

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 17th day of July 2017, by Inphaze, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 1779 W. 15th 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 7/14/2017 and recorded on A20000661771, as Deed Record _____, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 0.4 acres and is also identified by the county by parcel identification number #49-06-34-123-011.000-101. 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 Inphaze, LLC 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 on or in the vicinity of the Real Estate, Program site number BFD #4160214.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in ground water 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 trichloroethene ("TCE"), cis-1,2-dichloroethene ("Cis-1,2-DCE"), and vinyl chloride ("VC").

WHEREAS: Ground water, soil gas, indoor air, and ambient air on the Real Estate were sampled for volatile organic compounds ("VOCs"). Investigations detected levels of TCE, CIS-1,2-DCE, and VC above applicable ground water screening levels established by IDEM in the Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). Ground water sampling results detected TCE above its residential tap ground water screening level ("Res TAP GWSL") of 5 ppb in samples from MW-1 through MW-5 and a duplicate of MW-1 (DUP). Ground water sampling results detected TCE above its residential vapor exposure ground water screening level ("Res VE GWSL") of 9.1 ppb in all five ground water samples with MW-2 through MW-5 above industrial vapor exposure ground water screening level ("Indus VE GWSL") of 36 ppb. Cis-1,2-DCE was detected above its Res TAP GWSL of 70 ppb in ground water samples MW-3 and MW-4. Vinyl chloride was detected in ground water in sample MW-3 above its Res TAP GWSL of 2 ppb and above its Res VE GWSL of 2.1 ppb but below

its Indus VE GWSL of 35 ppb. Ground water analytical results above applicable RCG screening levels are summarized on Table 1, 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 ground water 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 unrestricted 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/idem/4101.htm>.

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

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:

- (a) Shall not occupy any existing and/or newly-constructed building(s) 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") while the heating, ventilation, air conditioning ("HVAC") system is operating in any existing and/or newly constructed human-occupied 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 (February 2014): Vapor Remedy Selection and Implementation*) within any existing or newly-constructed human-occupied 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 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 (a)(i) above, a detailed work plan must be submitted and approved by 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 any COCs potentially impacting indoor air in any existing or 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 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 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.

- (b) 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.

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 5/23/2017 2017, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON 7/19/2017, 2017, INSTRUMENT NUMBER (or other identifying reference) 201700534-5 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:
Steve Golten
Inphaze, LLC
1711 W. 15th Street
Indianapolis, Indiana 46202

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

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.

EXHIBIT A

Deed for the Real Estate



JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR
Jul 19 2017 PM 03:23
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER
E-082750583 MDM

A201700081771

07/20/2017 7:02 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: \$ 49.50
PAGES: 23
By: ER

State ID 49-06-34-123-011.000-101

BELL

QUITCLAIM DEED
Parcel: 1602945

THIS INDENTURE WITNESSETH, That the City of Indianapolis, Department of Metropolitan Development ("Grantor") of Marion County in the State of Indiana, CONVEYS and Quitclaims to INPHAZE LLC, an Indiana limited liability ("Grantee"), for the sum of One Dollar and 00/100 (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Marion County, Indiana:

Legal Description: Part of the West half (1/2) of Section Thirty-four (34), Township Sixteen (16) North, Range Three (3) East, in Marion County, Indiana, more particularly described as follows: Beginning at a point on the South property line of West 15th Street as now established, said point being 180 feet measured in a Westerly direction along said South line from the West line of East Riverside Drive as now established, said beginning point being coincident with the terminus as a line described as follows:

Commencing at the intersection of the South property line of West 15th Street as now established, and the line separating the East and West halves of said Section Thirty-four (34); running thence in a Westerly direction along said South line of 15th Street 1,046.73 feet to the West line of East Riverside Drive; thence in a Southerly direction along said West line 500.1 feet to the South line of West 15th Street; thence North 88 degrees 28 minutes 13 seconds West (assumed bearing) and along said South line 180 feet to the beginning point of this description; running thence North 88 degrees 28 minutes 13 seconds West and along the South line of 15th Street 100 feet; thence South 0 degrees 43 minutes 17 seconds West 151.92 feet to the North line of Waterway Boulevard as now established; thence South 72 degrees 22 minutes 58 seconds East and along said North line 104.4 feet; thence North 0 degrees 43 minutes 17 seconds East 181.03 feet to the point of beginning.

Commonly known as: 1779 W. 15th Street, Indianapolis, IN 46202

Subject to:

- (1) Building and zoning ordinances;
- (2) All liens, encumbrances, easements, covenants, restrictions and rights-of-way of record, if any, running with the land, all taxes due and payable in 2017 and all taxes thereafter.

IN WITNESS WHEREOF, the Grantor has executed this deed, this 19th day of July, 2017.

Signature: Emily Mack

Printed: Emily Mack, Director of

Department of Metropolitan Development

STATE OF INDIANA)

SS:

COUNTY OF MARION)

Before me a Notary Public in and for said County and State, personally appeared Emily Mack, Director, Department of Metropolitan Development, who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal, this 19th day of July, 2017.

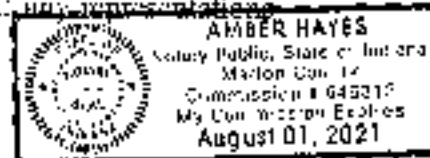
My commission expires:

August 01, 2021

Signature: Amber Hayes

Printed: Amber Hayes

Residing in Marion County, Indiana



This instrument was prepared by Office of the Corporation Counsel, City of Indianapolis, 200 E. Washington, Suite 501, Indianapolis, IN 46204. I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.
Sheila Kinney, Asst Corporation Counsel.

Tax statements to be sent to the grantee at: 1711 WEST 15TH STREET, INDIANAPOLIS, IN 46202

Attachment A
PROJECT AGREEMENT FOR THE DEVELOPMENT OF
1779 W.15th Street.

THIS PROJECT AGREEMENT ("Agreement") is made by and between the DEPARTMENT OF METROPOLITAN DEVELOPMENT OF THE CONSOLIDATED CITY OF INDIANAPOLIS, acting for and on behalf of the Metropolitan Development Commission of Marion County, Indiana, in its capacity as the Redevelopment Commission of the City of Indianapolis, Indiana, having its office at 2042 City-County Building, 200 East Washington Street, Indianapolis, Indiana 46204 ("Agency"), and Engineered Testing Systems LLC ("ETS") and INPHAZE LLC, ("INPHAZE,") having offices at 1711 West 15th Street, Indianapolis, Indiana, 46202 (collectively, "Developer.")

The effective date of this Agreement, and the term "Effective Date" as used in this Agreement, shall be the latest calendar date on which any party hereto has executed this Agreement.

WHEREAS, pursuant to Ind. Code § 36-7-15.1, Agency has acquired the real estate located at 1779 West 15th Street in Indianapolis, Indiana ("Property") which Property is more particularly described as follows:

Legal Description: 100FT NL X 181.03FT BL X 151.92FT WL X 104.40 FT SLBEG 180FT W
OF RIVERSIDE & 15TH ST PT S1/2 NW1/4S34 T16 R3;

and

WHEREAS, in May 2015, in accordance with I.C. 36-7-15.1-15, Agency offered the Property to the public for sale for the purpose of redevelopment, but no responses were received; and

WHEREAS, subsequently, Developer, whose business is located adjacent to the Property, and another interested party inquired about the Property; and

WHEREAS, pursuant to IC 36-7-15.1-15 (h,) Agency negotiated a purchase price in a manner it considered necessary to further the redevelopment of the Property and determined Developer's proposal ("Proposal") to be the best proposal for development of the Property; and

WHEREAS, the Proposal and all of Developer's representations therein are described herein; and

WHEREAS, in accordance with the terms of Developer's Proposal, Agency desires to enter into this Agreement with Developer and to convey title to the Property to Developer on the terms and conditions set forth herein; and

WHEREAS, Parties acknowledge that a quiet title action is required prior to actual conveyance of the Property to Developer, however Parties do not want to delay implementation of the Proposal; and

WHEREAS, Agency desires to allow Developer immediate access to the Property for the purpose of implementing the Proposal; and

WHEREAS, Agency believes that the development of the Property by Developer best serves the interests of the City of Indianapolis and its inhabitants, both from the standpoint of human needs and economic values, in accordance with the public purposes and provisions of applicable law.

