

CR-1

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MAY 24 2016

INDIANA FINANCE AUTHORITY  
ENVIRONMENTAL PROGRAMS

1634009425

BROOK E. CLEAVER  
HOWARD COUNTY IN RECORDER  
ELECTRONICALLY RECORDED  
AS PRESENTED ON  
05/16/2016 08:50:01AM  
REC FEE: \$78.00 PAGES: 34

### Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 6<sup>th</sup> day of May, 2016, by JJS Properties, Inc. ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Howard, Indiana, which is located at 114 West Main Street in Greentown 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 May 6, 2016, and recorded on May 11, 2016, as Deed Record 1634009207, in the Office of the Recorder of Howard County, Indiana. The Real Estate consists of approximately 0.51 acres and is identified by the county by parcel identification numbers 34-05-33-386-009.000-012, 34-05-33-386-010.000-012 and 34-05-33-386-011.000-012. 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 resulting from a release of hazardous substances relating to historical operations in the vicinity of the Real Estate, Program site number BFD #4131202 and State Cleanup site number #201445877.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in ground water and 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 tetrachloroethene ("PCE"), trichloroethene ("TCE"), and lead in ground water and PCE, TCE, carbon tetrachloride, and chloroform in soil gas.

WHEREAS: Soil, ground water, subslab soil gas, and indoor air on the Real Estate were sampled for some or all of the following: volatile organic compounds ("VOCs"), 1,2-dichloroethane ("1,2-DCA"), ethylene dibromide ("EDB"), polynuclear aromatic hydrocarbons ("PAHs"), polychlorinated biphenyls ("PCBs"), cyanide, and metals (cadmium, chromium, hexavalent chromium, lead, mercury, and selenium). Investigations detected levels of PCE, TCE, and lead in ground water above their respective residential tap ground water screening levels ("Res TAP GWSLs") established by IDEM in the Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). PCE and TCE were also detected in ground water at concentrations in excess of their respective residential vapor exposure ground water screening levels ("Res VE GWSLs"). Carbon tetrachloride, chloroform, PCE, and TCE were detected in subslab soil gas samples at levels in excess of their respective

REVIEWED

May 13 2016

Martha J. Lake / RD  
Auditor, Howard County, Indiana

calculated residential and/or commercial/industrial screening levels ("Res SGss SLs" and/or "Indus SGss SLs"). Ground water and soil gas analytical results above applicable RCG screening levels are summarized on Tables 1, 2, 3, and 4 attached hereto as Exhibit "D". A site map, attached hereto as "Exhibit E", depicts sample locations on the Real Estate at which the COCs were detected in ground water and soil gas above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the Remediation Closure Guide. However, the Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for 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, 12<sup>th</sup> 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/idem/4101.htm>.

NOW THEREFORE, JJS Properties, Inc. subjects the Real Estate to the following restrictions and provisions, which shall be binding on JJS Properties, Inc. and all future owners:

#### **I. RESTRICTIONS**

**1. Restrictions.** The Owner and all future owners:

- (a) Shall prohibit any activity at the Real Estate that interferes with any ongoing response activities, long-term ground water monitoring, or 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 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).
- (c) Shall not use or allow the use or extraction of ground water at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities.
- (d) (i) Shall not occupy any building(s) constructed on the Real Estate on or after the effective date of this Covenant 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 newly constructed building(s) on the Real Estate

or, Option 2) install, operate and maintain a vapor mitigation system (in accordance with U.S. EPA *Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment*, EPA 542-R-08-001 (March 2008) and IDEM *Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014)) within any newly constructed building(s) 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 commercial/industrial vapor exposure indoor air screening level ("Indus IA VESL") or site-specific action levels approved by the Department.

(ii) If Option 2 is selected from (d)(i) above, a detailed work plan must be submitted and approved by the Department's State Cleanup Program or the Indiana Brownfields Program outlining the 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 purposes of mitigating the COCs potentially impacting indoor air in any newly-constructed buildings on the Real Estate after the date of this Covenant per the *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014) until the Department makes a determination regarding acceptable risk under Paragraph 9 of this Covenant. The Department's determination shall be based upon RCG Indus IA VESLs or site-specific action levels approved by the Department. The Department's determination in concert with Paragraph 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 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 HOWARD 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 Howard 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:  
JJS Properties, Inc.  
4310 Stout Field North Drive  
Indianapolis, IN 46241  
ATTN: Scott Weaver

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

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, JJS Properties, Inc. the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 6th day of May 20 16

JJS Properties, Inc. an Indiana corporation

By: [Signature]

Jeffrey S. Hummer, President

By: [Signature]

Jack R. Mumbower, Treasurer

By: [Signature]

Scott J. Weaver, Secretary

STATE OF INDIANA )

) SS.

