



July 29, 2013

Mr. Loic Maniet  
Indiana Department of Environmental Management  
Office of Land Quality – ELTF Section  
100 North Senate Avenue, Room 1101  
Indianapolis, Indiana 46206

**Re: Request for No Further Action Status  
Former Retail Shell Station  
5715 West Jefferson Boulevard  
Fort Wayne, Indiana  
IDEM Incident # 1993-11-548  
Facility ID # 124**

Dear Mr. Maniet,

Attached, please find an executed copy of an Environmental Restrictive Covenant (ERC) for the above referenced site, as approved by the Indiana Department of Environmental Management (IDEM) in correspondence dated June 24, 2013. Based on the attached information, URS Corporation, (URS) is requesting that No Further Action Status be issued.

Upon receipt of the No Further Action Status, the existing monitoring well network and underground system piping currently located on the subject property will be abandoned in accordance with 312 Indiana Administrative Code (IAC) 13-10-2.

Should you have any questions or require additional information, please contact the undersigned at (317) 532-5447 or Mr. John Robbins of Shell Oil Products US at (815) 468-8824. Please also direct any written correspondence to Mr. John Robbins, Shell Oil Products US, 20945 South Wilmington Avenue, Carson, California 90810.

Sincerely,  
**URS Corporation**

Mike Priebe  
Environmental Scientist

Kara K. Czechowski  
Senior Environmental Scientist  
Project Manager

The following Indiana registered licensed professional has reviewed and approved the attached report:

Joseph L. Gordon, CHMM #11650  
Principal Environmental Scientist



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Tx:4094027

2013041688

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JOHN MCGAULEY

ALLEN COUNTY RECORDER

FORT WAYNE, IN

**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 24 day of July, 2013, by Jewett Family Land Trust No. 1, 5715 West Jefferson Boulevard, Fort Wayne, Indiana.

WHEREAS: Owner is the fee owner of certain real estate in the County of Allen, Indiana, which is located at 5715 West Jefferson Boulevard, Fort Wayne, Indiana and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on May 30, 2000, and recorded on June 2, 2000, as Deed Record 200033031, in the Office of the Recorder of Allen County, Indiana. The Real Estate consists of approximately 1.55 acres and has also been identified by the county as parcel identification number 02-12-07-455-002.000-074.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the former operation of a retail gasoline station. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 1993-11-548, and the relevant facility identification number is 124.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater and soil of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented to protect human health and the environment. These COCs are benzene, toluene, ethylbenzene, xylenes, methyl-tertiary-butyl ether, and total petroleum hydrocarbons

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently [www.in.gov/idem/](http://www.in.gov/idem/)).

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NOW THEREFORE, Mr. Harold D. Jewett subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

## I. RESTRICTIONS

### 1. Restrictions, The Owner:

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, dally child care facillites or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Risk Integrated System of Closure ("RISC") Technical Resource Guidance Document. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws; and disposal of such soils must also be done in accordance with all applicable federal and state laws.

## II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their aùthorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the

entire Real Estate unless expressly stated as applicable only to a specific portion thereof.

3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records
5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED JULY 24 2013, RECORDED IN THE OFFICE OF THE RECORDER OF \_\_\_\_\_ COUNTY ON JULY 24, 2013 INSTRUMENT NUMBER (or other identifying reference) 2013041688 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

### III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result,

if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

#### IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Allen County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

#### V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant

shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:  
Jewett Family Land Trust No. 1  
5715 West Jefferson Boulevard  
Fort Wayne, Indiana 46804-1672

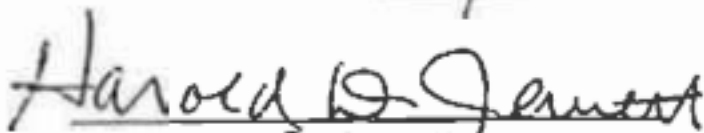
To Department:  
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Chief, Leaking Underground Storage Tank Program

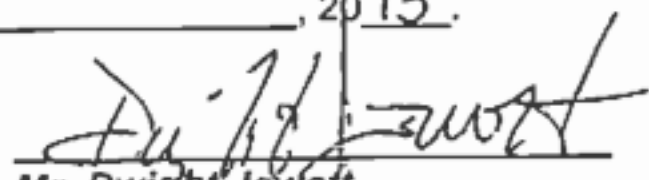
An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

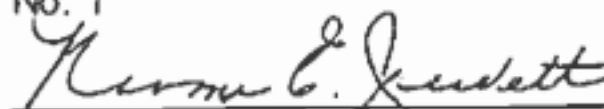
15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, *Jewett Family Land Trust No. 1*, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 24 day of July, 2013.

  
Mr. Harold D. Jewett  
Trustee of the Jewett Family Land Trust  
No. 1

  
Mr. Dwight Jewett  
Trustee of the Jewett Family Land Trust  
No. 1

  
Ms. Naomi Jewett  
Trustee of the Jewett Family Land Trust No. 1

STATE OF Indiana )  
 ) SS:  
COUNTY OF Allen )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Harold D. Jewett, Dwight Jewett, and Naomi Jewett, the representatives of the Owner, Jewett Family Land Trust, Inc. who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 24 day of July, 2013.