NOW, THEREFORE, in consideration of the premises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

SEC. 1 PURCHASE, SALE AND POSSESSION

Subject to all the terms, covenants and conditions of this Agreement, Agency agrees to sell the Property to Developer, and Developer agrees to purchase the Property from Agency, for the total amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) ("Purchase Price.") The Purchase Price shall be paid by Developer to Agency on the Closing Date (as defined in Section 2 (f)) and deposited in the Brownfield Redevelopment Fund pursuant to Sec. 135-781 of the Revised Code of the Consolidated City and County. Upon the Effective Date and prior to the Closing Date, Developer shall have access to the Property in consideration of its agreement to initiate implementation of the Proposal, including securing, maintaining, and insuring the Property.

Parties acknowledge that Agency Resolution No. 2015-R-050 for the transfer and redevelopment of the Property named ETS but that ETS and INPHAZE, while legally separate entities, have common ownership and will operate together as Developer hereunder. Both ETS and INPHAZE agree to be bound, as Developer, by the terms of this Agreement. Agency agrees to accept funds from either Developer entity and to execute a deed to the entity specified by Developer.

SEC. 2 CONVEYANCE OF PROPERTY

- (a) **Form of Deed.** In accordance with the terms of the Proposal, Agency shall convey to Developer the title to the Property by quitclaim deed, which shall be delivered at the Closing, as defined herein in Section 2 (f), subject only to:
- (1) Building and zoning ordinances;
 - (2) If Developer does not obtain a Title Commitment and/or survey as set forth in Sections 2(b)(1) and (2) hereof, such conditions, covenants and restrictions, if any, running with the land;
 - (3) If Developer obtains a Title Commitment and/or survey, Permitted Exceptions as defined in Section 2(b)(3) hereof; and

(4) Terms, conditions and/or restrictions of this Agreement.

(collectively, the "Quitclaim Deed").

(b) Evidence of Title and Survey.

(1) Developer may, at its sole cost and expense, obtain a title insurance commitment, including any required quiet title action ("Title Commitment") from a title insurance company ("Title Company") showing the condition of title to the Property. Pursuant to the Title Commitment, the Title Company shall agree to issue upon delivery of the Quitclaim Deed, an owner's policy of title insurance insuring Developer's fee simple title to the Property ("Title Policy").

(2) Developer may, at its sole cost and expense, obtain a staked survey of the Property in form and substance required by Developer ("Survey") certified to Developer, the Title Company and Developer's lender(s), if requested, as of a current date, showing the location of all easements, Permitted Exceptions (as hereinafter defined), encroachments, rights of way and improvements, if any, located thereon.

(3) Developer shall, at least fifteen (15) days prior to the scheduled Closing (as hereinafter defined,) notify Agency of any unacceptable defects disclosed in the Title Commitment or Survey. Agency shall have thirty (30) business days (or such longer period as Developer has approved in writing) to cure or remove any such unacceptable defects at Agency's sole cost and expense. If Agency is unwilling or unable to cure or remove such defects within said period, then Developer, as its sole and exclusive remedies may, either within ten (10) business days thereafter, waive such defects and proceed to the Closing (in which case they shall be deemed "Permitted Exceptions") or terminate this Agreement.

If Developer fails to object, in a timely fashion, to any of the exceptions to title reflected on the Title Commitment (except the lien of any mortgage or other security instrument to be released at or before the Closing, as hereinafter defined) or to any defect revealed in the Survey, those exceptions and defects shall be deemed "Permitted Exceptions".

(4) In the event Developer did not obtain a Title Commitment and/or Survey within the time frames stated above, Developer shall take the Property subject to all existing conditions, including, but not limited to, easements, encroachments, rights-of-way and improvements.

(c) Conditions Precedent to Agency's Obligations. The obligations of Agency hereunder shall be subject to the fulfillment of the following conditions precedent.

each of which shall have been satisfied on or before the Closing Date (as defined in 2(f)), or such other time as stated herein; provided, however, that Agency may, conditionally or unconditionally, waive any one or more of such conditions:

- (1) All of the documents delivered by Developer to Agency pursuant to the terms and conditions of this Agreement shall have been delivered within the time specified herein and shall be in form and substance reasonably satisfactory to Agency;
- (2) Developer shall timely perform or update an ASTM standard "PHASE I Environmental Site Assessment" prior to the Closing Date;
- (3) Each of the representations and warranties of Developer contained herein shall be true in all material respects as of the Closing;
- (4) Developer shall in all material respects have complied with, fulfilled and performed each of the covenants, terms and conditions to be complied with, fulfilled or performed by Developer hereunder prior to the Closing;
- (5) Developer shall have paid all costs of surveying and obtaining title insurance for the Property, if any; and
- (6) Developer shall have a current commitment to close on its financing for the Proposal.

(d) **Conditions Precedent to Developer's Obligations.** The obligations of Developer hereunder to accept delivery of the Quitclaim Deed shall be subject to the fulfillment of the following conditions precedent, each of which shall have been satisfied on or before the time as stated herein; provided, however, that Developer may, conditionally or unconditionally, waive any one or more of such conditions:

- (1) All of the documents pertaining to the Property required to be delivered by Agency to Developer pursuant to the terms and conditions of this Agreement shall have been delivered within the time specified herein and shall be in form and substance reasonably satisfactory to Developer;
- (2) Each of the representations and warranties of Agency contained herein shall be true in all material respects as of the Closing;
- (3) Agency shall in all material respects have complied with, fulfilled and performed each of the covenants, terms and conditions that relate to the Property and are required to be complied with, fulfilled or performed by Agency hereunder prior to the Closing;

- (4) Developer shall have obtained a commitment to finance the development and construction of the Developer Improvements (as hereinafter defined) by the Closing Date on terms satisfactory to Developer in its sole and absolute discretion;
 - (5) Developer shall have received the Title Policy.
- (e) **Failure of Conditions Precedent.** In the event that one or more of the conditions precedent are not satisfied as set forth in Section 2(c) and 2(d), the party for whose benefit the condition precedent is intended may waive such conditions or may terminate this Agreement, in which event the parties hereto shall have no further rights or remedies hereunder.
- (f) **Time and Place for Delivery of Deed.** Subject to the prior satisfaction or written waiver of the conditions precedent contained within Sections 2(c) and 2(d), or such other date as may be agreed upon in writing by Agency and Developer, Agency shall deliver the Quitclaim Deed described in Section 2(a) to Developer and exclusive possession of the Property to Developer on the date that Developer closes on its financing for the Proposal ("Closing Date"). For the purposes of this Agreement, the "Closing" means the consummation of the transfer of fee simple title to the Property and related deliveries in accordance with the terms and conditions of this Agreement. The Closing shall be held at the office of the Title Company or at such other place as designated by Developer and Agency, and Developer shall accept conveyance of the Property at such time and place. Any fee for conducting the Closing shall be paid for by Developer. At the Closing, Agency and Developer agree to deliver to each other, in accordance with the terms of this Agreement, the following:
- (1) Agency shall deliver to Developer a duly authorized and executed Quitclaim Deed in recordable form, conveying title to the Property from Agency to Developer, subject only to the conditions described in Section 2(a) hereof;
 - (2) Each party shall deliver to the other satisfactory resolutions or other evidence of the authority of the signers of the documents to consummate the transaction on behalf of Agency and Developer;
 - (3) Agency shall deliver to Developer a Sales Disclosure Form with seller's information completed; and
 - (4) All other documentation reasonably necessary to complete the transaction contemplated by this Agreement that can be furnished by the parties without material cost or expense.

All of the documents and instruments required pursuant to this Section 2(f) or otherwise in connection with the consummation of this Agreement shall be in a form and a manner reasonably satisfactory to counsel to Agency and Developer.