COUNTY OF HENDRICKS )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey S. Hummer, Jack R. Mumbower & Scott J. Weaver the President, Treasurer & Secretary respectively of the Owner, JJS Properties, Inc., who acknowledged the execution of the foregoing instrument for and on behalf of said entity

Witness my hand and Notarial Seal this 6th day of May 20 16



MISTY M. GEARS  
Notary Public of Indiana  
Hendricks County  
My Commission Expires  
APRIL 18, 2023

[Signature]  
Misty M. Gears

Notary Public

Residing in Hendricks County, IN

My Commission Expires 4-13-23

This instrument prepared by Jennifer E. Jones, Attorney at Law, Royal Title Services, 365 E. Thompson Road, Indianapolis, IN 46227, 317-791-6000

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

Jennifer E. Jones

(Printed Name of Declarant)

**EXHIBIT A**

**Deed for the Real Estate**



1634009207

BROOK E. CLEAVER  
HOWARD COUNTY IN RECORDER  
ELECTRONICALLY RECORDED  
AS PRESENTED ON  
05/11/2016 09:32:03AM  
REC FEE: \$18.00 PAGES: 2

Parcel/State ID: 34-05-33-386-011.000-012  
Parcel/State ID: 34-05-33-386-010.000-012  
Parcel/State ID: 34-05-33-386-009.000-012

## WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT

**Gary L. Hulce**

("Grantor"), of Howard County, in the State of Indiana, CONVEYS AND WARRANTS to:

**JJS Properties, Inc., an Indiana corporation**

("Grantee"), for the sum of Ten and no/100 Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Howard County, in the State of Indiana.


**Lots Number Fourteen (14), Fifteen (15) and Sixteen (16) in the Original Plat in that part laid out by Jesse Osborn in the Town of Greentown, Liberty Township, Howard County, Indiana, as recorded in Recorder's Plat Book 1, page 130.**

Subject to any and all easements, agreements and restrictions of record. The address of such real estate is commonly known as **114, 118 and 122 West Main Street, Greentown, IN 46936.**

This Deed shall serve as a full and complete satisfaction of Contract for Purchase of Grocery Store Assets, by and among Hulce Supermarkets, Inc. and Gary L. Hulce, as Sellers, and Heartland Markets, Inc. and JJS Properties, Inc., as Buyers, executed May 9, 2014.

Grantee's acceptance of this conveyance shall serve as full and complete satisfaction and release of an unrecorded Real Estate Mortgage from Gary L. Hulce, as Mortgagor, to JJS Properties, Inc., as Mortgagee, dated May 19, 2014 securing a Note in the amount of \$50,000.00.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 6<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Gary L. Hulce

16-1526

DULY ENTERED FOR TAXATION

May 11 2016

Martha J. Lake / AB  
Auditor, Howard County, Indiana

State of Indiana  
County of Hendricks

Before me, a Notary Public, in and for said County and State, personally appeared **Gary L. Hulce** who acknowledged the execution of the foregoing Warranty Deed, and stated that the foregoing representations are true.

Witness my hand and Notarial seal, this 6<sup>th</sup> May, 2016.

4-13-23  
My Commission Expires

Hendricks  
County of Residence



MISTY M. GEARS Signature of Notary Public  
Notary Public of Indiana  
Hendricks County  
My Commission Expires  
APRIL 13, 2023

Misty M. Gears

Misty M. Gears  
Printed Name of Notary Public

Return deed to: **Royal Title Services, 365 East Thompson Road, Indianapolis, IN 46227-1624**

Send tax bills to: 4310 Stout Field ND, Indianapolis, IN 46241

Grantee's mailing address: 4310 Stout Field ND, Indianapolis, IN 46241

This instrument prepared by: **Jennifer E. Jones, Attorney at Law**

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

Misty M. Gears  
Printed Name

**EXHIBIT B**

**Map of the Real Estate**

ALLEY

PARCEL #34-05-33-386-009.000-012

PARCEL #34-05-33-386-010.000-012

ALLEY

PARCEL #34-05-33-386-011.000-012

MAIN STREET

# LEGEND

----- PROPERTY BOUNDARY  
 ----- PARCEL



NOTE:  
 DRAWING INFORMATION TAKEN FROM HOWARD COUNTY,  
 INDIANA, BEACON/SCHNEIDER WEBSITE.

No.	Revision	Date
		6-1-2015
	Drawn By	JAB
	Designed By	COS
	Scale	1" = 30'
	Project	067021.01.003.009

**SITE MAP**  
**114 WEST MAIN STREET**  
**GREENTOWN, INDIANA**



Figure No. CL-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) 232-8503 • [www.idem.IN.gov](http://www.idem.IN.gov)

Michael R. Pence  
Governor

Carol S. Comer  
Commissioner

January 29, 2018

Scott Weaver  
JJS Properties, Inc.  
4310 Stout Field North Drive  
Indianapolis, IN 46241

Re: **Comfort Letter --**  
**Bona Fide Prospective Purchaser**  
Hulce's Supermarket  
114 West Main Street  
Greentown, Howard County  
State Cleanup #201445877  
Brownfield Site #4131202

Dear Mr. Weaver:

