



WHEREAS: IDEM approved a conditional residential closure of environmental conditions on the Real Estate under RCG since: 1) the source of petroleum contamination was eliminated by removal of the USTs; 2) potable water is available through the local municipality; 3) if residential use of the property is considered in the future, the potential indoor air exposure pathway can be addressed through further risk evaluation and/or installation of a vapor mitigation system(s); and, 4) exposure to the detected ground water contamination can be addressed through an institutional control. Therefore, environmental conditions on the Real Estate meet conditional residential cleanup criteria in the RCG so long as the land use restrictions required by this Covenant are maintained.

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

NOW THEREFORE, King Park Development Corporation subjects the Real Estate to the following restrictions and provisions, which shall be binding on King Park Development Corporation and all future owners:

#### I. RESTRICTIONS

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

- (a) (i) Shall not occupy any single family or duplex residential buildings constructed on the Real Estate after the effective date of this Covenant without first completing one of the following: Option 1) Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air ("vapor intrusion") in any newly-constructed single family or duplex residential buildings on the Real Estate; or, Option 2) Install, operate and maintain a vapor mitigation system (in accordance with *U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014)) within any newly-constructed single family or duplex residential buildings on the Real Estate, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of IDEM RCG residential subslab soil gas screening levels ("Res SGss SLs") and/or residential indoor air vapor exposure screening levels ("Res IA VESLs") based upon residential use of the Real Estate 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 Program outlining activities to be completed to evaluate vapor intrusion risk and to determine the effectiveness of any

operating vapor mitigation system(s) after occupancy. Following Program approval, operate the vapor mitigation system(s) for the purpose of mitigating the COCs potentially impacting indoor air in any single family or duplex residential building on the Real Estate per the *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014) until the Department a) concurs that a vapor mitigation system(s) is no longer necessary based upon demonstrated achievement under an Program-approved sampling work plan of IDEM RCG Res SGss SLs and/or Res IA VESLs and/or site-specific action levels approved by the Department; and, b) makes a determination regarding acceptable risk under Paragraph No. 9 of this Covenant. The Department's determination shall be based upon RCG Res IA VESLs or site-specific action levels approved by the Department. The Department's determination in concert with Paragraph No. 9 shall not be unreasonably withheld. In the event that the vapor intrusion mitigation system(s) malfunction(s) or cease(s) operation, the Department shall afford the Owner a reasonable opportunity to repair or replace the vapor intrusion mitigation system(s) prior to the Department exercising whatever rights it may have under Paragraph No. 8.

- (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 September 20 2017, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON Sept. 20, 2017, INSTRUMENT NUMBER (or other identifying reference) A201600125148 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:

King Park Area Development Corporation  
1704 Bellefontaine Street  
Indianapolis, Indiana 46202  
ATTN: Steven Meyer

To Department:

Indiana Brownfields Program  
100 N. Senate Avenue, Rm. 1275  
Indianapolis, Indiana 46204

ATTN: Nancy Dollar

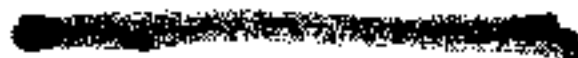
Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

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.



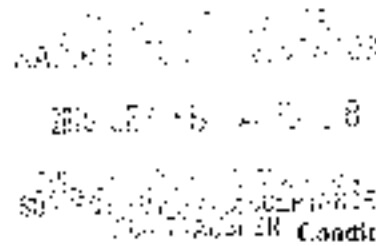
**EXHIBIT A**

**Conditional Quitclaim Deed for the Real Estate**



09/20/2016 10:56 AM  
KATHERINE SWEENEY BELL  
MARION COUNTY CLERK RECORDS  
300 4-10-50  
PAGE: 1  
OF 1

149000



Conditional Quitclaim Deed

THIS Indenture Witnesseth, that Marion County Board of Commissioners and City of Indianapolis ("Grantor") of Marion County in the State of Indiana, CONVEYS to King Park Development Corp., Marion County in the State of Indiana, for the sum of Four Thousand One Hundred Dollars (\$4,100) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real property in Marion County, in the State of Indiana:

Legal Description: 5A FLETCHER JUNE APN 179 & 180 H4  
Parcel Number: 101-1077453  
Commonly Known as: 1321 E 15th S

subject to all liens, encumbrances, easements, restrictions, rights-of-way of record, and all taxes due and payable in 2016 for 2017 assessment and all taxes thereafter.

