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05/14/2015 10:29 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER

FEE: \$ 112.50

PAGES: 34

By: EK

BB

JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR

121433

2015 MAY -6 A 8:03

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KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER~~

~~FEE: \$ 112.50~~

~~PAGES: 34~~

~~By: EW~~

FILED HEREIN FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

Re record to correct sequence.

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 15 day of May, 2015, by Pulliam Partners II, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 307 North Pennsylvania Street in Indianapolis and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on December 4, 2014 and recorded on December 12, 2014, as Deed Record A201400118125, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 1.9284 acres and is also identified by the county by parcel identification number #49-11-01-240-219,000-101. The Real Estate to which this Covenant applies is depicted on a map attached hereto as Exhibit "B".

WHEREAS: A Comfort Letter, a copy of which is attached hereto as Exhibit "C", was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of the Owner to address the redevelopment potential of the Real Estate which is a brownfield site ("Site") resulting from a release of hazardous substances and petroleum hydrocarbons relating to historic operations on the Site, Program site number BFD #4130808 and State Cleanup site #2013-38976.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in indoor air and subslab soil gas on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are chloroform, trichloroethene ("TCE") and tetrachloroethene ("PCE") in subslab vapor samples and TCE and PCE in indoor air samples.

WHEREAS: Soil, ground water, indoor air, and/or subslab vapor samples on the Real Estate were analyzed for volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs"). Because IDEM's Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions) does not provide subslab soil gas screening levels, an attenuation factor of 0.1 was applied (as outlined in Table 10-A of the RCG) and used to establish subslab Residential Soil Gas Subslab Screening Levels ("Res SGasSLs") and subslab Commercial/Industrial Soil Gas Subslab Screening Levels ("Indus SGasSLs") which were used in lab analysis. Analytical results detected levels of chloroform, PCE and/or TCE in subslab soil gas at SS#1, SS#2, SS#3, SS#4, SS#7, IA/SS-2, and IA/SS-8 above their respective calculated Res SGasSLs. Chloroform (at

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① ←

JOSEPH P. COOPER
MARION COUNTY ASSESSOR

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2015 MAY - 6 A 04:15

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KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: \$ 112.50
PAGES: 34
By: CW

RECORDED
SUBJECT TO FINAL APPROVAL
FOR TRANSFER

Re record to correct sequence.

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 15 day of May, 2015, by Pulliam Partners II, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 307 North Pennsylvania Street in Indianapolis and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on December 4, 2014 and recorded on December 12, 2014, as Deed Record A201400118125, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 1.9264 acres and is also identified by the county by parcel identification number #49-11-01-240-219.000-101. The Real Estate to which this Covenant applies is depicted on a map attached hereto as Exhibit "B".

WHEREAS: A Comfort Letter, a copy of which is attached hereto as Exhibit "C", was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of the Owner to address the redevelopment potential of the Real Estate which is a brownfield site ("Site") resulting from a release of hazardous substances and petroleum hydrocarbons relating to historic operations on the Site, Program site number BFD #4130808 and State Cleanup site #2013-38976.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in indoor air and subslab soil gas on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are chloroform, trichloroethene ("TCE") and tetrachloroethene ("PCE") in subslab vapor samples and TCE and PCE in indoor air samples.

WHEREAS: Soil, ground water, indoor air, and/or subslab vapor samples on the Real Estate were analyzed for volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs"). Because IDEM's Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions) does not provide subslab soil gas screening levels, an attenuation factor of 0.1 was applied (as outlined in Table 10-A of the RCG) and used to establish subslab Residential Soil Gas Subslab Screening Levels ("Res SGssSLs") and subslab Commercial/Industrial Soil Gas Subslab Screening Levels ("Indus SGssSLs") which were used in lab analysis. Analytical results detected levels of chloroform, PCE and/or TCE in subslab soil gas at SS#1, SS#2, SS#3, SS#4, SS#7, IA/SS-2, and IA/SS-8 above their respective calculated Res SGssSLs. Chloroform (at

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SS#1) and TCE (at SS#4) were detected above their calculated Indus SGssSLs. In addition, TCE was detected in the indoor air samples collected at sample collection point IA/SS-2 (basement) and in indoor air samples and subslab vapor at IA/SS-8 (sub basement) at levels greater than applicable residential indoor air vapor exposure screening levels ("Res IA VESLs") but below industrial indoor air vapor exposure screening levels ("Indus IA VESLs"). TCE was detected IA/SS-2 at 2.7 microgram per meter cubed ($\mu\text{g}/\text{m}^3$) and in IA/SS-8 at $4.3 \mu\text{g}/\text{m}^3$ which is above its Res IA VESL of $2.1 \mu\text{g}/\text{m}^3$ but below its Indus IA VESL of $8.8 \mu\text{g}/\text{m}^3$. PCE was detected at $48.8 \mu\text{g}/\text{m}^3$ in IA/SS-8 which is above its Res IA VESL of $42 \mu\text{g}/\text{m}^3$ but below its Indus IA VESL of $180 \mu\text{g}/\text{m}^3$. Subslab and indoor air analytical results above applicable RCG screening levels are summarized on Tables 1 and 2 attached hereto as Exhibit "D". A site map, attached hereto as "Exhibit E", depicts sample locations on the Real Estate at which COCs were detected above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the RCG. However, the Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for multi-tenant residential and/or commercial/industrial use.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: <http://www.in.gov/DEM/4101.htm>.

NOW THEREFORE, Pulliam Partners II, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on Pulliam Partners II, LLC and all future owners:

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:

- (a) Shall prohibit any activity at the Real Estate that may interfere with any ongoing measures necessary to assure the effectiveness and integrity of any response action or engineering control, or component thereof, implemented at the Real Estate.
- (b) Shall not allow occupancy of any existing or newly-constructed building on the Real Estate without first completing one of the following: Option 1) evaluate and determine, with Department concurrence, the presence or absence of the intrusion of contaminated vapor into indoor air ("vapor intrusion") in any existing and/or newly constructed human-occupied buildings on the Real Estate or Option 2) install, operate and maintain a vapor mitigation system (consistent with U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment, EPA 542-R-08-

001, March 2008) within any existing and/or newly constructed human-occupied buildings on the Real Estate, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of the applicable IDEM RCG indoor air vapor exposure screening level based upon then-current use of the Real Estate (residential or commercial/industrial) ("Res IA VESL" or "Indus IA VESL") or site-specific action levels approved by the Department.