In response to the request by Soil and Materials Engineers, Inc. (SME) on behalf of JJS Properties, Inc. (Prospective Purchaser) to the Indiana Brownfields Program (Program) for a Comfort Letter concerning the property located at 114 West Main Street, Greentown (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 Prospective Purchaser 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 Prospective Purchaser 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 0.51-acre Site consists of three parcels identified by the county by parcel #34-05-33-386-011.000-012, #34-05-33-386-010.000-012, and #34-05-33-386-009.000-012 separated by an alley that runs north/south between the east and the western parcels. The eastern parcel contains a 6,250 square-foot, single-story commercial building. The remainder of the Site is developed with paved parking. The original construction date of the building is unknown, but it is believed to have been constructed during the 1910s, and remodeled in 1956 and 1972. During the late 1800s and early 1900s, the two western parcels were occupied by residential dwellings. Both of the dwellings also included a commercial space, photo shop and doctor's office, until approximately 1910. The residential dwellings remained on the Site until approximately the 1970s. The dwellings were then demolished and the parcels were utilized as parking lots for the surrounding businesses. The eastern parcel, which currently includes a supermarket, was in commercial use as early as the late 1800s. Early commercial operations on the eastern parcel, as indicated on 1896 through 1909 fire insurance maps, included a confectionary and tobacco shop, a bake house, a laundry shop, a meat shop, and a restaurant. According to a 1916 fire insurance map, the eastern parcel was occupied by a commercial garage, with the capacity to hold 15 cars. Along with the garage, a veterinary clinic was located in the southwest corner of the building. The 1916 fire insurance map also indicated a 280 gallon gasoline underground storage tank (UST) at the southeast corner of the building (in what is now a right-of-way). The garage and gasoline UST remained on the Site in the 1927 fire insurance map; however, the veterinary clinic was no longer present. The building was converted to a supermarket around the 1940s. The Site had been occupied by Hulce's Supermarket since the 1980s and in May 2014 was leased to the current tenant, Heartland Markets, Inc., for continued use as a grocery. The Prospective Purchaser plans for the grocery to continue to operate on the Site.

The Site is adjoined to the northeast, south, and east by commercial properties, with residential properties located to the north and west. A dry cleaner operated 100 feet northeast of the Site from the 1980s until approximately 1995.

As part of this Comfort Letter request, the Prospective Purchaser provided the Program with a *Phase I Environmental Site Assessment* dated May 26, 2015 (May 2015 Phase I ESA) prepared for Kokomo Coalition by SME. The Prospective Purchaser obtained a reliance letter from SME for the Phase I ESA on May 26, 2015.

The Prospective Purchaser also provided the Program with a *Phase I Environmental Site Assessment Update* dated November 6, 2015 (November 2015 Phase I ESA) prepared for JJS Properties, Inc. and the Kokomo Coalition by SME. The Phase I 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 Prospective Purchaser to qualify as a BFPP, Scott Weaver, with JJS Properties, Inc., provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The Phase I and Phase I Update identified the following recognized environmental conditions (RECs):

**On-Site:**

- Presence of soil, soil gas, and ground water contamination at the Site

**Off-Site:**

- Possible presence of a 280-gallon UST in the right-of-way south of the Site
- Potential for environmental impact from unreported and/or undetected migration of hazardous substances and/or petroleum products onto the Site from historical dry cleaning sites, printing sites, and underground petroleum storage located northeast, southeast and south of the Site

To meet the requirement of ASTM Practice E1527-13 that the potential for vapor migration on the Site be assessed, SME evaluated the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or ground water either on or near the Site, specifically the up-gradient former dry cleaning property, by conducting numerous subsurface investigations, the results of which are discussed below.

**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 reports:

- *Phase I Environmental Site Assessment*, dated November 22, 2013, prepared by Hydrotech Environmental Consulting & Engineering
- *Phase II Environmental Site Assessment*, dated April 7, 2014, prepared by SME
- *Source Identification Report*, dated August 19, 2015, prepared by SME
- *Report of Vapor Intrusion Assessment*, dated October 19, 2015, prepared by SME
- *Report of Vapor Intrusion Assessment*, dated December 15, 2015, prepared by SME

For purposes of this letter, sample analytical results from on-Site investigations 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 (RDCSLs and IDCSLs, respectively); soil samples collected between 0 and 18 feet bgs were also compared to the excavation worker soil exposure direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth.



Ground water samples were compared to residential tap ground water screening levels (Res TAP GWSLs) and residential vapor exposure ground water screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure ground water screening levels (Indus VE GWSLs).

*Phase I Environmental Site Assessment – November 2013*

The 2013 Phase I identified the following REC associated with the Site:

- Historic fire insurance maps indicate a 280 gallon gasoline UST was located in front of the southeast corner of the on-Site building during the early 1900s. Additionally, historic records indicated three tanks adjacent to the south of the Site during the early 1900s, and a gasoline station and dry cleaner to the northeast of the Site. Additional information regarding the status of the tanks was unavailable. It is possible that contamination from the USTs and the dry cleaner is present and has impacted the Site. Therefore, additional investigation is warranted to make an accurate assessment.

*Phase II Environmental Site Assessment – April 2014*

In March 2014, five soil borings (SB1 through SB5) were advanced to a maximum depth of 22 feet bgs at the Site. Temporary ground water wells were installed in the five borings. Soil and ground water samples were analyzed for some or all of the following: volatile organic compounds (VOCs), 1,2-dichloroethane (1,2-DCA), ethylene dibromide (EDB), polynuclear aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), cyanide, and metals (cadmium, chromium, hexavalent chromium, lead, mercury, and selenium). Three subslab soil gas probes (SS1 through SS3) were also installed through the concrete slab of the on-Site building; samples were collected at 0.5 feet bgs and analyzed for VOCs to evaluate the potential for encroachment of contaminated vapors into indoor air (vapor intrusion).

Analytical results from all submitted soil samples were below laboratory detection limits for the constituents analyzed. However, tetrachloroethene (PCE), trichloroethene (TCE), and lead concentrations were detected in ground water above their respective RCG Res TAP GWSLs. TCE was also detected in SB2GW in excess of its Res VE GWSL, with TCE and PCE detected in SB5GW (and duplicate) in excess of their respective Res VE GWSLs. All ground water sample results were below their respective Indus VE GWSLs. Refer to Table 1, below, for a summary of ground water analytical data above applicable RCG screening levels.