Subject further to the following: This real property is conveyed to Grantee on the conditions that Grantee will abide by, perform, and comply with the following terms and conditions:

- The outside of the structure must be brought up to and meet all standards required by the Department of Code Enforcement and the Health and Hospital Corporation of Marion County within a three month period from the time of conveyance (whether permitting).
- Rehabilitation must be completed within a two year period from the time of conveyance, and meet all standards required by the Department of Code Enforcement and the Health and Hospital Corporation of Marion County.
- The Commissioners require that no new liens be placed on the property from any governmental entity prior the date of conveyance. If new liens are placed on any parcel transferred by the Commissioners, the property will revert back to the County's control.
- Progress reports will be due to the Marion County Commissioners on six (6), twelve (12) and twenty-four (24) months from the time of conveyance, or once the period is complete. At completion, a disclaimer must be requested stating all costs of renovation and proof of these renovations will be required.
- The property shall remain in the applicant's name until the conditions on the deed have been released via Discharge by the Commissioners.
- In reference to I.C. 6-1-1-24-6.7, the reversion of the property to the County if the grantee nonprofit corporation fails to comply with any of the terms and conditions set forth by the County Commissioners. If the nonprofit has any property reverted back to the County, they will no longer be considered as an eligible purchaser through this program.
- All property taxes on parcels/structures owned by the nonprofit corporation must be kept current.

It is covenanted that Grantee fails to comply with any of the conditions stipulated in this deed, use and enjoyment of the real property shall automatically terminate and all right, title, and interest of Grantee in and to the real property shall terminate and automatically revert to the County's control.

This conveyance is made pursuant to I.C. 6-1-1-24-6.7.

IN WITNESS WHEREOF, Grantor has executed this Conditional Quitclaim Deed this 20th day of August, 2016.

*Joseph H. Hogsett*  
Printed: Joseph H. Hogsett, Mayor of Indianapolis

*Claudia O. Fuentes*  
Printed: Claudia O. Fuentes, Marion County Commissioner

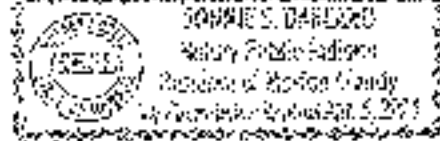
STATE OF INDIANA

ss.

COUNTY OF MARION

Before me, a Notary Public in and for the State of Indiana, Joseph H. Hogsett, who acknowledges the execution of the foregoing Conditional Quitclaim Deed, and who, having been duly sworn, stated that any representations therein contained are true.

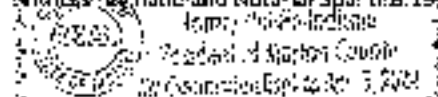
Witness my hand and Notary Seal this 20th day of August, 2016.



*Bonnie S. Dillard*  
Signature:  
Printed: Bonnie S. Dillard

Before me, a Notary Public in and for the State of Indiana, personally appeared Claudia O. Fuentes, who acknowledged the execution of the foregoing Conditional Quitclaim Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notary Seal this 19th day of August, 2016.



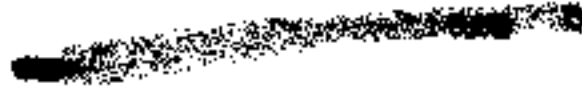
*Bonnie S. Dillard*  
Signature:  
Printed: Bonnie S. Dillard

This instrument was prepared by the Marion County Commissioner, Claudia O. Fuentes. I affirm under the penalties for perjury, that I have taken reasonable care to recheck Social Security number in this document unless required by law, Claudia O. Fuentes.