- (g) **Recordation of Deed and Agreement.** Upon Closing, Developer or its authorized agent, shall promptly record the Quitclaim Deed (with this Agreement as Attachment A,) at its expense, in the Office of the Recorder of Marion County, Indiana.
- (h) **Risk of Loss.** All risk of physical loss or damage to the Property, including, but not limited to, loss or damage by fire or otherwise, and all liability, including, but not limited to, personal liability arising from ownership, maintenance and use of the Property is the responsibility of Developer upon the Effective Date.
- (i) **Condition of Property.** The possession and sale of the Property as provided in this Agreement is made on an "AS IS" basis, and Developer expressly acknowledges that, in consideration of the agreement of Agency herein, except as otherwise explicitly specified herein or in any document delivered to Developer in accordance with the terms of this Agreement, AGENCY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO EVENT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

SEC. 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

- (a) **Representations and Covenants by Developer.** Developer represents and covenants that:

(1) After the Closing, Developer shall cause the improvements to be made to the Property in material compliance with the Proposal and in substantial accordance with the terms of this Agreement (hereinafter the "**Developer Improvements.**") Per the Proposal, Developer shall:

- occupy the existing building on the Property ("Building") immediately after Closing
- make needed repairs to the Building to make it habitable
- build out existing warehouse space for housing Gigahertz Transverse Electromagnetic (GTEM) cells
- purchase and install at least one GTEM cell with related equipment
- complete the renovations in approximately six (6) months
- staff the facility, including at least two (2) new jobs

Developer shall permit Agency access to the Property and to necessary documents and information to perform reviews and monitor the progress

of the construction to ensure conformity with local, state and federal laws and regulations and other terms herein.

- (2) Developer shall obtain all required permits, reviews, licenses, actions and approvals, and shall meet all requirements of all local, state and federal laws and regulations, which must be obtained or met before Developer Improvements may be constructed including applicable utilization requirements.
- (3) Developer's acquisition of the Property and undertakings pursuant to this Agreement are for the sole purpose of development pursuant to this Agreement and for no other purpose. Developer recognizes that, in view of the importance of the development to the general welfare of Agency and the City of Indianapolis, the qualifications and identity of Developer are of particular concern to Agency. Developer further recognizes that it is because of such qualifications and identity that Agency is entering into this Agreement and, in so doing, is relying upon Developer's representations as to its capabilities and financing, its schedule for completion and its acceptance of the undertakings and obligations of Developer pursuant to this Agreement.
- (4) Developer shall not enter into any contracts or undertakings that would limit, conflict with or result in a material breach of this Agreement.
- (5) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated, will not conflict with, or constitute a breach or default under, Developer's Articles of Organization or Operating Agreement, or the provisions of any bond, debenture, note, other evidence of indebtedness, loan agreement, lease or other contract to which Developer is a party or by which it is bound, or, to its actual knowledge, violate any law, regulation or order of the United States of America, the State of Indiana, or any Agency or political subdivision thereof, or any court order or judgment in any proceeding to which Developer is or was a party or by which it is bound.
- (6) There is no action, suit, proceeding or investigation at law or in equity, or by or before any United States court, arbitrator, administrative agency, or other federal, state or local governmental authority, pending or, to the actual knowledge of Developer or any of its members, threatened against Developer or any of its members, wherein an unfavorable decision, ruling or finding would have a material adverse effect on the validity of this Agreement or a material adverse effect on the transactions contemplated hereby.
- (7) Developer shall take no action to create or exacerbate environmental hazards which could negatively impact residents or uses of the Property.

- (8) Developer shall meet all MDC redevelopment standards and accessibility standards with respect to the project.
- (b) Representations and Warranties of Agency. Agency hereby represents, warrants and covenants that:
- (1) All necessary action has been taken to authorize Agency's execution of this Agreement and the performance of Agency's obligations hereunder, Agency has the power and authority under all federal, state and local law to enter into this Agreement and perform its obligations hereunder, and this Agreement constitutes a legal, valid and binding obligation enforceable against Agency.
 - (2) The execution and delivery of this Agreement by Agency does not, and the consummation of the transactions contemplated hereby in compliance with the terms hereof, will not conflict with or result in a violation of: (i) any provisions of any instrument governing Agency, (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation applicable to Agency, or (iii) the provisions of any bond, debenture, note, other evidence of indebtedness, loan agreement, lease or other contract to which Agency is a party or by which it is bound.
 - (3) As of the Effective Date, Agency has not received any written notice of any violation of any laws, rules or regulations applicable to the Property.
 - (4) Agency has marketable title to the Property, subject only to the conditions described in Section 2(a) hereof.
 - (5) Except for Permitted Exceptions, Agency shall convey the Property to Developer free of any lien for:
 - (i) property taxes or assessments for municipal improvements which are payable for the period prior to the applicable Closing Date,
 - (ii) any mortgage or other security instrument,
 - (iii) any mechanics or other similar lien; and
 - (iv) any judgment.
 - (6) To the best of the Agency's knowledge, there is no action, suit, proceeding or investigation at law or in equity, or by or before any United States court, arbitrator, administrative agency, or other federal, state or local governmental authority, pending or, to the actual knowledge of Agency, threatened against the Agency, wherein an unfavorable decision, ruling or finding would have a material adverse effect on the validity of this Agreement or a material adverse effect on the transactions contemplated hereby.

- (7) Agency shall not enter into any contracts or undertakings that would limit, conflict with or result in a material breach of this Agreement.

SEC. 4 CONSTRUCTION

Developer shall construct the improvements on the Property in accordance with all representations in the Proposal.

SEC. 5 TIME FOR COMMENCEMENT AND COMPLETION OF IMPROVEMENTS

- (a) **Developer Commitments and Agency Commitments: Commencement of Construction.** Subject to Developer's compliance with its Proposal, Agency hereby designates Developer as the exclusive Developer to work with Agency to accomplish the development of the Property. The Proposal and provisions of this Agreement specify immediate occupancy of the Property and commencement of renovations by Developer following Closing (hereinafter the "Commencement Date") and an approximate anticipated eighteen (18) month timeline. The Commencement Date may be amended by mutual agreement of the parties.
- (b) **Unavoidable Delay.** In the event that either party is unable to perform any of its obligations under this Agreement because of natural disaster, decrees of governmental bodies or other interference beyond the Parties' control and not the fault of the affected party (hereinafter "Unavoidable Delay,") the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give written notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, obligations under this Agreement shall be suspended for up to ninety (90) days of the duration of the Unavoidable Delay. If the period of nonperformance due to Unavoidable Delay would exceed ninety (90) days, the party whose ability to perform has not been so affected may terminate this Contract, unless the Parties agree otherwise.
- (c) **Completion of Construction.** Subject to Unavoidable Delay, Developer shall substantially complete construction of Developer Improvements on the Property no later than October 31, 2017, (hereinafter "Construction Completion Date;") to be evidenced by available records of an approved Final Inspection by the City of Indianapolis for a Structural Permit for the Developer Improvements listed above. Upon verification of such records and substantial completion of Developer Improvements in accordance with this Agreement, Agency shall issue a Release of Project Agreement ("Release") in recordable form. Said Release shall serve only as a statement to the effect that Developer Improvements have been completed and shall not serve as a warranty of any kind for such work.

SEC. 6 FINANCING

- (a) **Financing.** Contemporaneous with execution of this Agreement, Developer will provide Agency acceptable evidence of a current commitment letter for

construction/permanent financing or some alternative evidence of financial ability to complete Developer Improvements.

(b) Agency's Right of Re-Entry.

- (1) Title to the Property shall be vested conditionally in Developer, subject to divestment and reversion to Agency, and Agency may re-enter and retake all or a portion of the Property, pursuant to (3) below, upon the subsequent occurrence of the failure by Developer, subject to Unavoidable Delay, to deliver acceptable Developer Improvements in accordance with the terms of this Agreement, as amended from time to time.
- (2) For failure of condition (1) above, title to the Property shall revert to Agency and Agency shall have the right to re-enter and take possession of the Property and all right, title, estate and interest of Developer in the Property shall thereupon terminate and revert in Agency, free of any right or claim of Developer, their respective assigns or successors in interest.
- (3) The conveyance of the Property to Developer shall be made upon, and the Quitclaim Deed shall contain, a condition subsequent to the effect that in the event of Developer's failure as set forth in this Section 6, and a failure on the part of Developer or its Mortgagee to remedy, cure or correct such failure within the period and in the manner described herein (an "Uncured Default"), title to the Property, shall immediately revert in and revert to Agency and Agency shall have the right to re-enter and take possession of the Property and retake title free and clear of any and all interest of Developer, or any of its successors, assigns, mortgagees or other investors. It is the intent of the Parties that the above provisions are automatically effective upon an occurrence of such an Uncured Default and that thereupon title to the Property or shall immediately revert in Agency without need for any further action by Agency.
- (4) Fee simple title to the Property shall vest absolutely in Developer, free of the foregoing conditions, and Agency's right of re-entry under Section 6 shall terminate upon issuance of a Release by the Agency, in substantially the form attached hereto as Exhibit B. The foregoing termination may be evidenced by recording the Release in the office of the Recorder of Marion County, Indiana.