**TABLE 1**  
**March 2014 Ground Water Concentrations Exceeding**  
**Applicable IDEM RCG Screening Levels**

Contaminant Detected	Sample Location & Results (parts per billion (ppb))					Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	SB1GW	SB2GW	SB3GW	SB4GW	SB5GW/ DUP01			
Tetrachloroethene	57.1	7.3	64.3	73	<i>243/</i> <i>238</i>	5	110	470
Trichloroethene	2.1	<i>18.1</i>	6.6	2.2	<i>23.4/</i> <i>22.7</i>	5	9.1	38
Lead	ND	ND	ND	ND	<i>22.8/</i> <i>99.6</i>	15	NE	

Notes: *Italics* = above RCG Residential Tap Ground Water Screening Level  
**bold** = above RCG Residential Vapor Exposure Ground Water Screening Level  
 NE = not established    DUP01 = duplicate    ND = not detected

Carbon Tetrachloride, chloroform, PCE, TCE, and naphthalene were also detected in subslab soil gas samples at levels in excess of their respective calculated RCG residential and/or commercial/industrial screening levels (Res SGss SL and Indus SGss SL, respectively).<sup>1</sup> Refer to Table 2, below, for a summary of the subslab soil gas analytical data above applicable RCG screening levels.

<sup>1</sup> As specified on Table 6-1 of the June 2015 U.S. EPA *Technical Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air* (with concurrence from IDEM in its *New Attenuation Factors Memorandum* (October 2015)) subslab soil gas screening levels are calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor 0.03.

**TABLE 2**  
**March 2014 Subslab Soil Gas Concentrations**  
**Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter (ug/m <sup>3</sup> ))				Calculated Res SGss SL**	Calculated Indus SGss SL**
	SS1	SS2	SS3	DUP01SS		
Carbon Tetrachloride	<20.6	<b>1,370</b>	<b>2,740</b>	8	156.7	656.7
Chloroform	146	<b>&lt;932<sup>^</sup></b>	<b>&lt;838<sup>^</sup></b>	<1.5	40	176.7
Tetrachloroethene	1,820	<b>71,200</b>	<b>11,900</b>	<b>2,090</b>	1,400	6,000
Trichloroethene	<17.7	<b>701</b>	<b>1,590</b>	13.5	70	293.3
Naphthalene	<b>&lt;34.5<sup>^</sup></b>	<b>&lt;1060<sup>^</sup></b>	<b>&lt;952<sup>^</sup></b>	ND	27.7	120

Notes: *Italics* = above calculated RCG Residential Subslab Soil Gas Screening Level  
**bold** = above calculated RCG Commercial/Industrial Subslab Soil Gas Screening Level  
 DUP01SS = duplicate of SS1  
 ND = not detected  
<sup>^</sup> = laboratory detection limits were higher than the calculated RCG Subslab Soil Gas Screening Level and, therefore, this data is inconclusive as an actual detected level  
 \*\* = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03

The soil gas and ground water contamination detected at the Site were reported to IDEM's State Cleanup Program in May 2014 and assigned Incident #201445877. It is suspected that the PCE and TCE contamination detected on the Site originates from an up-gradient, off-Site, former dry cleaning operation.

#### *Source Identification Report – August 2015*

In April 2015 at the request of IDEM's State Cleanup Program, soil borings (SB6 through SB10) were advanced to a maximum depth of 24 feet bgs, permanent monitoring wells (MW1 through MW4) were installed on and off-Site with well screens ranging from 12 to 27 feet bgs, and exterior soil gas probes (SG1 through SG8) were installed to a maximum depth of six feet bgs in order to determine the extent and source of contamination. Three sewer gas samples (Sewer Gas 1, Sewer Gas 2, and Sewer Gas 3) were also collected by lowering a SUMMA™ canister into each manhole such that the end of the canister was near the bottom of the manhole structure, approximately 51 inches bgs. One drinking water sample was collected at a down-gradient residence with a private drinking water well (Lacey Water Well) located southwest of the Site across W. Main Street. A total of 14 soil, seven ground water, one drinking water, eight soil gas, and three sewer gas samples were collected and analyzed for VOCs and/or lead.

Lead was detected in shallow soil samples (0-10 feet bgs) SB6 and SB10 at concentrations in excess of its RCG RDCSL of 400 parts per million (ppm). However, Program staff calculated a Site-wide average concentration of lead in soil using analytical results from the nine shallow soil samples to be 159.1 ppm, which is below its RDCSL of 400 ppm. No other constituents were detected in soil samples at a level above their respective RCG RDCSLs. Therefore, Program staff has determined that the lead concentrations in shallow soil do not represent a direct contact exposure risk.

PCE was detected in each ground water interval from off-Site up-gradient monitoring well MW1 and in down-gradient off-Site monitoring well MW3 at concentrations in excess of its RCG Res TAP GWSL, but below its Res VE GWSL. TCE was detected in each ground water interval from off-Site monitoring well MW3 at concentrations in excess of its Res TAP GWSL, but below its Res VE GWSL. VOCs and lead were not detected in the drinking water well sample. Refer to Table 3, below, for a summary of ground water analytical data above applicable RCG screening levels.