(ii) If Option 2 is selected from (b)(i) above, a detailed work plan must be submitted and approved by the Department's Indiana Brownfields Program outlining activities to be completed in accordance with IDEM RCG indoor air sampling protocols used to evaluate the vapor intrusion risk and to determine the effectiveness of any operating vapor mitigation system(s) after occupancy. Following Department approval, operate the vapor mitigation system for the purpose of mitigating the COCs potentially impacting indoor air in any existing and/or newly constructed human-occupied buildings on the Real Estate after the date of this Covenant per the *IDEM Draft Interim Guidance Document (February 2014): Vapor Remedy Selection and Implementation* until the Department makes a determination regarding acceptable risk under Paragraph No. 9 of this Covenant. The Department's determination shall be based upon RCG Res IA VESLs or Indus IA VESLs (depending on then-current land use) or site-specific action levels approved by the Department. The Department's determination in concert with Paragraph No. 9 shall not be unreasonably withheld. In the event that the vapor intrusion mitigation system(s) malfunction(s) or cease(s) operation, the Department shall afford the Owner a reasonable opportunity to repair or replace the vapor intrusion mitigation system(s) prior to the Department exercising whatever rights it may have under Paragraph No. 8.

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 or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("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 all or any part of the Real Estate by any person shall limit 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 determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), 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 _____ 20____, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON _____, 20____, INSTRUMENT NUMBER (or other identifying reference) _____ 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 include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), 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 the Department 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, the Department 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 contaminants of concern on the Real Estate 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 from complying 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, 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:
Pulliam Partners II, LLC
c/o TWG Development, LLC
333 N. Pennsylvania Street
Suite 100
Indianapolis, Indiana 46204
ATTN: Dennis Dye

To Department:
Indiana Brownfields Program
100 N. Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Ken Coad

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

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, Pulliam Partners II, LLC, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 15th day of May, 2015.

Pulliam Partners II, LLC, an Indiana limited liability company

By: Pulliam TWG II, LLC, an Indiana limited liability company, its sole member

By: TWG Development, LLC, an Indiana limited liability company, its member

By: [Signature]
Dennis M. Dye, Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Dennis M. Dye, as Member of TWG Development, LLC, an Indiana limited liability company and a member of Pulliam TWG II, LLC, an Indiana limited liability company and the sole member of Pulliam Partners II, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 15th day of May, 2015.
[Signature]
Notary Public - Indiana
County of Hamilton
My Comm. Expires: Jul. 8, 2020
[Signature], Notary Public
Residing in Hamilton County.

My Commission Expires:

This instrument prepared by: Kenneth B. Chigges, Esq., Kuhl & Grant LLP, 707 E. North Street, Suite 800, Indianapolis, Indiana 46202.

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. -- Kenneth B. Chigges, Esq.

EXHIBIT A

Limited Warranty Deed of the Real Estate

A large, handwritten signature or set of initials in black ink, consisting of two stylized, sweeping curves that resemble the letters 'S' and 'S'.

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JULIE L. VOORNIES

MARION COUNTY IN RECORDER

FEE: \$ 27.50

PAGES: 4

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LIMITED WARRANTY DEED

THIS INSTRUMENT WITNESSETH That Pacific and Southern Company, Inc., a Delaware corporation ("Grantor"), BARGAINS, SELLS AND CONVEYS to Pulliam Partners II, LLC, an Indiana limited liability company ("Grantee"), for the sum of TEN DOLLARS (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the real estate located in Marion County, State of Indiana, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate").

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successors and assigns, that Grantee will forever defend title to the Real Estate against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Real Estate, or any part thereof, under, by or through, or based upon the acts of Grantor, but not otherwise, subject to (i) those matters set forth on Exhibit B attached hereto and made a part hereof; and (ii) all current, non-delinquent real estate taxes and assessments.

The undersigned person executing this Limited Warranty Deed on behalf of the Grantor represents and certifies that he is a duly elected officer of Grantor and has been fully empowered, by proper corporate actions, to execute and deliver this Limited Warranty Deed; that the Grantor has full capacity to convey the real estate described herein; and that all necessary action for the making of such conveyance has been taken and done.

SEND TAX STATEMENTS TO AND GRANTEE'S MAILING ADDRESS IS: Pulliam Partners II, LLC c/o TWC Development, LLC 133 North Pennsylvania Street, Suite 100 Indianapolis, IN 46204

This instrument was prepared by Matthew G. Brennan, Esq., Bond, Schoenert & King, PLLC, 350 Union Oaks, Suite 310, Rochester, New York 14625; Telephone (515) 362-4726.

I affirm, under the penalties for perjury, that I have taken reasonable care to report each Social Security number in this document, unless required by law. Matthew G. Brennan, Esq.

MCS 576983-1

[Signature Page To Follow]

RECORDED ELECTRONICALLY

Marion County Assessor
Dec 08 2014
Received SM

1415425 1020014

JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR
Dec 08 2014 PM 01:19
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER
E009947OH

596 983-1

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH: That Pacific and Southern Company, Inc., a Delaware corporation ("Grantor"), BARGAINS, SELLS AND CONVEYS to Pulliam Partners II, LLC, an Indiana limited liability company ("Grantee"), for the sum of TEN DOLLARS (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the real estate located in Marion County, State of Indiana, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate").

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successor and assigns, that Grantor will forever defend title to the Real Estate against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Real Estate, or any part thereof, under, by or through, or based upon the acts of Grantor, but not otherwise, subject to (i) those matters set forth on Exhibit B attached hereto and made a part hereof; and (ii) all current, non-delinquent real estate taxes and assessments.

The undersigned person executing this Limited Warranty Deed on behalf of the Grantor represents and certifies that he is a duly elected officer of Grantor and has been fully empowered, by proper corporate actions, to execute and deliver this Limited Warranty Deed; that the Grantor has full capacity to convey the real estate described herein; and that all necessary action for the making of such conveyance has been taken and done.

SEND TAX STATEMENTS TO AND
GRANTEE'S MAILING ADDRESS IS: Pulliam Partners II, LLC
c/o TWG Development, LLC
333 North Pennsylvania Street, Suite 100
Indianapolis, IN 46204

This instrument was prepared by Matthew G. Brammen, Esq., Bond, Schoenck & King, PLLC, 350 Linden Oaks, Suite 310, Rochester, New York 14625; Telephone (585) 362-4726.

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. *Matthew G. Brammen, Esq.*

NCS 576913-1

[Signature Page To Follow]

IN WITNESS WHEREOF, Grantor caused this Limited Warranty Deed to be executed as of December 4, 2014.

Pacific and Southern Company, Inc.,
a Delaware corporation

By: Todd Mayman
Printed: Todd Mayman
Title: Secretary

STATE OF VIRGINIA)
) SS:
COUNTY OF FAIRFAX)

Before me, a Notary Public in and for said County and State, personally appeared Todd Mayman, as Secretary of Pacific and Southern Company, Inc., a Delaware corporation, who acknowledged execution of the foregoing deed.