Shana M. Smith  
Shana M. Smith Notary Public  
Residing in marion County,

July 15, 2017  
My Commission Expires:

This instrument prepared by:  
Kady Ellison, URS Corporation, One Indiana Squire, Ste 2100, Indianapolis, Indiana 46204

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law:

Kady Ellison, URS Corporation, One Indiana Squire, Ste 2100, Indianapolis, Indiana 46204

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

Doc. No.	200033031
Receipt No.	15410
OCFD	3.00
DEED	8.00
SCSF	3.00
Total	16.00

THIS FORM HAS BEEN PREPARED FOR USE IN THE STATE OF INDIANA BY LAWYERS ONLY. SELECTING A FORM OF INSTRUMENT, FILLING IN BLANK SPACES, STRIKING OUT PROVISIONS AND INSERTING SPECIAL CLAUSES MAY CONSTITUTE THE PRACTICE OF LAW, WHICH SHOULD BE PERFORMED ONLY BY A LAWYER.

RECORDED  
06/02/2000 13:33:37  
RECORDER  
PATRICIA J CRICK  
ALLEN COUNTY, IN

MAIL TAX BILLS TO:

2805 Little River Rd  
Fort Wayne, IN 46804

### QUITCLAIM DEED

THIS INSTRUMENT WITNESSETH, that HAROLD D. JEWETT, Trustee of the Jewett Family Land Trust

No. 1, dated 11/27/89

GRANTOR(S) of Allen County in the State of Indiana

QUITCLAIM(S) to HAROLD D. JEWETT, Trustee of the Jewett Family Land Trust No. 1, dated 11/27/89

GRANTEE(S) of Allen County in the State of Indiana

in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate in Allen County, in the State of Indiana:

See Exhibit "A" attached hereto and made a part hereof by reference.

See Exhibit "B" for powers of the Trustee.

The purpose of this deed is to combine the real estate into one parcel for tax and building purposes.

*Wagner*

Dated this 30<sup>th</sup> day of May, 2000

Harold D. Jewett

Harold D. Jewett, Trustee  
(Printed Name)

(Signature)

(Printed Name)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

STATE OF INDIANA, COUNTY OF Allen SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 30<sup>th</sup> day of May, 2000, personally appeared Harold D. Jewett, Trustee of the Jewett Family Land Trust No. 1, dated 11/27/89

and acknowledged the execution of the foregoing deed. In witness whereof, I have herunto subscribed my name and affixed my official seal.

My commission expires January 20, 2008 Signature Charles D. Bash

Resident of Allen County Printed Charles D. Bash Notary Public

This instrument prepared by Charles D. Bash Attorney at Law

Attorney No. 4285-02

MAIL TAX  
COPYRIGHT 1997, THE ALLEN COUNTY INDIANA BAR ASSOCIATION, INC. (REV. 2-97, 6-99)

**FILED**

JUN 2 2000

SALES DISCLOSURE FORM

AUDITOR'S OFFICE  
Duly entered for taxation. Subject to final acceptance for transfer.

JUN 2 2000

AUDITOR OF ALLEN COUNTY

00 5253

*[Handwritten mark]*

#### EXHIBIT A

Lots Numbered 232, 233, 234, 235, 236, 245, 246, 247, 248, 249 and 250, together with the East half of Sheffield Drive running West of and parallel to Lots 232 and 250, as vacated by General Ordinance No. G-28-84, all in Country Club Terrace, Section A, an Addition to the City of Fort Wayne, Indiana, according to the plat thereof, recorded at Plat Record 12, page 42, in the Office of the Recorder of Allen County, Indiana. Also that portion of Winthrop Drive vacated by Circuit Court in Book 179, page 145 and lying North of Lot Number 245, as recorded in the Office of the Recorder of Allen County, Indiana.

#### EXHIBIT B

The Grantor, as Trustee(s) affirm(s) that the Trustee has the unlimited and unrestricted power and authority in its discretion to sell, convey, lease, and mortgage as Trustee, the real estate herein conveyed and to thereby convey and/or encumber the fee simple title thereto, and with no lesser powers than if it were the beneficial and fee simple owner thereof, and any conveyances, mortgage, and/or other contracts whatsoever affecting said real estate executed by the said Trustee under this deed, as well as the terms and conditions of any such sales, conveyances, mortgages of other instruments are hereby authorized by the Trust and no purchasers, mortgagees or other persons dealing with the Trustee shall be required or obligated to look to the application of any purchase money or mortgage proceeds, or otherwise to the purposes of this Trust.

The Grantee(s), as Trustee(s) herein, is/are given unlimited and unrestricted power and authority in its discretion to sell, convey, lease, and mortgage as such Trustee(s), the real estate herein conveyed and to thereby convey and/or encumber the fee simple title thereto, and with no lesser powers than if it were the beneficial and fee simple owner thereof, and any conveyances, mortgages, and/or other contracts whatsoever affecting said real estate executed by the said Trustee(s) under this deed, as well as the terms and conditions of any such sales, conveyances, mortgages or other instruments are hereby authorized by the Trust and no purchasers, mortgagees or other persons dealing with the Trustee(s) shall be required or obligated to look to the application of any purchase money or mortgage proceeds, or otherwise to the purposes of this Trust.