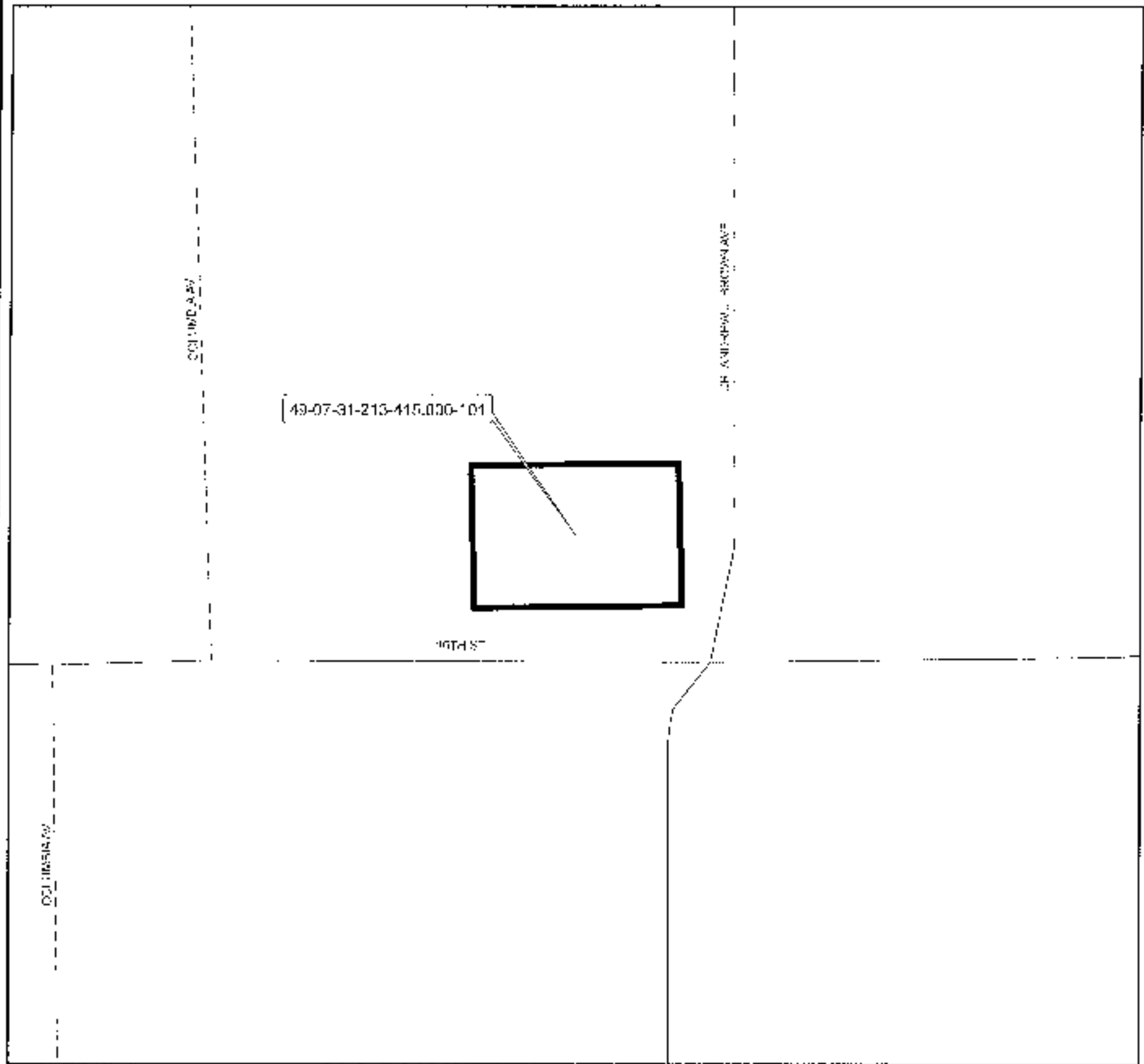


**EXHIBIT B**

**Map of the Real Estate**



# BFD 4160814 - Map of Real Estate



**Mapped By:** W. Lee Hill, IDEM Office of Land Quality Science Services Branch, Engineering & GIS Services, May 11, 2017



**Deed Info:** Instrument# A20150105148      Recorded 08/22/2015  
 Conditional Quitclaim Deed



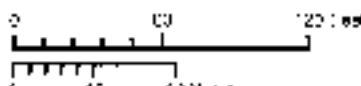
**Parcel ID:** 49-07-31-213-415.000-101

**PLSS Info:** Section 8<sup>th</sup>, T18N, R4E  
 Center Township  
 Marion County, IN

**Property Info:** 1524 East 16<sup>th</sup> Street, Indianapolis, IN

**Disclaimer:** This map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy in other purposes.

	Real Estate
	Street

Marion County



Project Area

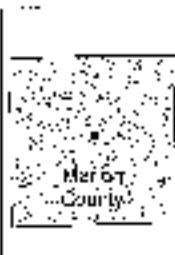
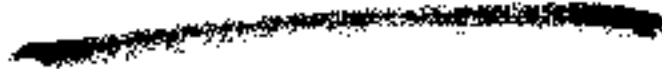


EXHIBIT C

Copy of Comfort and Closure Letter





## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Eric J. Holcomb  
Governor