(c) Easements. Parties agree that, in the event Agency exercises its Right of Re-Entry and as a condition thereof, the Parties agree to grant to each other easements across the Property as may be necessary in order to provide utility services across the Property.

SEC. 7 NON DISCRIMINATION and E-VERIFY

- (a) **Non Discrimination.** Developer and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Project Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, creed, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- (b) **Compliance with E-Verify Program.** Pursuant to IC 22-5-1.7, Developer shall enroll in and verify the work eligibility status of all newly hired employees of Developer through the E-Verify Program ("Program"). Developer is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- (1) Developer and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that or its subcontractor subsequently learns is an unauthorized alien. If Developer violates this Section, Agency shall require Developer to remedy the violation not later than thirty (30) days after Agency notifies Developer. If Developer fails to remedy the violation within the thirty (30) day period, Agency shall terminate the contract for breach of contract. If Agency terminates the contract, Developer shall, in addition to any other contractual remedies, be liable to Agency for actual damages. There is a rebuttable presumption that Developer did not knowingly employ an unauthorized alien if Developer verified the work eligibility status of the employee through the Program.
 - (2) If Developer employs or contracts with an unauthorized alien but Agency determines that terminating the contract would be detrimental to the public interest or public property, Agency may allow the contract to remain in effect until Agency procures a new Developer.
 - (3) Developer shall, prior to performing any work, require each subcontractor to certify to Developer that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Developer shall maintain or file a certification from each subcontractor throughout the duration of this Agreement. If Developer determines that a subcontractor is in violation of this Section, Developer may terminate its contract with the subcontractor for such violation.
 - (4) Pursuant to IC 22-5-1.7 a fully executed affidavit (Exhibit A) affirming that the business entity does not knowingly employ an unauthorized alien and confirming Developer's enrollment in the Program, unless the Program no longer exists, shall be filed with Agency prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with Agency.

SEC. 8 ENFORCEMENT OF AGREEMENT

Agency or Developer or their successors and assigns, may enlist the assistance of any appropriate body to use its authority to require remedial action in compliance with this Agreement. Furthermore, Agency or Developer or their successors and assigns may enter into a civil lawsuit to stop or rescind actions not in conformance with this Agreement, or to enforce contractual agreements to ensure conformance with this Agreement.

SEC. 9 INDEMNIFICATION

Developer shall indemnify, defend (by legal counsel reasonably acceptable to Agency) and hold harmless Agency and the City of Indianapolis, and their respective officers, employees, officials, agents, successors and assigns (hereinafter "Agency Indemnified Parties"), from and against any and all claims, damages, actions or proceedings of any type asserted by third parties against Agency Indemnified Parties, and all final judgments that Agency Indemnified Parties suffer and reasonable costs and expenses incurred, including reasonable attorneys' fees and expenses, (i) as a result of the assertion of such claims due to any negligent act or omission whatsoever by, or the intentional misconduct of, Developer or its agents, employees, servants, contractors or subcontractors, successors, or assigns, in using or improving the Property; (ii) as a result of claims, fines and penalties arising out of any failure of Developer or its agents, employees, servants, contractors or subcontractors, successors, or assigns, to comply with any law, ordinance, code requirement, regulation or other requirement applicable to Developer's work on Developer Improvements on the Property; (iii) arising or growing out of or in any way connected with Developer's ownership, use, occupancy, management or control of the Property, or Developer's operations, conduct or activities on the Property, unless caused by the gross negligence or intentional misconduct of Agency or any one of the Agency Indemnified Parties while acting within the scope of their employment or as agents of the Consolidated City of Indianapolis, or (iv) as a result of a breach by Developer of any provision of this Agreement.

SEC. 10 ASSIGNMENT OF AGREEMENT AND TRANSFER OF PROPERTY

- (a) Except as expressly allowed herein, Developer affirms that it has not and will not make any partial or total transfer of any interest in the Property or Developer Improvements ("Transfer") without prior written approval of the Agency.
- (b) Developer shall have the right to enter into the financing for the construction of Developer Improvements or any refinancing and to lease the Property in the ordinary course of business. After the substantial completion of Developer Improvements, as evidenced by a Release per Section 5(c) herein, the restrictions contained in this Section 10 shall no longer be applicable. The only preconditions to approval of a Transfer by Developer that may be required by Agency are that:
 - (1) Any proposed transferee shall have the qualifications and financial responsibility, reasonably determined by Agency, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer insofar as such obligations relate to the Property;

- (2) There shall be submitted to Agency for review, prior to any such transfer and written Agency approval, all instruments and other legal documents involved in effecting transfer; and
 - (3) The Developer's successor(s) shall agree to the obligations undertaken in this Agreement by Developer.
- (c) Upon completion of any assignment, Developer shall be released from its obligations and liabilities hereunder when the transferee, by instrument in writing reasonably satisfactory to Agency and in form recordable in the land records, shall, for itself and its successors and assigns, and expressly for the benefit of Agency, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all of the conditions and restrictions to which Developer is subject insofar as such obligations, conditions and restrictions relate to the Property being transferred.

SEC. 11 EVENTS OF DEFAULT

- (a) **Events of Default by Developer.** The term "Event of Default" as used in this Agreement in reference to actions or omissions of Developer shall mean any one or more of the following events (and the term "default" shall mean any event which would, with the passage of time or giving of notice or both, be an "Event of Default" hereunder):
- (1) Subject to Unavoidable Delay, failure by Developer to observe and perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder within thirty (30) days after written notice to Developer specifying such failure and requesting that it be remedied (or within such other period as otherwise expressly provided in this Agreement), or within such further period of time as is reasonably necessary to cure such failure, but only if Developer has within said thirty (30) days provided Agency with assurances reasonably deemed adequate by Agency that Developer will cure the failure as soon as is reasonably possible; provided, no cure rights beyond one (1) year are provided in this Agreement to extend the time to perform any of the obligations of Developer described in Section 5 hereof; and
 - (2) Failure by Developer, or any successor in interest, to pay real estate taxes or special assessments on the Property when due, and Developer fails to cure said default within thirty (30) days after written demand from Agency to do so.
- (b) **Remedies on Developer's Default.** Whenever any Event of Default by Developer occurs and is continuing, Agency may take any one or more of the following actions and/or any other action permitted in this Agreement:

- (1) Take whatever action at law or in equity may appear necessary or desirable to Agency to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Developer under this Agreement;
 - (2) Retain all sums paid to Agency; or
 - (3) Enforce performance and observance of any obligations, agreements, or covenants of the Developer under this Agreement, including, without limitation, the right to compel specific performance of such obligations, agreements and covenants.
- (c) **Events of Default by Agency.** The term "Event of Default" as used in this Agreement in reference to actions or omissions of Agency shall mean any one or more of the following events (and the term "default" shall mean any event which would, with the passage of time or giving of notice or both, be an "Event of Default" hereunder):
- Failure by Agency to observe and perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder within thirty (30) days after written notice to Agency specifying such failure and requesting that it be remedied (or within such other period as otherwise expressly provided in this Agreement), or within such further period of time as is reasonably necessary to cure such failure, but only if Agency has within said thirty (30) days provided Developer with assurances reasonably deemed adequate by Developer that Agency will cure the failure as soon as is reasonably possible.
- (d) **Remedies on Agency's Default.** Whenever any Event of Default by Agency occurs and is continuing, Developer may take any one or more of the following actions and/or any other action permitted in this Agreement:
- (1) Take whatever action at law or in equity may appear necessary or desirable to Developer to enforce performance and observance of any obligation, agreement or covenant of Agency under this Agreement; and
 - (2) Enforce performance and observance of any obligations, agreements, or covenants of Agency under this Agreement including, without limitation, the right to compel specific performance of such obligations, agreements and covenants.
- (e) **No Remedy Exclusive.** No remedy herein conferred upon or reserved to Agency or Developer is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall

be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law or in equity or by statute.

- (f) **Notice of Default.** In order to entitle Agency or Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required pursuant to the terms of this Section 11 or by appropriate law.

SEC. 12 COUNTERPARTS/ ELECTRONIC TRANSMISSION

This Agreement may be executed in several counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same Agreement, may be transmitted via electronic means and shall be effective when fully executed by the Parties.