**TABLE 3**  
**April 2015 Off-Site Monitoring Wells**  
**Ground Water Concentrations Exceeding Applicable**  
**IDEM RCG Screening Levels**

Contaminant Detected	Sample Location & Results (parts per billion (ppb))					Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	MW1/DUP	MW3	MW3-S	MW3-M	MW3-D			
Tetrachloroethene (PCE)	39.4/41.8	59.2	56.2	57.8	53.1	5	110	470
Trichloroethene (TCE)	3.0/2.9	7.0	7.4	7.2	6.8	5	9.1	38

Notes: *italics* = above RCG Residential Tap Ground water Screening Level  
 DUP = field duplicate

VOCs were not detected in the exterior soil gas samples in excess of their respective calculated RCG residential screening levels for deep soil gas samples.<sup>2</sup> VOCs were also not detected above their respective calculated RCG Res SGs SLs in the sewer gas samples.

State Cleanup is in the process of pursuing responsible parties to address the VOC contamination identified on and off-Site.

<sup>2</sup> As specified in Table 10-A of the IDEM Remediation Closure Guide, exterior soil gas screening levels are calculated by dividing the applicable RCG residential and commercial/industrial indoor air screening levels by an attenuation factor of 0.01 for deep exterior soil samples collected from more than five feet bgs.

*Vapor Intrusion Assessment – October 2015*

In September 2015, three subslab vapor sampling ports (SS-101, SS-102, and SS-103) were installed within the on-Site building and were paired with three indoor air samples (IA-101, IA-102, and IA-103) to determine the absence or presence of intrusion of contaminated subslab vapor into air inside the on-Site building. One exterior ambient air sample (AA-101) was collected upwind of the building on the northwest corner of the parking lot. Subslab soil gas, indoor air, and ambient air samples were analyzed for VOCs.

Carbon tetrachloride, PCE, TCE, and naphthalene were detected in soil gas samples SS-102 and SS-103 at concentrations in excess of their respective calculated RCG Res SGss SLs and/or Indus SGss SLs. Refer to Table 4, below, for a summary of soil gas analytical data above applicable RCG screening levels. Contaminants of concern (COCs), TCE and PCE, were not detected in indoor air samples at concentrations in excess of their respective RCG Res IA VESLs.

**TABLE 4**  
**September 2015 SubSlab Soil Gas Concentrations**  
**Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter (ug/m <sup>3</sup> ))			Calculated Res SGss SL**	Calculated Indus SGss SL**
	SS-101/SS-101DUP	SS-102	SS-103		
Carbon Tetrachloride	<20.6/20.8	547	558	156.7	666.7
Tetrachloroethene	876/1,420	34,000	34,000	1,400	6,000
Trichloroethene	<17.7/<17.0	185	241	70	293.3
Naphthalene	<171 <sup>^</sup> / <sup>^</sup> <165 <sup>^</sup>	<1,320 <sup>^</sup>	<1,320 <sup>^</sup>	27.7	120

Notes: *italics* = above calculated RCG Residential Subslab Soil Gas Screening Level  
**bold** = above calculated RCG Commercial/Industrial Subslab Soil Gas Screening Level  
 DUP = field duplicate  
<sup>^</sup> - laboratory detection limits were higher than the calculated RCG Subslab Soil Gas Screening Level and, therefore, this data is inconclusive as an actual detected level  
 \*\* = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03

*Vapor Intrusion Assessment – December 2015*

In November 2015, three subslab soil gas samples (SS-101, SS-102, and SS-103) were paired with three indoor air samples (IA-101, IA-102, and IA-103) to confirm the absence or presence of intrusion of contaminated subslab vapor into indoor air in the on-Site building under "worse case" scenario sampling conditions (winter climate).

One exterior ambient air sample (AA-101) was collected upwind of the building on the northwest corner of the parking lot. Subslab soil gas, indoor air, and ambient air samples were analyzed for VOCs.

PCE was detected in subslab soil gas sample SS-103 at a concentration in excess of its calculated RCG Res SGss SL and Indus SGss SL. Naphthalene was detected in soil gas from all three subslab samples at concentrations in excess of its calculated RCG Res SGss SL.<sup>3</sup> Refer to Table 5, below, for a summary of subslab soil gas analytical data above applicable RCG screening levels. Naphthalene was detected in indoor air sample IA-103 at a concentration in excess of its Res IA VESL and Indus IA VESL. No other VOCs were detected in indoor air samples at concentrations in excess of their respective RCG Res IA VESLs. Refer to Table 6, below, for a summary of indoor air analytical data above applicable RCG screening levels

**TABLE 5**

**November 2015 SubSlab Soil Gas Concentrations  
 Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter (ug/m <sup>3</sup> ))			Calculated Res SGss SL**	Calculated Indus SGss SL**
	SS-101/SS-101DUP	SS-102	SS-103		
Tetrachloroethene	6,060/19.5	1,120	<b>23,300</b>	1,400	6,000
Naphthalene	<79.3 <sup>3</sup> /5.9	<73.9 <sup>^</sup>	<79.3 <sup>^</sup>	27.7	120

Notes: *italics* = above calculated RCG Residential Subslab Soil Gas Screening Level  
**bold** = above calculated RCG Commercial/Industrial Subslab Soil Gas Screening Level  
 DUP = field duplicate  
<sup>^</sup> - laboratory detection limits were higher than the calculated RCG Subslab Soil Gas Screening Level and, therefore, this data is inconclusive as an actual detected level  
 \*\* = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03

<sup>3</sup> The laboratory re-evaluated naphthalene to the Method Detection Limit (MDL) for subslab soil gas samples (SS-101 through SS-103) collected during the November 2015 sampling event. Due to the 20 times dilution performed for the samples, the MDL for naphthalene was 9.1 ug/m<sup>3</sup> and the analytical results were determined to not exceed applicable screening levels.