Witness my hand and Notarial Seal this 2nd day of December, 2014.



Karen R. Levy
(signature)

Karen R. Levy
(printed name) Notary Public

My Commission Expires:

02/29/2016

County of Residence:

Fairfax

LEGAL DESCRIPTION OF THE PROPERTY

Beginning at the Southwest corner of Square 24 of the Donation Lands in Marion County, Indiana, said point being at the intersection of the northerly right of way for New York Street and the easterly right of way for Pennsylvania Street; thence North 00 degrees 19 minutes 33 seconds West along the easterly right of way for Pennsylvania Street 370.00 feet to the south face of a 10 story masonry building; thence North 89 degrees 42 minutes 40 seconds East along the south line of said 10 story building and the projection of said south line 210.00 feet to the centerline of Talbot Street now vacated by 97-VAC-9, recorded July 23, 1997 as Inst. No. 1997-0101486 in the Office of the Recorder for Marion County, Indiana; thence North 00 degrees 19 minutes 33 seconds West along said centerline 50.00 feet to the south right of way line for Vermont Street; thence North 89 degrees 42 minutes 43 seconds East along said south right of way line 15.00 feet to the easterly right of way of said vacated Talbot Street; thence South 00 degrees 19 minutes 33 seconds East along the easterly right of way of said vacated Talbot Street 420.00 feet to the north right of way line for New York Street; thence South 89 degrees 42 minutes 40 seconds West along said north right of way line 225.00 feet to the Point of Beginning and containing 1.9284 acres more or less.

EXHIBIT B

EXCEPTIONS

1. Real estate taxes for the year 2014 (payable 2015) are a lien but not yet due and payable.
2. Real Estate Mortgage, Assignment of Rents and Leases and Security Agreement (and Fixture Filing) dated December 4, 2014, and given by Pulliam Acquisition Partners, LLC to Pacific and Southern Company, Inc.
3. Terms and provisions of Declaratory Resolution 79-VAC-8 vacating a portion of Tippecanoe St. recorded August 17, 1979 as Instrument No. 79-61564. As shown on the survey prepared by Evergreen Planners, L.L.C., dated November 27, 2013 as Job No. 13-13. Hereinafter referred to as "The Survey".
4. Terms and provisions of an Application for an Encroachment License, City of Indianapolis, Indiana recorded August 2, 2006 as Instrument No. 2006-0116619. As shown on the survey prepared by Evergreen Planners, L.L.C., dated November 27, 2013 as Job No. 13-13.
5. Terms and provisions of a Reciprocal Easement Agreement recorded February 28, 2012 as Instrument No. A201200018914. As shown on the survey prepared by Evergreen Planners, L.L.C., dated November 27, 2013 as Job No. 13-13.
6. Terms and provisions of a Reciprocal Encroachment Agreement recorded February 28, 2012 as Instrument No. A201200018915. As shown on the survey prepared by Evergreen Planners, L.L.C., dated November 27, 2013 as Job No. 13-13.
7. Temporary Construction Easement by and between Pacific and Southern Company, Inc., a Delaware corporation and Pulliam Acquisition Partners, LLC, an Indiana limited liability company recorded December 30, 2013 as Instrument No. A201300155192.
8. Access Easement Agreement by and between Pacific and Southern Company, Inc., a Delaware corporation and Pulliam Acquisition Partners, LLC, an Indiana limited liability company recorded December 30, 2013 as Instrument No. A201300155193.