Bruno L. Pigott  
Commissioner

August 31, 2017

Mr. Steven A. Meyer  
King Park Development Corporation  
1704 Bellefontaine Street  
Indianapolis, IN 46202

Re: **BFPP Comfort & Closure Letter**  
Former Auto Service Station  
1324 East 16<sup>th</sup> Street  
Indianapolis, Marion County  
UST FID #25358  
Brownfield #4160814

Dear Mr. Meyer:

In response to the request by Heartland Environmental Associates, Inc. (Heartland) on behalf of King Park Development Corporation (Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 1324 East 16<sup>th</sup> Street, Indianapolis (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and/or petroleum products found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Owner must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

### Site Description and History

The 0.31-acre Site is one parcel identified by the State by parcel 49-07-31-213-415.000-101. Until demolition activities in December 2016, the Site was improved with an approximately 1,160-square foot, centrally located, one-story building with an



associated paved parking lot. The Site was unoccupied from 2013 to the present day. Historically, the Site was used as a gasoline service station and an automobile service station under various operating entities from at least 1929 to at least 2012. Prior to 1929, the Site was developed with residential and commercial storefront properties along the eastern portion of the Site and a moving picture company along the western portion of the Site by at least 1915.

The Site is bounded to the north by residential properties; to the east by Dr. Andrew J. Brown Avenue followed by residential properties; to the south by 16<sup>th</sup> Street followed by a school; and to the west by an alley and commercial properties. The Owner acquired the Site on September 6, 2016 and redevelopment plans are to use the Site for commercial purposes.

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment (ESA)* dated June 3, 2016 (Phase I ESA) (IDEM Virtual File Cabinet (VFC) Document #80342497) prepared for King Park Area Development Corporation and the City of Indianapolis by Heartland. The Phase I was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312. In an effort for the Owner to qualify as a BFPP, Steven Meyer,<sup>1</sup> Executive Director of King Park Development Corporation, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

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

*On-Site:*

- A gasoline filling station operated at the Site from at least 1929 to at least 2013. The service station historically operated at least two known 6,000-gallon gasoline underground storage tanks (USTs) in the southern portion of the Site and potentially operated an additional three USTs in the northwestern portion of the Site prior to 1964.
- An automobile service garage also historically operated at this Site. During the Site reconnaissance, one hydraulic lift was observed in the western portion of the Site building.

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<sup>1</sup> As indicated in an affidavit dated June 16, 2017, Steven Meyer is the executive director of both the King Park Development Corporation and its predecessor, the King Park Area Development Corporation. The King Park Development Corporation legally changed its name with the Indiana Secretary of State on July 29, 2015. The Phase I ESA was mistakenly addressed to the previous legal name, the King Park Area Development Corporation.

In addition to the above-noted RECs, the Phase I ESA identified the following Data Gaps:

- Heartland was not able to gain access to the interior of the former Site building to fully conduct Site reconnaissance.
- Heartland was unable to contact historical or current property owners to fully conduct a Site interview.

In addition to the RECs identified above, IDEM would consider the following historical Site condition to be a REC:

- Aerial photographs indicated automobile storage areas on-Site, including areas that were unpaved, associated with the automobile repair business. There is a potential for surface soil contamination.

To meet the requirements of ASTM Practice E1527-13, Heartland completed a Tier 1 Vapor Encroachment Screen in general conformance with ASTM E2600-10 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions. This Tier 1 evaluation assessed the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or ground water either on or near the Site. Heartland identified one potential vapor encroachment condition (VEC) associated with the Site:

- The Site was previously occupied by a gasoline filling station and service station. No information was available about the removal or closure of Site USTs or any Site investigation activities.

### **Environmental Conditions**

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents, all prepared by Heartland:

- *Underground Storage Tank Closure Report* (UST Closure Report), dated January 19, 2017 (VFC Document #80469900)
- *Phase II Environmental Site Assessment* (Phase II ESA), dated January 19, 2017 (VFC Document #80423930)
- *Response to Request for Additional Information Letter* (Additional Information Response), dated May 18, 2017 (VFC Document #80464544)

These documents may be viewed electronically by searching online by the applicable document # in IDEM's VFC on the IDEM website.

For purposes of evaluating Site conditions for closure, sample analytical results were compared to IDEM's Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively); and soil samples collected between 0 and 18 feet bgs were compared to the excavation worker soil exposure direct contact screening levels (EX DCSLs). 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).

