



**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 17<sup>th</sup> day of June, 2015, by Donald J. Tharp and Marsha J. Tharp, c/o Tharp Investments, Inc., 6910 N. Shadeland Avenue, Suite 200, Indianapolis, Indiana 46220.

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 5540-5550 East Washington Street, Indianapolis, Marion County 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 February 7, 2001, and recorded on February 15, 2001, as Deed Record 2001-0023666, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 0.47 acres and has also been identified by the county as parcel identification number[s] 49-10-03-218-002.000-701. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit "B" ("Site Map").

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum and hazardous substances relating to the former Shell Gasoline Station #172020 and Curley's Cleaners. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is state cleanup number 2001-06-179.

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. The known COCs remaining are listed in Exhibit "C" (*Analytical Data Tables*), which is attached hereto and incorporated herein.

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/)).

NOW THEREFORE, Donald J. Tharp and Marsha J. Tharp subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

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## 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, daily child care facilities 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.
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 authorized 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 JUNE 17<sup>th</sup> 2015, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON JUNE 18<sup>th</sup>, 2015, INSTRUMENT NUMBER A201500057900 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 Marion 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:

Donald J. Tharp and Marsh J.  
Tharp  
c/o Tharp Investments, Inc.  
6910 N. Shadeland Avenue,  
Suite 200  
Indianapolis, IN 46220

To Department:

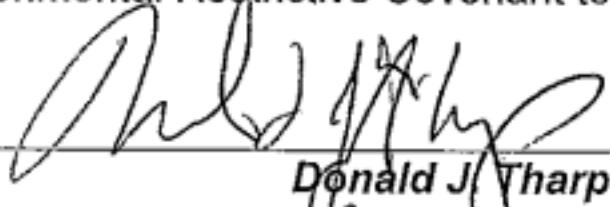
IDEM, Office of Land Quality  
100 N. Senate Avenue  
IGCN 1101  
Indianapolis, IN 46204-2251  
Attn: Chief, Leaking Underground  
Storage Tank Program

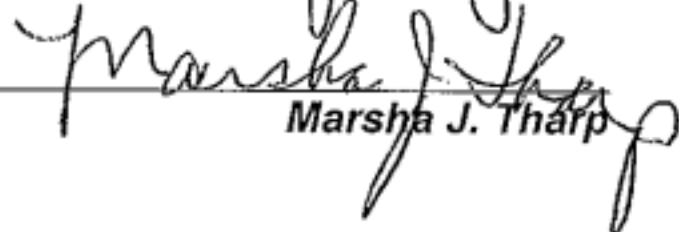
An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

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, **Donald J. Tharp and Marsha J. Tharp**, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 17<sup>th</sup> day of June, 2015.

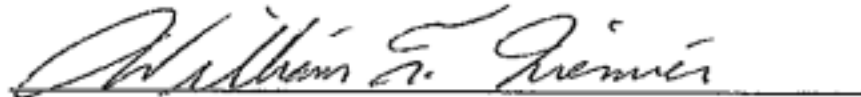
  
\_\_\_\_\_  
Donald J. Tharp

  
\_\_\_\_\_  
Marsha J. Tharp

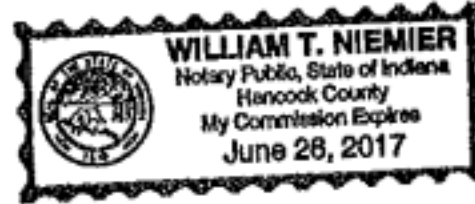
STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Donald J. Tharp and Marsha J. Tharp being the Owner, and who acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal this 17<sup>th</sup> day of June, 2015.

  
William T. Niemier, Notary Public

My Commission Expires: 6-26-2017  
County of Residence: Hancock



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:

Rob George  
Active Environmental Services, Inc.

*Prepared By William T. Niemier, Attorney At Law, 6910 N. Shadeland Avenue, Suite 200,  
Indianapolis, IN 46220*

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**



FAT

5540

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MARTHA A. WOMACKS  
MARION COUNTY CLERK

359284 FEB 15 2001

SUBJECT TO MUTUAL ACCEPTANCE  
FOR TRANSFER

**GENERAL WARRANTY DEED**

THIS INDENTURE WITNESSETH, that Daniel B. Wilmore, an individual ("Grantor"),  
CONVEYS AND WARRANTS to Donald J. Tharp and Marsha J. Tharp, husband and wife  
(hereinafter "Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the  
receipt of which is hereby acknowledged, the real estate commonly known as 5540 E. Washington  
Street, Indianapolis, Marion County, Indiana, and more particularly described as follows:

Lot numbered One and twenty-five feet off the entire East side of Lot numbered Two  
in Howe's East Washington Street Subdivision in the City of Indianapolis, as per plat  
thereof, recorded in Plat Book 15, page 161, in the Office of the Recorder of Marion  
County, Indiana;

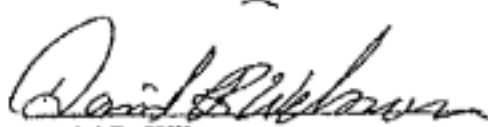
THIS CONVEYANCE IS MADE, and said real estate is SUBJECT TO:

- (1) real estate taxes, solid waste assessments and any and all other regular public assessments due and payable in May, 2001 and all such taxes and assessments payable thereafter; and
- (2) all rights-of-way, easements, restrictions, covenants and other matters of record.