EXHIBIT B

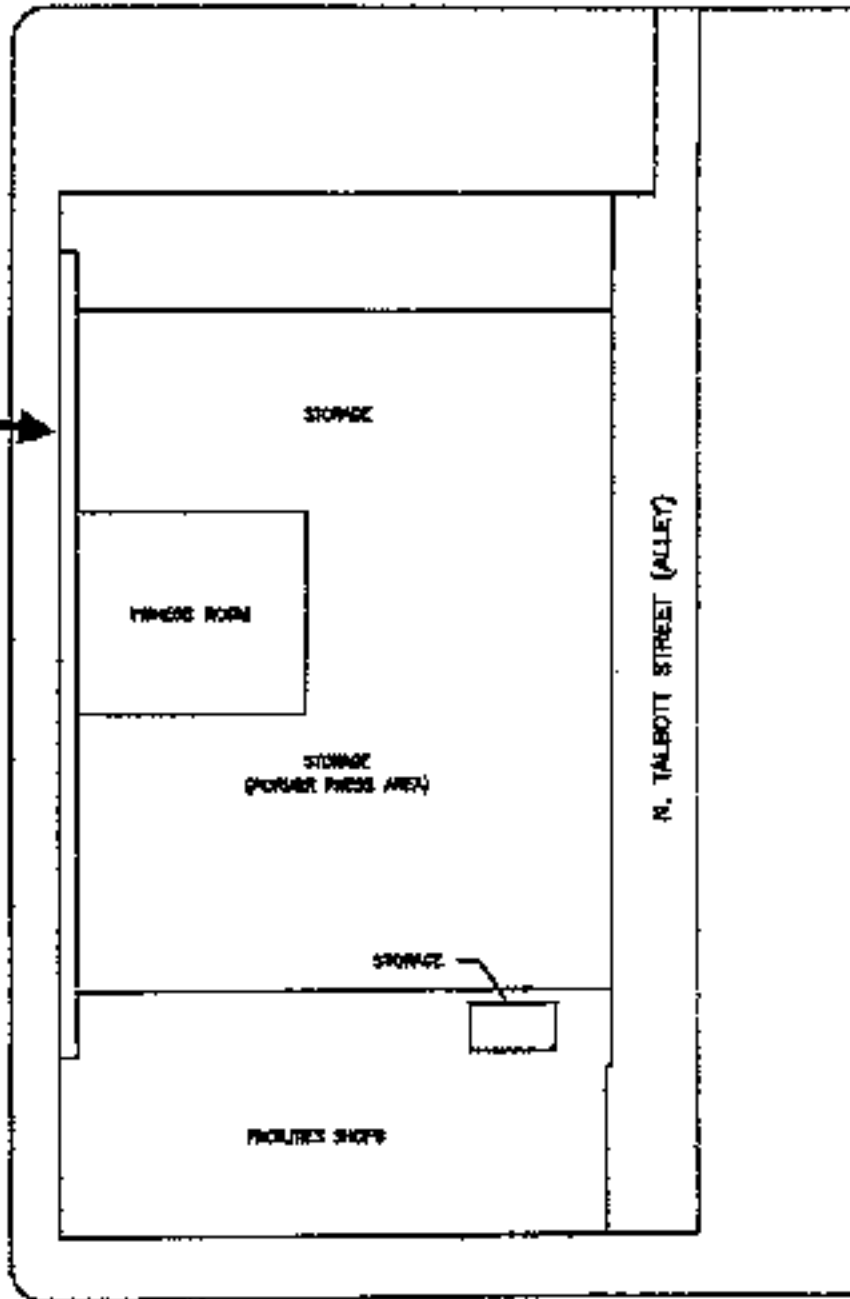
Map of the Real Estate



E. VERMONT STREET

Parcel #:
49-11-01-240-219.000-101

N. PENNSYLVANIA STREET



N. TALBOTT STREET (ALLEY)

E. NEW YORK STREET

LEGEND

PROPERTY BOUNDARY

ASPHALT DRIVEWAY

FORMER INDIANAPOLIS
STAR BUILDING
307 N. PENNSYLVANIA ST.
INDIANAPOLIS, IN



**SPECIALTY EARTH
SCIENCES, LLC**
4330 Security Parkway
New Albany, Indiana

MAP OF REAL ESTATE

FIGURE 1

EXHIBIT C

Copy of Comfort Letter



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-8027 • (317) 232-8603 • www.idem.in.gov

Michael R. Pence
Governor

Thomas W. Easterly
Commissioner

March 20, 2015

Mr. Dennis Dye
Pulliam Partners II, LLC
c/o TWG Development, LLC
707 E. North Street Suite 800
Indianapolis, Indiana 46202

Re: **Comfort Letter**

Indianapolis Newspapers, Inc.
307 North Pennsylvania Street
Indianapolis, Marion County
State Cleanup #2013-38976
Brownfield #4130808

Dear Mr. Dye:

In response to the request by TWG Development, LLC on behalf of Pulliam Partners II, LLC (Pulliam Partners or Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 307 North Pennsylvania Street, Indianapolis (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and petroleum products found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Owner must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.



Site Description and History

The 1.9284-acre Site is located at the northeast corner of East New York and North Pennsylvania Streets and is comprised of one parcel identified by the county by parcel #49-11-01-240-219.000-101. The Site has a seven-story brick building and basement encompassing a total of approximately 307,000 square feet. The seven-story structure is made up of six connected buildings/additions constructed between 1907 and 1985 which were occupied by The Indianapolis Star & News and used in the daily production of newspapers. Equipment and operational areas within the building included: printing presses, paper roll and ink storage, newspaper packaging, maintenance and mechanical activities, a cafeteria, and office space. At one time, the Site was bisected by Tippecanoe Street which ran in an east/west direction between Delaware and Pennsylvania Streets before being vacated by the City in 1979. In 1997, Talbot Street was vacated becoming the eastern-most portion of the Site. Historical usage of the Site prior to the 1880s was residential. In the early 1900s, a church was constructed at the Site. In 1907, the first of several buildings was constructed on the southern portion of the Site for use by the Indianapolis Star & News, with newspaper operations eventually expanding to the north. Buildings/additions were constructed at the Site in 1940 and 1980, with the last building addition added to the Site in 1986. Prior to 1972, an underground storage tank (UST) of unknown size/product located in the southern portion of the basement was filled with sand and closed in-place. In 1982, the Site was listed by the United States Environmental Protection Agency (USEPA) as facility #IND006037435 as a Small Quantity Generator¹ of hazardous waste (Waste Code K086 – Ink formulation) which included: solvent washes and sludges and water washes from cleaning equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing lead and chromium. Between 1989 and 1991, six underground storage tanks (USTs) containing print inks were cleaned and closed-in place at the Site. By 1990, USEPA reclassified the newspaper as a Large Quantity Generator² of hazardous waste. In 2000, the Site was again reclassified by the USEPA as a Conditionally Exempt Small Quantity Generator³ (CESQG) of hazardous waste. Newspaper printing operations continued on-Site until 2002 when they were moved to a new printing facility located off-Site.

Redevelopment plans for the Site include demolition of the existing structure and the construction of a new, six-story building which will include an underground parking garage, commercial space on the first floor, and residential space on the upper five floors.

¹ A Small Quantity Generator generates more than 100 kilograms, but less than 1,000 kilograms, of hazardous waste per month.

² A Large Quantity Generator generates more than 1,000 kilograms or more of hazardous waste, or more than 1 kilogram per month of acutely hazardous waste per month and may only store hazardous materials up to 90 days.

³ A Conditionally Exempt Small Quantity Generator generates 100 kilograms or less per month of hazardous waste, or 1 kilogram or less per month of acutely hazardous waste.

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The Site is located within a mixed residential and commercial area in downtown Indianapolis. The Site is bordered to the north by a former office building converted to residential properties, across New York Street to the south by commercial businesses, to the east by a parking garage and multi-storied apartment building under construction, and across Pennsylvania Street to the west by a city park.

October 2014 Phase I Environmental Site Assessment

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment* (October 2014 Phase I ESA) dated October 28, 2014 prepared for TWG Development, LLC by The Wetlands Group, LLC (Wetlands Group). The October 2014 Phase I ESA was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312. In an effort for the Owner to qualify as a BFPF, Joseph Whitsett, President of TWG Development, LLC, provided answers to the user-specific questions to ensure the Owner's satisfaction of the federal AAI rule.⁴

The October 2014 Phase I ESA identified the following recognized environmental conditions (RECs) associated with the Site:

- The potential release(s) through the concrete into the subsurface from solvents and inks historically used at the Site and from historic operations of printing presses in the basement.
- A potential release of hazardous substances and/or petroleum products was reported to the IDEM - State Cleanup Section on August 2, 2013 and assigned incident #2013-38976 because of subslab vapors detected above applicable regulatory limits in July 2013 during an investigation. Although no on-Site source of the subslab vapors was identified during subsequent investigations, IDEM - State Cleanup is requiring the owner of the real estate to record an environmental restrictive covenant (ERC) on the property to address potential exposure to contaminated vapors in indoor air (vapor

⁴ The Program received an affidavit from Joseph Whitsett, CEO of the Managing Member of Pulliam Partners, LLC, explaining that Pulliam Partners II, LLC, the Owner, is a wholly owned subsidiary of TWG GP, LLC, which in turn is a wholly owned subsidiary of TWG Development, LLC, the original applicant for this Comfort Letter and the named "User" of the October 2014 Phase I ESA. The affidavit further explains that prior to the Owner acquiring the Site, he, as authorized representative of Pulliam Partners, LLC, TWG GP, LLC, and TWG Development, LLC, was aware of, reviewed, and relied on the Phase I. Therefore, the Program has concluded that the Owner satisfied the AAI rule because of the fact that an AAI-compliant Phase I was obtained by a principal for the Owner prior to purchase, and the Owner was aware of, reviewed and relied on the Phase I report prior to acquiring the Site, and an authorized representative of the Owner answered the User Questionnaire. However, should a court later determine that the Owner did not satisfy all appropriate inquiry (and therefore did not satisfy the BFPF defense); the basis in statute for this letter would be void, invalidating the agency's exercise of enforcement discretion.

