 637;  
Deed Book 53709, Page 641;  
Deed Book 53709, Page 645;  
Deed Book 53709, Page 649;  
Fulton County, Georgia records

**CONSENT AND APPROVAL**

Branch Banking and Trust Company ("BB&T"), being the "Lender" under those certain Negative Pledge Agreements dated April 2, 2014, recorded in Deed Book 53709, Page 620; Deed Book 53709, Page 625; Deed Book 53709, Page 629; Deed Book 53709, Page 633; Deed Book 53709, Page 637; Deed Book 53709, Page 641; Deed Book 53709, Page 645; and Deed Book 53709, Page 649, all in the Fulton County, Georgia records (collectively, the "Negative Pledge"), hereby consents to, and approves of, the execution, delivery and recordation of, and the terms and conditions contained in, the Environmental Covenant made by Whitaker Properties, Ltd. to which this Consent and Approval is attached (the "Environmental Covenant").

BB&T hereby (i) expressly authorizes the execution, delivery and recording of the Environmental Covenant, and (ii) acknowledges and agrees that such execution and delivery shall not constitute a breach or default under the Negative Pledge or any other loan documents.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Approval this 11<sup>th</sup> day of March, 2019.

Signed, sealed and in the presence of:

Stacy L. Hayes  
Witness

Sonia N. Blackwell  
Notary Public

My Commission expires:

Notarial Seal

Branch Banking and Trust Company

By: [Signature]

Name: Richard E. Carswell

Its: SR Vice President

Attest: [Signature]

Name: Jennifer Phelps

Its: SR Vice President

**SONIA N BLACKWELL**  
NOTARY PUBLIC  
Barrow County  
State of Georgia  
My Comm. Expires April 4, 2022

[SEAL]