SEC. 13 MISCELLANEOUS PROVISIONS

- (a) **Notices.** All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing and shall be deemed given on the date of service if delivered personally or by next day delivery, or three (3) days after mailing by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Agency: City of Indianapolis, Department of Metropolitan Development
2042 City-County Building
200 East Washington Street
Indianapolis, Indiana 46204
Attention: Asst. Admr., Brownfield Redevelopment Program
[currently: Lauren.Riga@indy.gov]

To Developer: Engineered Testing Systems LLC & INPHAZE LLC
1711 West 15th Street
Indianapolis, Indiana, 46202
Attention: Steve Golten
golten@engineered-testing.com

Either party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

- (b) **Time is of the Essence.** Except for extensions of time resulting from Unavoidable Delay, the times for performance provided in this Agreement are essential due to the obligations and expenditures of the parties.

- (c) **Cooperation Between Parties.** Approvals required by either party shall not be unreasonably withheld, delayed or conditioned, except as otherwise expressly set forth herein.
- (d) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Agency and Developer, and their respective legal representatives, successors and assigns, subject to the terms and conditions of this Agreement.
- (e) **Merger and Modification.** This Agreement supersedes all prior negotiations and agreements, and constitutes the entire agreement between the parties with respect to the subject matter hereof. No change, amendment or modification to, or extension of or waiver of, any provision of or consent provided under this Agreement shall be valid unless such change, amendment, modification, extension, consent or waiver is in writing and signed by both parties to this Agreement or, in the case of consent or waiver, by the party granting the same.
- (f) **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- (g) **Non-Merger Provisions.** None of the provisions of this Agreement, including, without limitation, the indemnification provisions set forth in Section 9 hereof, which are intended to be performed or completed after the Closing Date shall be merged by reason of deed or other conveyance, and any such deed or other conveyance shall not be deemed to affect or impair any of the provisions and covenants of this Agreement which are intended to be performed or completed after the Closing Date.
- (h) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.
- (i) **Captions.** The captions of the various sections herein contained are solely for the convenience of the parties hereto and shall not be construed to interpret or limit the content of any provision or section of this Agreement.
- (j) **Non-Waiver.** No delay or failure to require performance of any provision hereunder shall be construed as a waiver of any of the party's rights, either of the subject provision, any continuing breach or later or other breach. However, without affecting other terms or provisions of this Agreement, any party may, in its sole discretion, waive in writing any requirement, covenant or condition herein established for the party's benefit. A delay in the exercise of any right hereunder shall not operate as a waiver of that right; and rights may be exercised as often as necessary to achieve expected performance hereunder. All rights and remedies under this Agreement are cumulative and are in addition to those otherwise provided by law.

- (k) **No Brokers.** Developer and Agency each represent and warrant to the other that neither has contracted with any broker, finder or other person nor has either incurred any brokerage or finder's fees or commissions related to this Agreement.
- (l) **Jurisdiction and Venue.** The Marion County, Indiana, courts shall have exclusive jurisdiction and venue for the resolution of any and all matters relating to this Agreement.
- (m) **Attorneys' Fees.** To the extent allowed by law, Developer shall be liable to Agency for reasonable attorneys' fees incurred by Agency in connection with the collection of any damages arising from the negligent or wrongful act or omission of Developer, or from Developer's failure to fulfill any provisions or responsibility provided herein.
- (n) **Language of Agreement.** This Agreement is the result of negotiations between the parties and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any party.
- (o) **Mutual Assistance.** The parties agree to execute and deliver such additional instruments and documents, including those specifically identified herein, and provide such additional information, attend such public hearings or meetings relating to the Properties or the subject matter of this Agreement, and take such additional actions, as reasonably may be required from time to time in order to effectuate the provisions and intent of this Agreement.
- (p) **No Liability.** No officer or employee of the Agency assumes personal liability arising out of the existence of this Agreement or the obligations of Agency hereunder.
- (q) **No Third Party Beneficiaries and No Partnership or Joint Venture Created.** Each of the parties hereto agrees that nothing contained in this Agreement shall be deemed or construed by either of them, or by any third party, as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or any other association or relationship between them. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successors and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

SEC. 14 TERM

The term of this Agreement shall be for the period commencing on the Effective Date and continuing through the Fulfillment Date. For purposes of this Agreement, the "Fulfillment Date" shall mean the first to occur of (i) the date on which Developer

Improvements are completed as evidenced by a Release, or (ii) the cancellation or termination of this Agreement as permitted herein.

[REMAINDER LEFT INTENTIONALLY BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year set forth below.

"DEVELOPER"

By: [Signature]
Engineered Testing Systems, an Indiana limited liability company
Steve Galten, Member

Date: 3/16/17

By: [Signature]
INPHAZE, an Indiana limited liability company
Steve Galten, Member

Date: 3/16/17

STATE OF INDIANA)
) SS:
COUNTY OF MARION)



CHRISTOPHER R. ARSENAULT, Notary Public
Marion County, State of Indiana
My Commission Expires September 16, 2023

Before me, a Notary Public in and for said County and State, personally appeared Steve Galten on behalf of both Engineered Testing Systems, L.L.C., an Indiana limited liability company, and INPHAZE, an Indiana limited liability company, who, being first duly sworn, acknowledged the execution of the foregoing Agreement, for and on behalf of said limited liability companies, as his voluntary act and deed and for the use and purposes contained therein.

Witness my hand and Notarial Seal this 10 day of March, 2017.

My Commission Expires:
9-16-23

[Signature]
(Signature) Notary Public

My County of Residence:

Marion

Christopher Arseneault

(Printed)



"AGENCY"

CITY OF INDIANAPOLIS, DEPARTMENT OF METROPOLITAN DEVELOPMENT

By: Emily Mack
Emily Mack, Director
Date: April 3, 2017

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Emily Mack, Director of the City of Indianapolis, Department of Metropolitan Development, who, being first duly sworn, acknowledged the execution of the foregoing Agreement, as said Director, for and on behalf of City of Indianapolis, Department of Metropolitan Development, as her voluntary act and deed and for the use and purposes contained therein.

Witness my hand and Notarial Seal this 3rd day of April, 2017.

My Commission Expires:

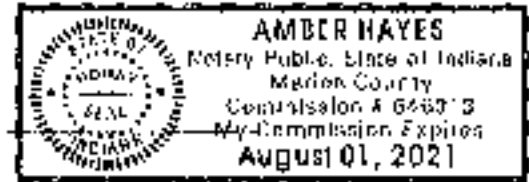
August 01, 2021

Amber Hayes
(Signature) Notary Public

My County of Residence:

Marion

Amber Hayes
(Printed)



Approved as to Adequacy of Legal Form:

By: Sheila Elliott Kinney
Sheila Elliott Kinney, Assistant Corporation Counsel

This instrument prepared by *Sheila Kinney, Office of Corporation Counsel 200 E. Washington Street, Suite 1601, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I, Sheila Elliott Kinney, have taken reasonable care to redact each Social Security number in this document, unless required by law. Office of Corporation Counsel, 1601 City-County Building, 200 E. Washington Street, Indianapolis, IN 46204

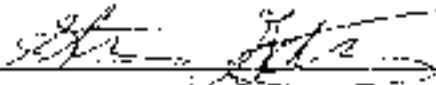
EXHIBIT "A"

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor/Developer ("Contractor") entering into a contract with Agency is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with Agency, the undersigned Contractor will enroll in and agree to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): Engineered Testing Systems, LLC

By (Written Signature): 

(Printed Name): Steven Golten

(Title): Managing Partner

Important - Notary Signature and Seal Required in the Space Below

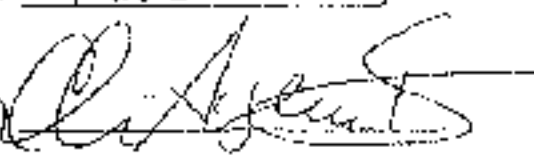
STATE OF Indiana
COUNTY OF Marion

SS:



CHRISTOPHER R. ARSENEAULT, Notary Public
Marion County, State of Indiana
My Commission Expires September 16, 2023

Subscribed and sworn to before me this 28 day of March, 2017.