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Although not identified as such in the October 2014 Phase I ESA, the Program has determined that the seven USTs permanently closed-in-place at the Site represent a historic REC (HREC). The USTs contained either an unknown product (pre-1972) or print ink, and ranged in size from 1,000-gallons to 2,000-gallons. The USTs were cleaned and filled with inert material before being permanently closed-in-place. Available confirmatory soil analytical results collected from around four of the seven USTs were below detection limits for total petroleum hydrocarbons (TPH). No other information regarding the USTs is available.

Vapor Encroachment Screening

As part of the October 2014 Phase I ESA, vapor encroachment screening utilizing ASTM E2600-10 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions was performed by the Wetlands Group. The potential risk of vapor encroachment conditions at the Site was evaluated by applying the *Methodology for Identifying the Area of Concern (AOC) Around a Property Potentially Impacted by Vapor Migration from Nearby Contaminated Sources* (Buonicore, 2011).⁶ The AOC perimeter was determined based on a conservative plume length from potential sources of contamination, along which volatilized vapors could travel a path of least resistance to the Site. The 2014 Phase I ESA identified eight leaking USTs (LUSTs), 150 historic dry cleaners, and 197 historic auto stations located within 1/2-mile of the Site. Plume length was calculated by using the 90th percentile of the distance from AOCs located upgradient of the Site. Based on the results of the vapor encroachment screening, vapor encroachment conditions were identified and confirmed in Specialty Earth Sciences, LLC's (Specialty Earth) July 2013 *Limited Phase II* report of subslab soil gas sampling and Environ International, Inc.'s (Environ) February 2014 Site Investigation Report of subslab and indoor air sampling activities discussed below in this letter.

Asbestos and Lead Conditions

The Professional Service Industries, Inc. (PSI) NESHAP Asbestos Renovation/Demolition Sampling Survey (May 12, 2013) detailed an asbestos inspection survey of the building at the Site. A total of 578 samples of suspect asbestos containing materials (ACM) was collected from 180 homogeneous areas during the survey and analyzed by Polarized Light Microscopy (PLM). Of the areas surveyed, 22 of those areas were assumed ACM either because the areas could not be sampled due to access or the areas were not sampled due to the destructive nature of the method of sample collection. Materials identified as ACM from the various materials collected included: sub-floor material, vinyl floor tile in the basement, clay tile, mastic, wall tile, grout, and mastic on the 1st Floor; sub-floor leveling compound, various sized floor tile and grout, wall tile, mastic, and grout on the 2nd Floor; floor tile and mastic, wall tile and

⁶ Buonicore, Anthony, (2011) *Around a Property Potentially Impacted by Vapor Migration from Nearby Contaminated Sources* (Paper 2011-A-301-AWMA); Milford, Connecticut.

grout on the 3rd Floor; drywall, floor tiles and mastics throughout the 4th Floor; floor tiles and mastics, and window grout on the 5th Floor; floor tiles, mastics, and sub-floor on the 6th Floor; sub-floor and floor tile on the 7th Floor; and textured ceilings, wall grout, mastics, floor tiles on multiple-floors, and thermal insulation pipe wrap, mudded-joint packing on pipe joints, corrugated thermal system insulation on pipes throughout various buildings. All other samples submitted were below the 1% ACM designation threshold, as defined by 326 Indiana Administrative Code (IAC) 14-10-2. The 2003 ACM survey did not identify areas containing friable (easily crumbled) ACM versus non-friable ACM materials. Non-friable building products do not create an asbestos exposure unless they are broken, ripped, sawed, and/or pulverized. Many non-friable ACMs (e.g. ACM-containing vinyl tile/mastic) can remain on-site and do not require abatement prior to building demolition. However, materials that are non-friable at a specific time (e.g., well maintained ACM-containing pipe wrap) can become friable if not properly abated prior to being disturbed for repair or demolition. Building materials that may become friable will need to be evaluated by an experienced and licensed inspector and abated prior to being disturbed and/or demolished.

The Indianapolis Star *Lead Management Plan (LMP)* (Revised June 2008) was prepared based on the findings of lead wipe testing performed by Haley & Aldrich on September 11, 2006. Although a copy of the Haley & Aldrich 2006 report was not provided for reference, the LMP indicated that lead smelting was the likely source of lead detected during lead wipe testing inside the building. The smelting of used lead-print plates to make new plates was a common practice in newspaper printing. The LMP indicated that lead smelting had occurred in the utility area of the building's basement prior to 1970. Lead fumes emitted into the air during smelting eventually cool causing lead particles to settle on nearby surfaces. Lead wipe sample concentrations ranged from 88 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) to 1,951 $\mu\text{g}/\text{ft}^2$ on surfaces inside the facility including: floor grates, exposed pipes, ductwork, light fixtures, and window wells. Three of the wipe sample locations detected concentrations above residential Federal government safety standards of 400 $\mu\text{g}/\text{ft}^2$. Although the LMP indicated no Federal government allowable level has been established for commercial/industrial settings and because lead contamination has been identified inside the facility, lead contaminated materials are to be managed and disposed of in accordance with all applicable Federal, State and local laws and regulations.

Other Non-ASTM Phase I Considerations

Although not identified as a REC within the Phase I, considering the age of the on-site buildings, there exists the potential for the presence of lead-based paint, PCBs in lighting ballasts and/or transformers, and mercury within industrial switches and fluorescent light bulbs at the Site. The presence/absence of lead-based paint within the buildings, PCBs in lighting ballasts and/or transformers, and mercury within fluorescent light bulbs should be determined, and if they are present, should be managed and disposed of in accordance with all applicable Federal, State and local laws and regulations.

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Environmental Conditions

As part of the request for assistance in determining any existing environmental impacts and potential liability at the Site, Program staff also reviewed the following additional reports:

- *Limited Phase II Investigation (Limited Phase II)*, dated July 18, 2013, prepared by Specialty Earth Sciences, LLC (Specialty Earth)
- *Phase I Environmental Site Assessment (2013 Phase I ESA)*, dated August 26, 2013, prepared by Wetlands Group
- *Site Investigation Work Plan (2013 Work Plan)*, dated November 2013, prepared by Environ
- *Site Investigation Report*, dated February 2014, prepared by Environ
- *Report Addendum for Limited Phase II Investigation*, dated May 30, 2014, prepared by Specialty Earth
- *Update Phase I Environmental Site Assessment and Limited Phase II (Update Phase I & Limited Phase II)*, dated June 3, 2014, prepared by Wetlands Group

For purposes of this letter, sample analytical results were compared to IDEM's Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSL and IDCSL, respectively) and the excavation worker soil exposure direct contact screening level (EX DCSL); soil samples collected from 10 feet to 18 feet were compared to Residential Soil Migration to Groundwater Screening Levels (Res MTGSL); soil samples collected between 0 and 18 feet bgs were also compared to the EX DCSL; and, soil samples collected at depths greater than 18 feet were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth. Groundwater samples were compared to both residential tap (Res TAP GWSL) and residential/commercial/industrial vapor exposure groundwater screening levels (Res VE GWSL and Indus VE GWSL, respectively).