POST OFFICE ADDRESS OF GRANTEE: Donald J. Tharp  
Marsha J. Tharp  
7709 E. 42<sup>nd</sup> Street  
Indianapolis, IN 46226

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 7 day of  
February, 2001

GRANTOR:

  
Daniel B. Wilmore

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said county and state, personally appeared Daniel B. Wilmore, who being first duly sworn by me upon his oath, acknowledged execution of the foregoing.

Witness my hand and Notarial Seal this 7 day of February, 2001.



NOTARY PUBLIC:  


Printed: David W Womac

My Commission Expires:  
11/9/06

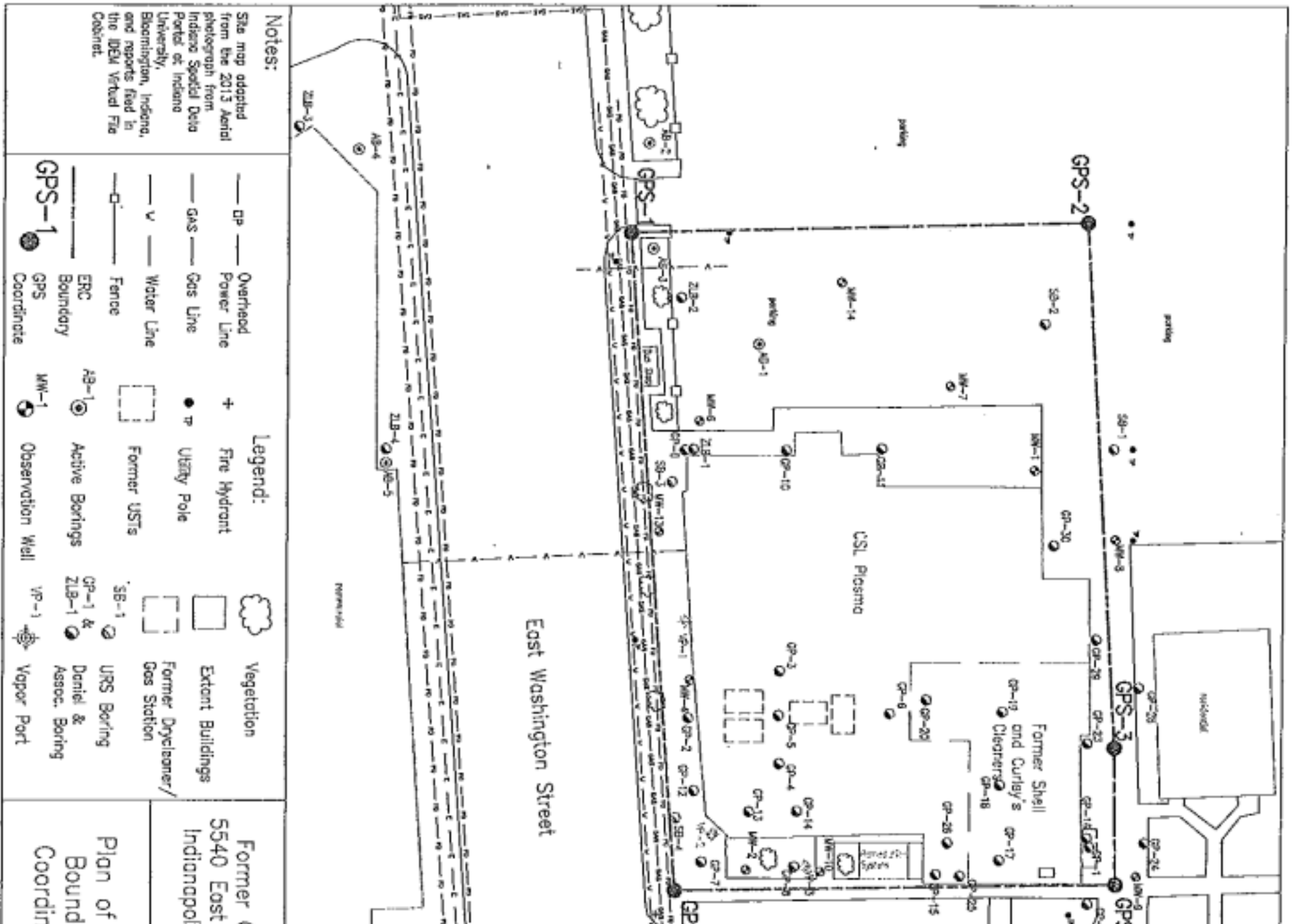
My County of Residence:  
Hamilton

This instrument was prepared by and please return after recordation to:

Peter D. Cleveland, Attorney-at-Law  
PETER D. CLEVELAND, P.C.  
*a professional corporation*  
7709 E. 42<sup>nd</sup> Street  
Indianapolis, IN 46226

**EXHIBIT B**

**SITE MAP**



Coordinate Location Identification	
EASTING	NORTHING
<b>ERC Approximate Affected Area for Soil</b>	
GPS-1	579403.27
GPS-2	579402.70
GPS-3	579445.30
GPS-4	579455.98
GPS-5	579456.59

**Data Collector:** K. Lewis  
**Date Collected:** 4/15/2015  
**Projection:** UTM Zone 16  
**Datum:** NAD83  
**Units:** Meters  
**GPS Receiver:** Magellan MobileMapper, 2008

**Former Curley's Cleaners**  
 5540 East Washington Street  
 Indianapolis, Indiana 46219

**Active ENVIRONMENTAL SERVICES, INC.**  
 3906 West 86th Street  
 Indianapolis, Indiana 46268  
 www.active-environmental.com  
 (317) 871-8560

**Plan of Site with ERC Boundary and GPS Coordinate Locations**  
 Modified By: AES  
 4/16/15  
 Project Number: 7023  
 Exhibit: B

**Notes:**  
 Site map adopted from the 2013 Aerial photograph from Indiana Spatial Data Portal of Indiana University, Bloomington, Indiana, and reports filed in the IDEM Verbal File Cabinet.

- Legend:**
- GP — Overhead Power Line
  - GAS — Gas Line
  - V — Water Line
  - F — Fence
  - B — ERC Boundary
  - GPS — GPS Coordinate
  - + — Fire Hydrant
  - — Utility Pole
  - — Former USTs
  - ☉ — Active Borings
  - ⊙ — Observation Well
  - ☁ — Vegetation
  - — Extant Buildings
  - — Former Drycleaner/Gas Station
  - ☉ — URS Boring
  - ☉ — Daniel & Assoc. Boring
  - ☉ — Vapor Port

**EXHIBIT C**

**ANALYTICAL DATA TABLES**



**ERC - Exhibit C**  
**ERC Ground Water VOC Laboratory Results**  
 Former Curley's Cleaners  
 5540 East Washington St.  
 Indianapolis, Indiana  
 IDEM Incident #: 2001-06-179  
 Active Environmental Project Number: 7023

Sample Identification	Date Sampled	VOC Compound Detected	Concentration (ug/L)	RCG Ground Water Tap Residential Screening Level	RCG Vapor Exposure Ground Water Residential Screening Level	RCG Vapor Exposure Ground Water Commercial Screening Level
MW-2	2/25/15	Benzene	689	5	24	120
		Ethylbenzene	1,310	700		
		Isopropylbenzene (Cumene)	59.6	390	<i>Not Listed in the RCG Screening Levels</i>	
		1-Methylnaphthalene	34.4	9.7		
		2-Methylnaphthalene	60.7	27	91	460
		Naphthalene	137	1.4		
		n-Propylbenzene	178	530	<i>Not Listed in the RCG Screening Levels</i>	
		Toluene	414	1,000		
		1,2,4-Trimethylbenzene	1,000	15	<i>Not Listed in the RCG Screening Levels</i>	
		1,3,5-Trimethylbenzene	327	87		
		Total Xylenes	3,076	10,000		
MW-4	2/25/15	Benzene	1,080	5	24	120
Duplicate MW-4	2/25/15	Benzene	1,250	5	24	120
MW-6	2/25/15	Tetrachloroethene (PCE)	293	5	110	470
MW-10	2/25/15	Benzene	514	5	24	120
		Ethylbenzene	5,800	700		
		Isopropylbenzene (Cumene)	6,690	390	<i>Not Listed in the RCG Screening Levels</i>	
		1-Methylnaphthalene	481	9.7		
		2-Methylnaphthalene	946	27	91	460
		Naphthalene	1,110	4.1		
		n-Propylbenzene	1,240	780	<i>Not Listed in the RCG Screening Levels</i>	
		Toluene	20,200	1,000		
		1,2,4-Trimethylbenzene	8,090	15	<i>Not Listed in the RCG Screening Levels</i>	
		1,3,5-Trimethylbenzene	2,410	87		
		Total Xylenes	28,870	10,000		
MW-13	2/25/15	Benzene	5.21	5	24	120
		1-Methylnaphthalene	24.1	9.7		
		2-Methylnaphthalene	55	27	<i>Not Listed in the RCG Screening Levels</i>	
		Naphthalene	109	1.4		
		1,2,4-Trimethylbenzene	792	15	91	460
		1,3,5-Trimethylbenzene	249	87		

**Bold text represent concentrations reported above the IDEM Remediation Closure Guide (RCG) Ground Water Screening Levels, 2015**  
 ND - Concentrations reported below detection limits  
 ug/L - Concentrations reported in parts per billion  
 VOC - Volatile Organic Compounds