My commission expires: 9-16-23 (Signed) 

Residing in Marion County County, State of Indiana

Exhibit B

Release of Project Agreement

The CITY OF INDIANAPOLIS, INDIANA, DEPARTMENT OF METROPOLITAN DEVELOPMENT ("DMD") hereby releases Engineered Testing Systems LLC and INTHAZE LLC, ("Grantee" or "Developer") from that certain "Project Agreement ("Agreement") entered in to on ~~July 14, 2017~~ 2017, by and between DMD and Grantee with respect to the following described real estate in Marion County, Indiana:

Address: 1779 W. 15th Street, Indianapolis IN 46202

Legal Description: 100FT NL X 181.03FT EL X 151.92FT WL X 104.40 FT SLBEG 180FT W OF RIVERSIDE & 15TH ST PT S1/2 NW1/4S34 T16 R3 ("Property")

CITY OF INDIANAPOLIS, DEPARTMENT OF METROPOLITAN DEVELOPMENT

By: Emily Mack
Emily Mack _____, Director, Department of Metropolitan Development

STATE OF INDIANA)

SS:

COUNTY OF MARION)

Before me a Notary Public in and for said County and State, personally appeared Emily Mack, Director, Department of Metropolitan Development, who acknowledged the execution of the foregoing Release of Project Agreement, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 14th day of July, 2017

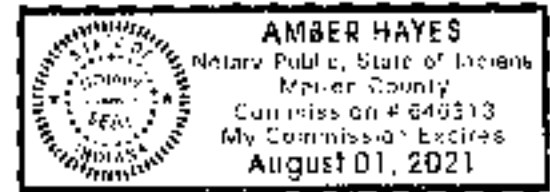
My commission expires:

August 01, 2021

Signature Amber Hayes

Printed Amber Hayes

Residing in Marion County, Indiana



This instrument was prepared by Office of the Corporation Counsel, City of Indianapolis, 200 E. Washington, Suite 1601, Indianapolis, IN 46204.

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

EXHIBIT B

Map of the Real Estate

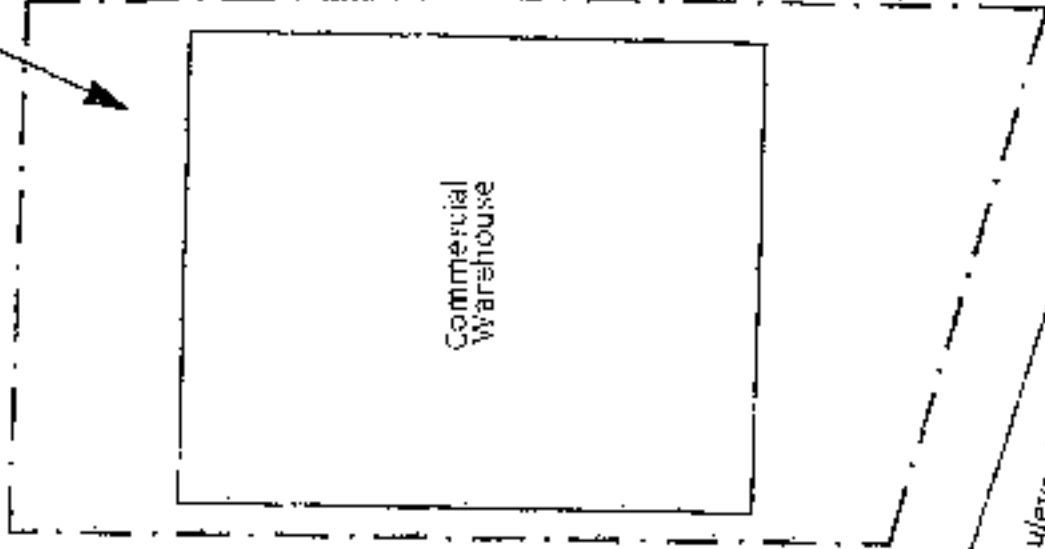


LEGEND

Property Boundary

West 15th Street

PARCEL ID: 49-06-34-123-011-000-101



Race Car Restorations

Vehicle Trailer Storage

Commercial Warehouse

Engineered Testing Systems

Waterway Boulevard

White River Flood Levee



FIGURE 1
SITE MAP

Project No.	
Date	
Scale	
Sheet No.	

DeTavernier Warehouse
2791 West 15th Street
Indianapolis, IN 46254



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) 451-6327 • (317) 232-8633 • www.idem.in.gov

Michael R. Pence
Governor

Carol S. Comer
Commissioner

May 23, 2016

Ladonna Sweitzer
First Financial Bank
300 N. Meridian Street, Suite 1400
Indianapolis, Indiana 46204

Re: **Lender Comfort Letter**
Commercial Warehouse
1779 W. 15th Street
Indianapolis, Marion County
Brownfield #4160214

Dear Ms. Sweitzer:

In response to the request by Industrial Waste Management (IWM) consultants on behalf of First Financial Bank (Lender or First Financial) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 1779 W. 15th Street in Indianapolis, Marion County (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Lender Comfort Letter to outline applicable limitations on liability with respect to hazardous substances found on the Site. This letter does not provide a release from liability. It will, however, clarify the potential liability of First Financial regarding its interest in the Site as a potential lender to Inphaze, LLC, the Prospective Purchaser of the Site.

Site History and Description

The 0.4-acre Site is one parcel identified by the State by parcel #49-06-34-123-011.000-101. The Site was used agriculturally until at least 1972 when it was developed as a parking lot. The Site is currently occupied with an 8,000-square foot, one story building constructed in 1997. Areas surrounding the building are covered with concrete and asphalt parking and grass at the rear of the building. Businesses operating on the Site have consisted of a transmission parts sales facility, a water softener company, a construction contractor, and the Delta Automotive Company. Property ownership and transfer dates are summarized in Table 1, below.

The Site is surrounded by W. 15th Street, AP Appliance Parts, C Cat Cabling, and the former Flexdar facility to the north; Engineered Testing Systems, LLC, Indiana University/Purdue University Transportation Garage, and Riverside Drive to the east; Waterway Boulevard and the White River to the south; a vehicle trailer storage lot, Racecar Restorations, Inc., a church, Waterway Boulevard, and the White River to the

west. The Prospective Purchaser plans to reuse the current building structure with modifications.

TABLE 1
Site Ownership

Date of Transfer	Name on Deed
10/3/1969	George Bignotti
10/28/91	George A. Bignotti, Trust
2/28/94	Donald C. Skies
6/24/96	H&R Transmission Parts, Inc.
4/23/97	H&R Business Leasing, Inc.
5/29/03	Bank One NA % Charles Schottler Portfolio MGMT Center
6/2/03	Sharon J. Dodge
8/5/03	Sawmill Associates
5/3/06	Lambert General Contractors Inc.
9/26/14	City of Indianapolis

Environmental Conditions

As part of the request from First Financial for assistance in identifying any existing environmental impacts and potential liability at the Site, Program staff has reviewed the following reports:

- *Phase I Environmental Site Assessment* (Phase I ESA – July 2014), dated July 11, 2014, prepared by IWM
- *Phase II Environmental Site Assessment* (Phase II ESA – September 2014), dated September 15, 2014, prepared by IWM
- *Phase I Environmental Assessment Report* (Phase I ESA – January 2016), dated January 6, 2016, prepared by IWM

These reports may be viewed electronically by searching in IDEM's online Virtual File Cabinet using the brownfield site ID # referenced on the first page of this letter.

For purposes of evaluating the Site conditions, analytical results, compared to the IDEM Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected from 0 to 10 feet below ground surface (bgs) were compared to residential direct contact screening Levels (RDCSLs) and commercial/industrial direct contact screening levels (IDCSLs); soil samples collected from 0 to 18 feet bgs were compared to excavation worker direct contact

screening Levels (EX DCSLs). Soil samples collected from 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). Subslab soil gas samples (SGss) were compared to the calculated RCG residential SGss screening levels (Res SGss SLs) and calculated commercial/industrial SGss screening levels (Indus SGss SLs). Exterior soil gas samples were compared to the calculated RCG residential exterior soil gas screening levels (Res SGe SLs) and calculated commercial/industrial exterior soil gas screening levels (Indus SGe SLs).