Limited Phase II – July 2013

In June 2013, Specialty Earth conducted an investigation to evaluate subsurface conditions which included the installation of seven subslab soil gas (SGss) sample collection ports (SS#1 through SS#7) in the basement of the former Indianapolis Star & News building (on-Site) and the advancement of six borings (SS-1 through SS-6) to a maximum depth of 32 feet bgs off-Site on the adjacent property immediately east of the Site (200 East New York Street). The on-Site subslab sampling activities were conducted across the basement of the former Indianapolis Star building to investigate the potential for contaminant vapor intrusion within the building structure. Because the RCG does not provide subslab soil gas screening levels, an attenuation factor of 0.1 was applied (as outlined in Table 10-A of the RCG) and used with the Res VE GWSLs

and Indus VE GWSLs to calculate each Residential Soil Gas Subslab Screening Level (Res SGssSL) and Industrial/Commercial Soil Gas Subslab Screening Level (Indus SGssSL). Using these calculated screening levels, the subslab soil gas samples collected at SS#1, SS#2, SS#3, SS#4, and SS#7 detected levels of tetrachloroethylene (PCE), chloroform, and/or trichloroethylene (TCE) above their respective calculated Res SGssSLs with SS#1 (chloroform) and SS#4 (TCE) also above their respective Indus SGssSLs. As a result of the subslab sampling activities, Gannett Publishing (Site owner at the time) reported the results of the soil gas sampling on August 2, 2013 to IDEM's State Cleanup Program which assigned the Site a State Cleanup number (#2013-38976). Subslab soil gas analytical results above applicable calculated screening levels are included in Table 1, below.

TABLE 1
June 20-21, 2013 Subslab Soil Gas Concentrations
Above Calculated RCG Screening Levels

Sample ID	Contaminant Detected & Result (microgram/meter ³)		
	Chloroform	Tetrachloroethene	Trichloroethene
SS#1	95	296	23
SS#2	15.3	235	15.3
SS#3	13.6	340	5.91
SS#4	<11	982	89.7
SS#7	4.15	1,100	16.5
Res SGssSL*	11	420	21
Indus SGssSL*	53	1,800	89

Notes: *An attenuation factor of 0.1 was used to calculate Res SGssSLs and Indus SGssSLs
Italic = above RCG Residential SGssSL **Bold** = above RCG Industrial/Commercial SGssSL

The off-Site soil samples collected from SB-1, SB-2, and SB-4 were submitted for analyses of TPH - Extended Range Organics (ERO), semi-volatile organic compounds (SVOCs), total lead, and total chromium. Ground water samples were collected through push-probe drill rods fitted with dedicated sampling points from three boring locations (SB-3, SB-5, and SB-6) and analyzed for volatile organic compounds (VOCs) and SVOCs. Analytical results revealed all soil and ground water results were below applicable RCG screening levels.

Phase I ESA - August 2013 & Update Phase I - June 2014

Both the 2013 Phase I ESA and the Update 2014 Phase I ESA identified the storage and spillage of hazardous materials as a REC at the Site. In addition, results of the July 2013 Limited Phase II identified the presence of VOCs in the sub-slab vapors above PCE, TCE, and chloroform which represents a REC.

Site Investigation Report – February 2014

In November 2013, Environ began implementation of the 2013 *Work Plan* approved by IDEM-State Cleanup. The 2013 *Work Plan* proposed the installation of up to six borings completed as monitoring wells (MW-1 through MW-6) on and near the Site to determine the presence/absence of soil and ground water contamination in the subsurface and the undertaking of a vapor intrusion (VI) study within the former Indianapolis Star building. Due to subsurface obstructions and buried utilities, only two of the five proposed monitoring wells (MW-4 and MW-5) could be safely installed to assess soil and ground water conditions near the Site. Monitoring wells MW-4 and MW-5 were advanced to a depth of 40 feet bgs and placed up-gradient and off-Site to the north/northwest of the Site. No soil boring or monitoring well was placed on-Site as part of the soil and ground water investigation. Soil and ground water samples analyzed for VOCs and SVOCs detected only TCE in soil in MW-05 (34 to 35 feet bgs) at 0.14 ppm, which is above its Res MTGWSL of 0.036 ppm. All other soil and ground water analytical results were below applicable screening levels.

The November 2013 VI study included six paired indoor air/subslab sample locations (IA/SS-1, IA/SS-2, IA/SS-3, IA/SS-4, IA/SS-7 and IA/SS-8), with five of the six locations at the same locations sampled during the July 2013 Specialty Earth investigation. Sample IA/SS-8 was collected in a sub-basement area which had not been previously evaluated. Results of VI investigation identified the presence of TCE in indoor air in IA/SS-2 at 2.7 $\mu\text{g}/\text{m}^3$, which is above its RCG Residential Indoor Air Vapor Exposure Screening Levels (Res IA VESL) of 2.1 $\mu\text{g}/\text{m}^3$ but below its Commercial/Industrial Indoor Air Vapor Exposure Screening Level (Indus IA VESL) of 8.8 $\mu\text{g}/\text{m}^3$. Paired samples collected at IA/SS-8 detected PCE in indoor air at 48.8 $\mu\text{g}/\text{m}^3$, which is above its Res SGssSL of 42 $\mu\text{g}/\text{m}^3$ but below its Indus SGssSL 1,800 $\mu\text{g}/\text{m}^3$. PCE and TCE were detected in both indoor air and subslab soil gas samples above their respective residential screening levels but below their respective industrial/commercial screening levels. Indoor air and subslab soil gas analytical results above applicable (calculated) concentrations are included in Table 2, below.