**TABLE 6**  
**November 2015 Indoor Air Concentrations**  
**Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ))	Res IA VESL	Indus IA VESL
	IA-103		
Naphthalene	<b>17.8</b>	0.83	3.6

Notes: *italics* = above RCG Residential Indoor Air Vapor Exposure Screening Level  
**bold** = above RCG Commercial/Industrial Indoor Air Vapor Exposure Screening Level

Although naphthalene was detected in indoor air sample IA-103 at a concentration in excess of its Res IA VESL and its Indus IA VESL, the detected level has been determined by IDEM to likely be the result of a background source of the contaminant that interfered with the sample. Naphthalene is a common chemical in moth balls which were located approximately 20 feet from the location of sample IA-103. To substantiate the suspicion that the indoor air result was biased high as a result of background interference, as noted in footnote 3, the laboratory re-evaluated the naphthalene analytical results for subslab soil gas samples (SS-101 through SS-103) collected during the November 2015 sampling event to the Method Detection Limit (MDL). Due to the 20 times dilution performed for the samples, the MDL for naphthalene was determined to be  $9.1 \mu\text{g}/\text{m}^3$ . Therefore, the laboratory revised the analytical results for naphthalene noted on Table 5 to note that naphthalene was not detected at or above the MDL of  $9.1 \mu\text{g}/\text{m}^3$ , and therefore, the naphthalene levels detected in subslab soil gas did not exceed applicable screening levels. This conclusion is more consistent with the fact that naphthalene was not detected in the soil or ground water at the Site. In light of the detected indoor air concentration ( $17.8 \mu\text{g}/\text{m}^3$ ) being higher than the recalculated soil gas results ( $<9.1 \mu\text{g}/\text{m}^3$ ), IDEM concludes that the detection of naphthalene in indoor air is from a background source and not from the subsurface migration of vapors into indoor air.

Even though TCE and PCE were detected in subslab soil gas in excess of their respective calculated RCG Indus SGss SLs, TCE and PCE were not detected in any indoor air samples from the September 2015 or November 2015 investigations in excess of their respective Res IA VESLs indicating that the vapor intrusion pathway is incomplete in the existing Site building.

#### 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

if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Prospective Purchaser, 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 Prospective Purchaser nor an agent or employee of the Prospective Purchaser caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site, and;
- (5) the Prospective Purchaser is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exception 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 Prospective Purchaser 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 Prospective Purchaser 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 Prospective Purchaser 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 a Prospective Purchaser for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Prospective Purchaser 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. § 6901.

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 Prospective Purchaser will acquire the Site after January 11, 2002 (and after June 30, 2009), and the disposal of hazardous substances and petroleum at the Site will have 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 Prospective Purchaser 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 Prospective Purchaser 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 Prospective Purchaser 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 Prospective Purchaser 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 Prospective Purchaser 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 Prospective Purchaser 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 Prospective Purchaser 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.

### **Reasonable Steps**

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Prospective Purchaser to undertake with respect to the hazardous substances 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.
- Reasonably cooperate with and do not impede any third party's undertaking of any response actions required by IDEM's State Cleanup Program to address incident number 201445877 or any other identified contamination on the Site resulting from an off-Site source.
- 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. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

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 lead detected in ground water and PCE, TCE, carbon tetrachloride, and chloroform detected in subslab soil gas on-Site were above applicable RCG residential screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the parcels that comprise the Site to ensure no exposure to on-Site contamination. As the Site is currently undergoing assessment under the IDEM State Cleanup Program, the foregoing restrictions may be eliminated or modified in the future by subsequent written agreement between IDEM and Prospective Purchaser (or a subsequent owner of the Site) pursuant to the terms and conditions of the ERC. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Prospective Purchaser must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- Prohibit any activity at the Site that interferes with any ongoing response activities, long-term ground water monitoring, or measures necessary to assure the effectiveness and integrity of any response action or engineering control, or component thereof, implemented at the Site.

- Not use or allow the use of the Site 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).
- Not use or allow the use or extraction of ground water at the Site for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior IDEM approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities.
- Not occupy any human-occupied buildings constructed on the Site on or after the effective date of the ERC without first completing one of the following: Option 1) Evaluate and determine, with IDEM concurrence, the presence or absence of the intrusion of contaminated vapor into indoor air (vapor intrusion) in any 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) and IDEM Draft Interim Guidance Document: *Vapor Remedy Selection and Implementation* (February 2014)) within any newly constructed human-occupied buildings on the Site, unless IDEM concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of the applicable IDEM RCG Indus IA VESL based upon the commercial/industrial use of the Site or site-specific action levels approved by IDEM.

## Conclusion

IDEM encourages the continued commercial use 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 parcels comprising 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 Prospective Purchaser 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 requirement does not apply to information

developed by a third party that should be separately communicated to IDEM by the third party.