Phase I ESA – July 2014

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

- Five ground water monitoring wells are located on the Site. Marion County Health Department records indicate the wells were installed in 2010 by the URS Corporation to assess concentrations of trichloroethene (TCE) in ground water as part of foreclosure activities for Lehman Brothers Holdings. The TCE contamination is the result of a release from the former Flexdar facility located at 1825 W. 18th Street and enrolled in IDEM's State Cleanup Program (SCP) as project #200404159. The results of the ground water investigation were not included in the Health Department records. Personnel with URS Corporation stated that laboratory testing results showed that ground water beneath the Site had been contaminated with TCE but they could not release the report for the on-site investigation. The wells appeared to be in good condition.
- The regulatory review summary indicated that a spill of TCE was identified on the former Flexdar property in 2004. Subsequent investigations of the release included the installation of ground water monitoring wells and soil borings on the surrounding properties to the east, west, and south of Flexdar. Two monitoring wells were identified to the northwest and northeast of the Site in the right-of-way (R-O-W) for W. 15th Street and two monitoring wells were located south of the Site on Waterway Boulevard. None of the soil samples collected during the 2012 monitoring well installation north and south of the Site detected VOC concentrations in any of the samples submitted. Ground water sampling results from 2012 detected TCE concentrations ranging from 38.87 parts per billion (ppb) to 196 ppb in wells north, upgradient, of the Site and from 146 ppb to 182 ppb in wells to the south, downgradient, of the Site along Waterway Boulevard above its RCG Res TAP GWSL of 5 ppb, its Res VE GWSL of 9.1 ppb, and its Indus VE GWSL of 38 ppb. These results indicate that ground water beneath the

Site has likely been contaminated by the release from the former Flexdar Facility and is a REC for the Site.

The July 2014 Phase I also noted the following observed condition associated with the Site:

- One 55-gallon drum is located near the center of the warehouse area of the building. The drum contained approximately 25-gallons of suspected used oil, but was not labeled. The drum appeared to be in good condition with no visible evidence of releases.

The July 2014 Phase I noted the following vapor encroachment condition (VEC) associated with the Site:

- A Tier I VEC was conducted for the Site using standard environmental records sources. Ground water sampling conducted to investigate a spill at the Flexdar property detected TCE in ground water to the north and south of the Site which presents a potential VEC at the Site.

Phase II ESA – September 2014

In September 2014, RECs identified in the Phase I ESA – July 2014 were investigated through ground water sampling, paired soil gas subslab (SGss), and indoor air (IA) sampling. Ground water samples were collected from existing on-Site monitoring wells (MW-1 through MW-5) for analysis of volatile organic compounds (VOCs). Depth to water in the monitoring wells ranged from 10.11 feet bgs in MW-5 to 14.19 feet bgs in MW-3. Ground water flow direction was determined to be from the north to the south/southwest across the Site.

Ground water sampling results detected TCE above its Res TAP GWSL of 5 ppb in samples from MW-1 through MW-5 and the duplicate of MW-1 (DUP). TCE in ground water was detected above its Res VE GWSL of 9.1 ppb in samples from all five monitoring wells across the Site, and above its Indus VE GWSL of 38 ppb in MW-2 through MW-5. Cis-1,2-DCE was detected above its Res TAP GWSL of 70 ppb in samples MW-3 and MW-4. Vinyl chloride was detected in sample MW-3 at 2.2 ppb above its Res TAP GWSL of 2 ppb and Res VE GWSL of 2.1 ppb but not above its Indus VE GWSL of 35 ppb. All other ground water sampling results were below applicable screening levels. Refer to Table 2, below, for a summary of ground water analytical data above applicable RCG screening levels.

TABLE 2
July 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
	MW-1	DUP	MW-2	MW-3	MW-4	MW-5			
TCE	26.4	25.3	<u>54.1</u>	<u>251</u>	<u>290</u>	<u>42</u>	5	9.1	38
Cis-1,2-DCE	11.3	10.7	64.1	97.4	82.3	26.9	70	NE	
Vinyl chloride	<2	<2	<2	2.2	<2	<2	2	2.1	35

Notes: *italics* = above RCG Residential Tap Ground Water Screening Level
bold = above RCG Residential Vapor Exposure Ground Water Screening Level
underline = above RCG Commercial/Industrial Vapor Exposure Ground Screening Level
 NE = not established
 DUP = field duplicate of MW-1
 TCE = Trichloroethene
 Cis-1,2-DCE = Cis-1,2-dichloroethene

Three SGss sampling ports (VP-1 through VP-3) were installed through the concrete building slab. Sampling port VP-1 was installed in the southwest corner of office #2, located near the north-central portion of the building. Sampling port VP-2 was installed in the south-central portion of the east warehouse bay and VP-3 was installed in the central portion of the west warehouse bay. Once the SGss ports were installed, each port was leak-tested and fitted with a silicone cap to prevent vapor loss from the sampling port.

Indoor air samples (IA-1 through IA-3) were collected at locations adjacent to the SGss sampling ports at a height which corresponded to the typical breathing height of 3 to 4 feet above the building floor. One ambient/background air sample (Background Ambient) was collected outside of the building near the northwest corner of the parking lot on the Site approximately 30 feet northeast of the main entrance door also collected at a height of 3 to 4 feet above ground surface.

The ceiling height of the office area was 8.5 feet and the ceiling height of the warehouse bay was approximately 15 feet. The heating, ventilation, or air conditioning (HVAC) equipment had not operated in the building for 5 years and was not operating during the sampling activities.

Samples were collected in laboratory supplied canisters (1-liter for SGss and 6-liter for indoor and ambient air samples) and submitted for analysis of chlorinated VOCs. The SGss samples were collected within a 5-minute interval while the indoor air and ambient air samples were collected over an 8-hour interval.

TCE was detected in one SGss sample (VP-1) but at a level below its calculated RCG Res SGss SL of 70 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and was not detected in any of the indoor air or the ambient air samples. Tetrachloroethene (PCE) was

detected in all three SGss samples (VP-1 through VP-3), in two of the indoor air samples (IA-1 and IA-3), and in the ambient air sample (Background Ambient) though all detected levels were below applicable exposure screening levels.

Phase I ESA – January 2016

The January 2016 Phase I ESA identified the following RECs associated with the Site:

On-Site:

- Five ground water monitoring wells are located on the Site. Marion County Health Department records indicate the wells were installed by the URS Corporation as part of foreclosure activities for Lehman Brothers Holdings. The wells were reportedly installed in 2010 to assess trichloroethene (TCE) contamination in ground water resulting from a release at the former Flexdar facility located approximately 1,000 feet north/northwest of the Site at 1825 W. 18th Street. A spill was reported on April 22, 2004 following site investigation activities at the Flexdar facility which was enrolled in IDEM's State Cleanup Program (SCP) as project #200404159. The results of the ground water investigation were not included in the Health Department records. Personnel with URS Corporation stated that laboratory testing results showed that ground water beneath the Site had been contaminated with TCE but URS was unable to release the reports for the on-Site investigation. IWM sampled the five monitoring wells in July 2014. Dissolved VOCs (specifically TCE, cis-1,2-DCE, and vinyl chloride) were detected in the ground water beneath the Site at concentrations above their RCG screening levels and are believed to have originated from a release at the former Flexdar facility. The reported ground water contamination is a REC at the Site; however, the responsible party for the release has been identified and remediation of the ground water contamination is currently being conducted with oversight by the SCP.

Off-Site:

- The regulatory review summary indicated that a spill of TCE was identified on the former Flexdar property in 2004. Subsequent investigation of the release included the installation of ground water monitoring wells and soil borings on the surrounding properties to the east, west, and south of Flexdar. Two off-Site monitoring wells were identified to the northwest and northeast of the Site in the right-of-way R-O-W of W. 15th Street and two additional off-Site monitoring wells are located south of the Site in the R-O-W of Waterway Boulevard. None of the soil samples collected during the 2012 monitoring well installation to the north and south of the Site detected VOC concentrations above their RCG screening levels. Ground water sampling results from 2012 detected TCE concentrations

above its RCG screening level in monitoring wells north along West 15th Street, upgradient, of the Site and south, downgradient, along Waterway Boulevard of the Site. These results would suggest that ground water beneath the Site has been contaminated by a release at the former Flexdar Facility and is a REC for the Site.

No on-Site sources of contamination are suspected or have been identified as of the date of this letter.

Technical Conclusions

Although no SGss or IA samples were detected above applicable screening levels, TCE, cis-1,2-DCE, and/or vinyl chloride contaminants have been detected in ground water on the Site above applicable RCG Res TAP GWSLs, Res VE GWSLs, and/or Indus GWSLs. Exposure to the identified ground water contamination can be addressed through institutional controls which will be recorded on the deed for the Site by the Prospective Purchaser following Site acquisition.