TABLE 2
November 2013 Subslab and Indoor Air Sample Concentrations
Above Applicable RCG Screening Levels

Sample ID	Contaminant Detected & Result (microgram/meter ³)			
	Tetrachloroethene		Trichloroethene	
	<i>Indoor Air</i>	<i>Subslab</i>	<i>Indoor Air</i>	<i>Subslab</i>
IA/SS-2	1.4	1.1	2.7	1.0
IA/SS-8	<u>48.8</u>	132	<u>4.3</u>	22
Res IA VESL / Res SGssSL*	42	420*	2.1	21*
Res IA VESL / Indus SGssSL*	180	1,800*	8.8	88*

Notes: * An attenuation factor of 0.1 was used to calculate Res SGssSLs and Indus SGssSLs
Underline = above RCG Residential IA VESL *Italic* = above RCG Residential SGssSL

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Report Addendum for Limited Phase II Investigation – May 2014

In April 2014, Specialty Earth advanced one boring (SB-10) to a maximum depth of 30 feet bgs inside the basement of the former Indianapolis Star Building to determine the presence/absence of VOCs in the ground water beneath the building. The ground water grab sample was collected through a Geoprobe® Screen Point sampling device utilizing dedicated plastic tubing and a hand pump. Ground water analytical results of this sample were all below laboratory detection limits for VOCs.

Environmental Conditions - Conclusion

Evaluating the available analytical data from the Site in its totality, no soil or ground water concentrations were detected above applicable residential screening levels. However, TCE, PCE, and chloroform vapor concentrations were detected in subslab and/or indoor air samples above applicable calculated Res SGssSLs, Indus SGssSLs and/or Res IA VESLs. Therefore, the risk of indoor air exposure to contaminated vapors was further evaluated in the context of the proposed redevelopment for the Site which includes the construction of a six-story building with an underground parking garage, commercial space on the first floor, and residential space on the upper five floors.

While the underground parking structure will not include residential units within the subsurface structure, it will not be open to atmospheric conditions. Therefore, contaminated vapors may potentially collect within the underground parking garage which could pose an unacceptable risk to indoor air quality for the proposed mixed retail/residential redevelopment. Therefore, the Owner or a third party undertaking Site cleanup activities must adequately address this potential exposure pathway prior to Site occupancy.

Because the on-Site contaminant release area is as yet unidentified, and the known presence of the seven Site USTs that were closed-in-place which could have released contaminants, IDEM recommends a Soil Management Plan (SMP) be prepared so that if contaminated soils are encountered during Site activities, they can be managed appropriately. Notwithstanding the content of an SMP if one is prepared, any disturbance and/or modification to existing soils across the Site must be managed in accordance with all Federal, State, and local regulations. IDEM concludes that the Site can be developed for the proposed mixed use development as long as all potential exposure pathways are effectively controlled through construction plans and the land use restrictions as outlined in this letter.

Liability Clarification

IDEM's "Brownfields Program Comfort and Site Status Letters" Non-rule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield

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If the stakeholder satisfies certain eligibility criteria outlined below, IDEM concludes, based in part on information provided by the Owner, that:

- (1) no state or federal enforcement action at the Site is pending;
- (2) no federal grant requires an enforcement action at the Site;
- (3) no condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) neither the Owner nor an agent or employee of the Owner caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance at the Site, and;
- (5) the Owner is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exemption to liability for hazardous substance contamination found in IC § 13-25-4-8(b) and for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the applicable statutory criteria are met.

As discussed below, the Owner has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and petroleum contamination provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

Bona Fide Prospective Purchaser

Under IC § 13-25-4-8(a), except as provided in IC § 13-25-4-8(b), (c), or (d), a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. IC § 13-25-4-8(b) references certain exceptions to liability imposed by IC § 13-25-4-8(a), including the exception in Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which states that a BFPP whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus a prospective purchaser that qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

Under Indiana law, if the Owner qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Owner even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such Owner for response costs relating to the past release of hazardous substances or petroleum contamination

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at the Site. Therefore, IDEM will not require the Owner to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA or the Resource Conservation and Recovery Act, 42 U.S.C. § 8901.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Owner acquired the Site on December 4, 2014 after January 11, 2002 (and after June 30, 2009), and the disposal of hazardous substances and petroleum at the Site occurred prior to that date. See 42 U.S.C. § 9601(40)(A); IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Owner has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Owner has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Owner meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Owner must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance." 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Prospective Purchaser must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Owner recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Owner will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Owner must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

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Reasonable Steps

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the hazardous substances and petroleum contamination found at the Site in order to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Implement and maintain the land use restrictions required by this letter.
- Manage any ACM, lead-contaminated surfaces, lead-based paint, PCBs in lighting ballasts and/or transformers, and mercury in switches and/or fluorescent light bulbs present on Site in accordance with applicable Federal, State and local laws and regulations.
- Remove all containers, fluids, and solvents from the Site and dispose of such in accordance with applicable Federal, State and local laws and regulations.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance and petroleum contamination or any information about new (or previously unidentified) contamination.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

Institutional Control

Since levels of PCE, TCE, and chloroform detected in subslab vapor and levels of PCE and TCE detected in indoor air on-Site were above applicable RCG screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- Prohibit any activity at the Site that may interfere with any ongoing measures necessary to maintain effectiveness and integrity of any response action or engineering control.

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- Evaluate and determine, with IDEM concurrence, the presence or absence of the intrusion of contaminated vapors into air inside the on-Site buildings (vapor intrusion) or mitigate the indoor air exposure pathway from the migration of contaminated vapors into existing and newly-constructed on-Site buildings. Sampling of indoor air prior to occupancy will be required to determine if the vapor intrusion mitigation system is effectively eliminating contaminated vapors from indoor air.

Conclusion

IDEM encourages the mixed use residential redevelopment of the Site. Should additional information gathered in conjunction with future Site Investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status.

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP or the benefit of the issuance of this letter. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site, and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue

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any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. In addition, if any acts or omission by the Owner exacerbates the contamination at the Site, or if the Owner does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Owner would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability.

In order for IDEM to consider this letter effective, the enclosed ERC must be recorded on the deed for the Site in the Marion County Recorder's Office. Please return a certified copy of the filed document to the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Ken Coad

IDEM is pleased to assist TWG Development, LLC with this mixed use residential redevelopment project. Should you have any questions or comments, please contact Ken Coad at 317-233-8409 or toll free from within Indiana at 800/451-8027, ext. 3-8408. He can also be reached via email at: kcoad@ifa.in.gov.