This letter shall not be construed as limiting the Prospective Purchaser'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 Prospective Purchaser 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 Prospective Purchaser, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Prospective Purchaser 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 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 Prospective Purchaser exacerbates the contamination at the Site, or if the Prospective Purchaser does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Prospective Purchaser 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, upon acquisition, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the new deed for the Site in the Howard 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: Tracy Concannon

Hulce's Supermarket, Greentown - BFPP Comfort Letter  
BFD #4131202  
January 29, 2016  
Page 16 of 16

IDEM is pleased to assist JJS Properties, Inc. with this commercial redevelopment project. Should you have any questions or comments, please contact Tracy Concannon at 317/233-2801 or toll free from within Indiana at 800/451-6027, ext. 3-2801. She can also be reached via email at: [tconcann@ifa.in.gov](mailto:tconcann@ifa.in.gov).

Sincerely,



Peggy Dorsey  
Deputy Assistant Commissioner  
Office of Land Quality

Enclosure

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)  
Bruce Oertel, IDEM (*electronic copy*)  
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)  
Tracy Concannon, Indiana Brownfields Program (*electronic copy*)  
Anne Weinkauff, IDEM State Cleanup (*electronic copy*)  
Gary Hulce, Owner (216 W. High Street, Greentown, IN 46936-1135)  
Chris Shaw, SME (*electronic copy*)

**EXHIBIT D**

**TABLES**

**TABLE 1**

***Hulce's Supermarket, Greentown - #4131202***  
**March 2014 Ground Water Concentrations Exceeding Applicable  
IDEM RCG Screening Levels**

**TABLE 2**

***Hulce's Supermarket, Greentown - #4131202***  
**March 2014 Subslab Soil Gas Concentrations  
Exceeding Calculated IDEM RCG Screening Levels**

**TABLE 3**

***Hulce's Supermarket, Greentown - #4131202***  
**September 2015 SubSlab Soil Gas Concentrations  
Exceeding Calculated IDEM RCG Screening Levels**

**TABLE 4**

***Hulce's Supermarket, Greentown - #4131202***  
**November 2015 SubSlab Soil Gas Concentrations  
Exceeding Calculated IDEM RCG Screening Levels**

**TABLE 1**  
**Hulce's Supermarket, Greentown - #4131202**  
**March 2014 Ground Water Concentrations Exceeding**  
**Applicable IDEM RCG Screening Levels**

Contaminant Detected	Sample Location & Results (parts per billion (ppb))					Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	SB1GW	SB2GW	SB3GW	SB4GW	SB5GW/ DUP01			
Tetrachloroethene	57.1	7.3	64.3	73	243/ 236	5	110	470
Trichloroethene	2.1	16.1	6.6	2.2	23.4/ 22.7	5	9.1	38
Lead	ND	ND	ND	ND	22.8/ 99.6	15	NE	

Notes: *italics* = above RCG Residential Tap Ground Water Screening Level  
**bold** = above RCG Residential Vapor Exposure Ground Water Screening Level  
 NE = not established    DUP01 = duplicate    ND = not detected

**TABLE 2**  
**Hulce's Supermarket, Greentown - #4131202**  
**March 2014 SubSlab Soil Gas Concentrations**  
**Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter (ug/m <sup>3</sup> ))				Calculated Res SGss SL**	Calculated Indus SGss SL**
	SS1	SS2	SS3	DUP01SS		
Carbon Tetrachloride	<20.6	1,370	2,740	8	156.7	666.7
Chloroform	146	<932 <sup>^</sup>	<836 <sup>^</sup>	<1.5	40	176.7
Tetrachloroethene	1,820	71,200	11,900	2,090	1,400	6,000
Trichloroethene	<17.7	701	1,590	13.5	70	293.3

Notes: *italics* = above calculated RCG Residential Subslab Soil Gas Screening Level  
**bold** = above calculated RCG Commercial/Industrial Subslab Soil Gas Screening Level  
 DUP01SS = duplicate of SS1  
 ND = not detected  
<sup>^</sup> - laboratory detection limits were higher than the calculated RCG Subslab Soil Gas Screening Level and, therefore, this data is inconclusive as an actual detected level  
 \*\* = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03

**TABLE 3**  
**Hulce's Supermarket, Greentown - #4131202**  
**September 2015 SubSlab Soil Gas Concentrations**  
**Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter (ug/m <sup>3</sup> ))			Calculated Res SGss SL**	Calculated Indus SGss SL**
	SS-101/SS-101DUP	SS-102	SS-103		
Carbon Tetrachloride	<20.6/20.6	547	558	156.7	666.7
Tetrachloroethene	876/1,420	<b>34,000</b>	<b>34,000</b>	1,400	6,000
Trichloroethene	<17.7/<17.0	<b>185</b>	<b>241</b>	70	293.3

Notes: *italics* = above calculated RCG Residential Subslab Soil Gas Screening Level  
**bold** = above calculated RCG Commercial/Industrial Subslab Soil Gas Screening Level  
DUP = field duplicate  
\*\* = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03

**TABLE 4**  
**Hulce's Supermarket, Greentown - #4131202**  
**November 2015 SubSlab Soil Gas Concentrations**  
**Exceeding Calculated IDEM RCG Screening Levels**

Contaminant Detected	Sample ID & Results (micrograms per cubic meter (ug/m <sup>3</sup> ))			Calculated Res SGss SL**	Calculated Indus SGss SL**
	SS-101/SS-101DUP	SS-102	SS-103		
Tetrachloroethene	6,060/19.5	1,120	<b>23,300</b>	1,400	6,000