Lender Liability Exemption

Current and past owners and operators of the Site were listed as part of the Phase I reports prepared for this Site and did not include First Financial. Representatives for First Financial have indicated that First Financial's involvement with the Site to date has been limited to that of a potential lender to Inphaze, LLC and that First Financial would be protecting a security interest in the facility or Site. First Financial has represented to IDEM that First Financial and its agents, employees, attorneys or consultants (collectively, Agents), have never participated in the management of, and should it provide financing, will not be undertaking activities at the Site that would be considered "participating in the management" of, any hazardous substances or petroleum at the facility as defined in Indiana Code (IC) 13-23-13-14, IC 13-11-3-151.2, IC 13-24-1-10, IC 13-11-2-151.3, IC 13-25-4-8.2, and IC 13-11-2-151.4.

Unless First Financial participates in the management of hazardous substances or petroleum at a facility by, for example, participating in the day-to-day management or operational affairs of the facility or an underground storage tank, it may be exempt from liability under IC 13-25-4 (based upon Section 101(20)(A) of the Comprehensive Environmental Responsibility, Compensation and Liability Act (CERCLA)), IC 13-24-1, and/or IC 13-23-13 for cleanup or reimbursement of costs incurred by others to clean up any hazardous substances and/or petroleum contamination on the Site.

Pre-foreclosure Activities

For additional information about potential liability as a lender on petroleum and/or hazardous substances-contaminated properties, IDEM suggests First Financial thoroughly review related federal regulations found at 40 C.F.R. § 280 (Subpart I –

Lender Liability), specifically Section 280.210(b) (discussing actions that are not participation in management pre-foreclosure) and CERCLA Section 101(20), which IDEM and Indiana law and regulation generally follow, and which clearly prescribe the activities that a lender may undertake with respect to a contaminated property on which it holds a security interest without jeopardizing an applicable exemption from liability by "participating in management" of the Site. Loan policing and work out activities that do not constitute participation in management are specifically permitted. For example, such policing actions include, but are not limited to, securing or exercising authority to monitor or inspect a UST system or facility, 42 U.S.C. § 9601(20)(F)(iv)(IV); 40 CFR §280.210(b)(2)(i)(A). See also, IC 13-11-2-151.2(b), IC 13-11-2-151.3(b), IC 13-11-2-151.4 (excluding activities from definition of participation in management).

Post-foreclosure Activities

In general, in addition to applicable state law, IDEM follows federal regulation 40 C.F.R. § 280.210(c) and Sections 101(20)(E), (F) and (G) of CERCLA regarding post-foreclosure activities. The language of the lender liability exemptions in state and federal law & regulations, IC 13-11-2-148(e)(2)(B), IC 13-11-2-150(c), IC 13-11-2-151(e), 329 Indiana Administrative Code (IAC) 9-2-2, and 40 CFR 280 clearly prescribe the permissible activities which First Financial may undertake should First Financial ever foreclose on a loan that will not give rise to liability for undertaking activities at the Site that might otherwise be construed as operating or "participating in the management" of the facility.

Please review the above cited statutes and regulations in detail as they also obligate a lender to undertake certain specific activities post-foreclosure (e.g., actively marketing the property for sale) in order to preserve exemption from liability.

Conclusion

Pursuant to IDEM's Nonrule Policy Document "*Brownfields Program Comfort and Site Status Letters*," W-0051 (April 18, 2003) (Comfort Letter Policy), and based on information reviewed to date and referenced in this letter, IDEM concludes 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) at this time, no condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) neither First Financial, nor an agent or employee of First Financial caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site;
- (5) First Financial's interest in the Site would be limited to that of a lender protecting a security interest in the Site, therefore making it eligible for

exemption from liability pursuant to IC 13-11-2-148(e)(2), IC 13-11-2-150(c), IC 13-11-2-151(e), IC 13-23-13-14, IC 13-24-1-10, and IC 13-25-4-8(c).

Based on the information submitted to or otherwise reviewed by IDEM and pursuant to the Comfort Letter Policy, IDEM has determined to exercise its enforcement discretion to forego pursuit of First Financial to undertake cleanup or pay for response costs relating to the contamination identified at the Site should it provide financing to the Prospective Purchaser. So long as future activities undertaken by First Financial on the Site do not constitute "participation in the management" of hazardous substances or petroleum, IDEM will treat it as a non-liable party and not require it to undertake or finance remedial activities at the Site.

Due Care Requirements

Since levels of contaminants were detected in ground water on-Site above applicable RCG screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the Site by the Prospective Purchaser following acquisition 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, should First Financial become a lender to the Prospective Purchaser, it must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- Shall 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 Department approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities.
- Shall not occupy any existing and/or newly-constructed building(s) 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 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 building(s) while the heating ventilation and air conditioning (HVAC) system is operating on the Site 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 (February 2014): Vapor Remedy Selection and Implementation*) within any existing or newly-constructed human-occupied building(s) on the Site.

If at any time IDEM discovers that above-referenced reports or other information submitted to IDEM was inaccurate, or if any activities undertaken by First Financial exacerbate existing contamination on the Site or result in a new release or if Site

Commercial Warehouse, Indianapolis – Lender Comfort Letter
BFD #4180214
May 29, 2016
Page 10 of 10

conditions are determined by IDEM to constitute an imminent and substantial threat to human health and the environment, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Additionally, this determination does not apply to past or present contamination that is not described in the reports reviewed in preparation of this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 8901, criminal liability, or liability for natural resource damages. Furthermore, this letter does not constitute an assurance that the Site is safe or fit for any particular use.

This letter shall not be construed as limiting the First Financial'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 First Financial that are required to maintain 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.

Please be advised that any work performed at the Site must be done in accordance with all applicable environmental laws. Any possible redevelopment of this Site in a manner consistent with the land use restrictions discussed above will lessen the possibility that environmental conditions at the subject Site could deteriorate in the future.

IDEM is pleased to assist First Financial Bank with clarification of its potential liability with respect to hazardous substances at the Site should it become a lender to the Prospective Purchaser. Should you have any questions or comments, please contact Tracey Michael of the Indiana Brownfields Program at (317) 232-4402 or toll-free at 1(800) 451-6027, extension 2-4402 or by e-mail at tmichael@ifa.in.gov.

Sincerely,



Peggy Dorsey
Deputy Assistant Commissioner
Office of Land Quality

cc: Jan Pels, U.S. EPA Region 5 (*electronic*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic*)
Tracey Michael, Indiana Brownfields Program (*electronic*)
Brad Gentry, IWM (*electronic*)

EXHIBIT D

TABLE

TABLE 1

**Commercial Warehouse, Indianapolis – BFD #4160214
July 2014 Ground Water Concentrations Exceeding
Applicable IDEM RCG Screening Levels**

TABLE 1
Commercial Warehouse, Indianapolis -- BFD #4160214
July 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
	MW-1	DUP	MW-2	MW-3	MW-4	MW-5			
TCE	<i>26.4</i>	<i>25.3</i>	<u><i>54.1</i></u>	<u><i>251</i></u>	<u><i>290</i></u>	<i>42</i>	5	9.1	38
Cis-1,2-DCE	11.3	10.7	64.1	97.4	82.3	26.9	70	NE	
Vinyl chloride	<2	<2	<2	2.2	<2	<2	2	2.1	35

Notes: *italics* = above RCG Residential Tap Ground Water Screening Level
bold = above RCG Residential Vapor Exposure Ground Water Screening Level
underline = above RCG Commercial/Industrial Vapor Exposure Ground Water Screening Level
 NE = not established
 DUP = field duplicate of MW-1
 TCE = Trichloroethene
 Cis-1,2-DCE = Cis-1,2-dichloroethene

EXHIBIT E

Site Map Depicting Sampling Locations At Which COCs Were Detected Above Applicable 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.

LEGEND

[Symbol]	Property Boundary
[Symbol]	Waterway
[Symbol]	Waterway Flood Levee
[Symbol]	Monitoring Point

West 15th Street

Race Car Restorations

Vehicle Trailer Storage

Commercial Warehouse

Engineered Testing Systems

MW-1

MW-2

MW-3

MW-5

MW-4

Waterway Boulevard

White River Flood Levee



FIGURE 2
Site Map Depicting Sampling Locations at Which COCs Were Detected Above Applicable ROG Screening Levels

DATE	10/15/2010
BY	WMM
FOR	WMM
PROJECT	WMM

Commercial Warehouse
1779 West 15th Street
Marathon, TX 79401