Sincerely,



Peggy Dorsey
Deputy Assistant Commissioner
Office of Land Quality

Enclosure

cc: Jan Pels, U.S. EPA Region 5 (electronic copy)
Meredith Gramelspacher, Indiana Brownfields Program (electronic copy)
Ken Coad, Indiana Brownfields Program (electronic copy)
Nicolette Morris, IDEM-State Cleanup (electronic copy)
Shelly Lucas, Garnett Publishing (Contractor) (electronic copy)
Mark Flavin, Environ (electronic copy)

EXHIBIT D

TABLE 1

Indianapolis Star Building
307 N. Pennsylvania Street
Indianapolis, Marion County
Subslab Gas Sample Concentrations
Above Applicable RCG Screening Levels

TABLE 2

Indianapolis Star Building
307 N. Pennsylvania Street
Indianapolis, Marion County
November 2013 Subslab and Indoor Air Sample Concentrations
Above Applicable RCG Screening Levels

TABLE 1
Indianapolis Star Building
307 N. Pennsylvania Street
Indianapolis, Marion County
Subslab Gas Sample Concentrations
Above Applicable RCG Screening Levels

Sample Date	Sample ID	Contaminant Detected & Result (microgram/meter ³)		
		Chloroform	Tetrachloroethane	Trichloroethene
7/2013	SS#1	<u>95</u>	296	<u>23</u>
	SS#2	<u>15.3</u>	235	15.3
	SS#3	<u>13.6</u>	340	5.91
	SS#4	<11	<u>982</u>	<u>89.7</u>
	SS#7	4.5	<u>1,100</u>	16.5
11/2013	IA/SS-2	NA	1.1	1.0
	IA/SS-8	NA	132	<u>22</u>
Residential SGssSL		11	420	21
Industrial SGssSL		53	1,800	88

Notes: * An attenuation factor of 0.1 was used to calculate Residential SGssSLs and Industrial SGssSLs
Underline = above RCG Residential SGssSL **Bold** = above RCG Industrial SGssSL
 NA = Not Analyzed

TABLE 2
Indianapolis Star Building
307 N. Pennsylvania Street
Indianapolis, Marion County
November 2013 Subslab and Indoor Air Sample Concentrations
Above Applicable RCG Screening Levels

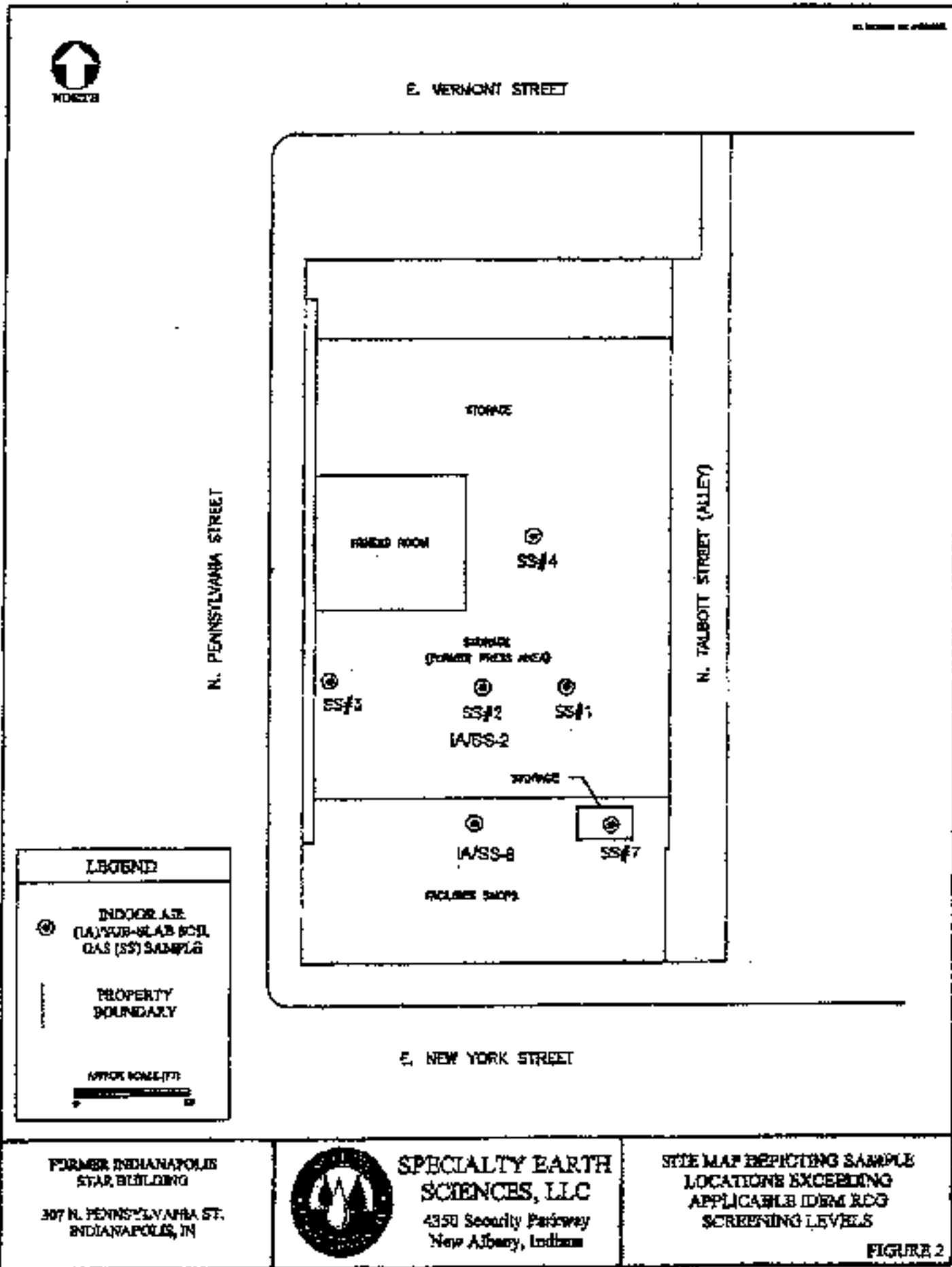
Sample ID	Contaminant Detected & Result (microgram/meter ³)			
	Tetrachloroethene		Trichloroethene	
	Indoor Air	Subslab	Indoor Air	Subslab
IA/SS-2	1.4	1.1	<u>2.7</u>	1.0
IA/SS-8	<u>48.8</u>	132	<u>4.3</u>	22
Res IA VESL / Res SGssSL*	42	420*	2.1	21*
Res IA VESL / Indus SGssSL*	180	1,800*	8.8	88*

Notes: * An attenuation factor of 0.1 was used to calculate Res SGssSLs and Indus SGssSLs
Underline = above RCG Residential IA VESL *Italic* = above RCG Residential SGssSL

EXHIBIT E

**Site Map Depicting Sampling Locations At Which
COCs Were Detected Above Applicable IDEM RCG Screening Levels**

DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.



E. VERMONT STREET

N. PENNSYLVANIA STREET

STORAGE

FIELD ROOM

⊙
SS#4

STORAGE
(FORMER PRESS ROOM)

⊙
SS#3

⊙
SS#2

⊙
SS#1

IA/SS-2

STORAGE

⊙
IA/SS-8

⊙
SS#7

OFFICE SPACE

E. NEW YORK STREET

N. TALBOTT STREET (ALLEY)