#### *UST Closure Report – January 2017*

No historical reports of spills or leaking USTs were on file for the Site with IDEM. Documentation in IDEM's VFC indicated that two USTs were registered at the Site in February 2014 by the previous Site owner, and a request for a facility identification number was submitted. However, UST removal activities were not initiated by the prior owner. In December 2016 following demolition of the on-Site building, Heartland mobilized to the Site to conduct UST closure activities. Two 6,000-gallon USTs with unknown contents, one 4,000-gallon UST with unknown contents, and two 550-gallon heating oil USTs were uncovered in two on Site pits. A total of 18 soil confirmation samples were collected from the two pits including ten bottom samples and eight sidewall samples. No ground water was encountered during the UST removal; therefore, no ground water samples were collected. The soil samples were submitted to a laboratory for analysis of volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and lead. No analyzed constituent was detected at a level above its respective RCG RDCSL.

#### *Phase II ESA – January 2017*

After removal of the UST systems, Heartland oversaw the advancement of 7 direct-push soil borings by Midway Services, Inc. The borings were advanced to a maximum depth of 16 feet bgs in order to evaluate possible impacts from the past use of the Site as a service station. Ground water was encountered at approximately 15 to 16 feet bgs. Seven soil samples (SB-1 to SB-7) and one field duplicate sample (FD-1) were collected and analyzed for VOCs, PAHs, and lead. Each of the seven soil borings was subsequently completed with the installation of temporary ground water piezometers. After 24 hours, ground water levels were measured and recorded and ground water samples, including one field duplicate, were collected. The seven ground water samples and one duplicate sample were also analyzed for VOCs, PAHs, and lead.

No soil samples contained VOCs, PAHs, or lead at levels in excess of RDCSLs.

Several petroleum contaminants and PAHs were detected at levels above Res TAP GWSLs in ground water samples from four borings (SB-2 through SB-4, SB-7), with only naphthalene above its RCG Res VE GWSL of 1.7 parts per billion (ppb), but below its Indus VE GWSL of 460 ppb. Total lead was detected at concentrations above its Res TAP GWSL in all seven ground water samples and the field duplicate. Based on the location of the highest level of total lead contamination (3,650 ppb at SB-4), which was in a boring where ground water was also contaminated by petroleum contaminants, the detected lead contamination in ground water is likely the result of the historical use of the Site as a gasoline station. Refer to Table 1, attached, for a summary of ground water analytical data above applicable RCG screening levels.

#### *Additional Information Response – May 2017*

As requested by the Program, Heartland provided additional information on three issues:

- Potential hydraulic lift: The Phase I ESA noted that Heartland was unable to gain access to the former Site building during their Site visit. Heartland was on-Site at the time of building demolition. No in-ground hydraulic lift was uncovered, nor any other subsurface features. A lift was located in the Site building, but no evidence of any impacts was associated with this lift.
- Additional USTs: Program staff inquired about the possibility of additional USTs at the Site associated with a former gasoline service station on Site as shown on a 1950 Sanborn map. In its May 2017 response letter, Heartland provided additional detail about its on-Site search for USTs. Heartland stated that test pits were excavated throughout the Site at the time the building was demolished, and that a description of these activities was not documented in the UST Closure Report. The test pits uncovered two previously unidentified USTs in the northwest portion of the Site. However, no evidence of additional USTs, pipe chases, utility conduits, etc. were observed in other portions of the Site.
- Potential Surface Soil Contamination: Heartland collected four surface soil samples to evaluate the possibility of surface soil contamination due to the historical use of the Site to store automobiles. These samples were analyzed for VOCs, PAHs, arsenic, and lead. The detected level of arsenic in one surface soil sample slightly exceeded its RDCL. The average detected concentration of arsenic from the four soil samples, however, was calculated and found to be below the RDCSL.<sup>2</sup> No other analyzed constituent was

<sup>2</sup> Arsenic is a naturally occurring element with background levels in Indiana generally ranging from 2 ppm to 13 ppm. With a summed total detected arsenic concentration of 31.2 ppm in the 4 samples collected, an average arsenic concentration of 7.8 ppm was calculated. Given that the calculated average is within the background range for arsenic in Indiana soils, IDEM concludes no risk related to arsenic levels were detected in on-Site soils above the RDCSL.

detected at a level above its respective RCG RDCSL.