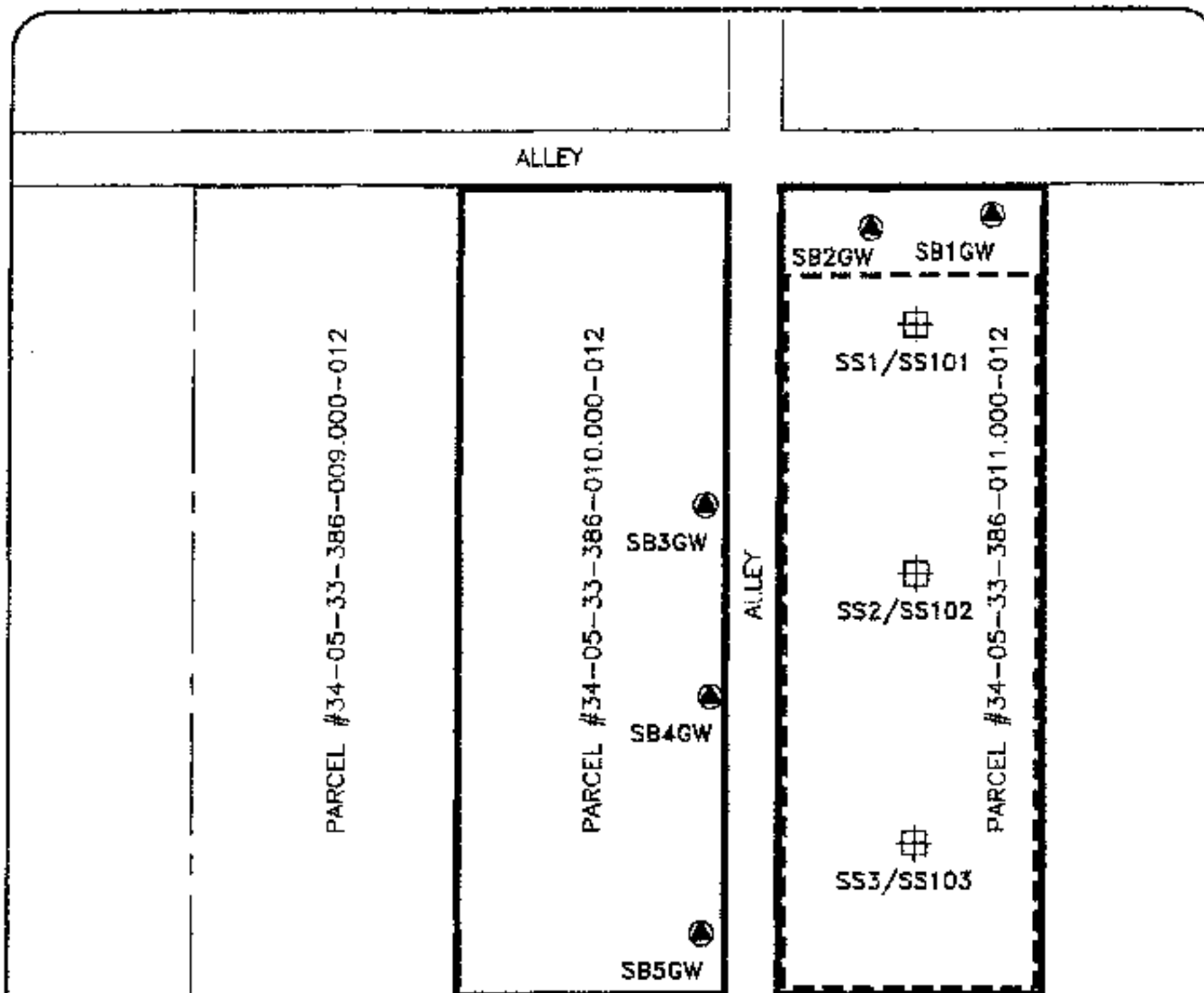
Notes: *italics* = above calculated RCG Residential Subslab Soil Gas Screening Level  
**bold** = above calculated RCG Commercial/Industrial Subslab Soil Gas Screening Level  
DUP = field duplicate  
\*\* = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03



## **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.*

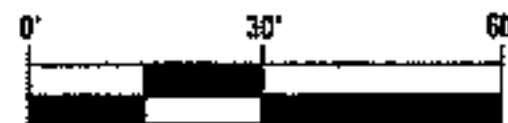


# MAIN STREET

## LEGEND

- PARCEL EXCEEDING SCREENING LEVELS
- PARCEL
- EXISTING BUILDING
- ▲ GROUNDWATER BORING LOCATION
- ⊕ SUB-SLAB SOIL GAS AND INDOOR AIR SAMPLE LOCATION

NOTE:  
DRAWING INFORMATION TAKEN FROM HOWARD COUNTY,  
INDIANA, BEACON/SCHNEIDER WEBSITE.



GRAPHIC SCALE: 1" = 30'

No.	Revision	Date
		1-19-16
	Drawn By	JAB
	Designed By	CGS
	Scale	1" = 30'
	Project	067021.01.004.001

**SAMPLE LOCATION EXCEEDING APPLICABLE  
IDEM RCG SCREENING LEVELS  
114 WEST MAIN STREET  
GREENTOWN, INDIANA**