## Closure

Although detected concentrations of benzene, lead, 1-methylnaphthalene, 2-methylnaphthalene, naphthalene, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene in on-Site ground water were above their respective RCG residential screening levels, IDEM can approve conditional residential closure of environmental conditions at the Site under the RCG since: 1) the source of petroleum contamination was eliminated by removal of the USTs; 2) potable water is available through the local municipality; 3) if future residential use of the property is considered, the potential indoor air exposure pathway can be addressed through further risk evaluation and/or installation of a vapor mitigation system(s) and, 4) exposure to the detected ground water contamination on the Site can be addressed through an institutional control, discussed further below.

IDEM has determined based on available data, Site conditions currently present no threat to human health or the environment and satisfy conditional residential closure criteria under the RCG so long as the land use restrictions within the environmental restrictive covenant (ERC) discussed below are implemented and maintained.

## Liability Clarification

IDEM's "Brownfields Program Comfort and Site Status Letters" Non-rule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Owner, that:

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

As discussed below, the Owner has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and/or

petroleum contamination provided it takes the “reasonable steps” required by statute, recommendations for which are also discussed below.

### **Bona Fide Prospective Purchaser**

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

Under Indiana law, if the Owner qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Owner even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such an Owner for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Owner to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA or the Resource Conservation and Recovery Act, 42 U.S.C. § 6901.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Owner acquired the Site on September 6, 2016, after January 11, 2002 and June 30, 2009, and the disposal of hazardous substances and/or petroleum at the Site occurred prior to that date. See 42 U.S.C. § 9601(40)(A); § IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Owner has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Owner has represented that it is not potentially liable or affiliated with

any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Owner meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

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

### **Reasonable Steps**

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

- Implement and maintain the land use restrictions required by this letter.
- Upon becoming aware of such information, communicate to IDEM any newly obtained information about existing hazardous substance and/or petroleum contamination or any information about new (or previously unidentified) contamination.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. Please be advised that any work

performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

### **Institutional Control**

Since detected levels of benzene, lead, naphthalene, 1-methylnaphthalene, 2-methylnaphthalene, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene in ground water on-Site were above applicable RCG residential screening levels, IDEM is requiring an ERC to be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- Not occupy newly-constructed single family or duplex residential building(s) without first determining if a vapor intrusion risk exists and/or installing a vapor intrusion mitigation system(s) in any new single family or duplex residential building on the Site, with IDEM concurrence.
- Prohibit the use of ground water for human or animal consumption.

### **Conclusion**

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

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

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental

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law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site, and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. In addition, if any acts or omission by the Owner exacerbates the contamination at the Site, or if the Owner does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Owner would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. Furthermore, this letter does not constitute an assurance that the Site is safe or fit for any particular use.

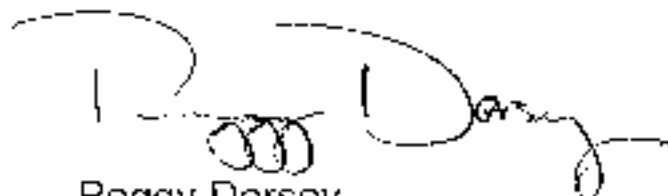
In order for IDEM to consider this letter effective, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the deed for the Site in the Marion County Recorder's Office. Please return a certified copy of the filed document to the address listed below:

Indiana Brownfields Program  
100 North Senate Avenue, Room 1275  
Indianapolis, Indiana 46204  
ATTN: Nancy Dollar

IDEM is pleased to assist the King Park Development Corporation with this request. Should you have any questions or comments, please contact Nancy Dollar of the Indiana Brownfields Program at 317-234-9764 or by email at [nadollar@ifa.in.gov](mailto:nadollar@ifa.in.gov).

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Sincerely,

A handwritten signature in black ink, appearing to read "Peggy Dorsey". The signature is written in a cursive style with a large initial "P" and "D".

Peggy Dorsey  
Assistant Commissioner  
Office of Land Quality

Attachment (Tables)  
Enclosure (ERC)

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)  
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)  
Nancy Dollar, Indiana Brownfields Program (*electronic copy*)  
Nivas Vijay, Heartland (*electronic copy*)

A thick, black, horizontal redaction bar covering several lines of text.

**TABLE 1**  
**Former Auto Service Station, Indianapolis – BFD #4160814**  
**January 2017 Ground Water Analytical Results above RCG Screening Levels**

Contaminant	Sample Location										Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	Results in parts per billion (ppb)												
	SB-1	SB-2	SB-3	SB-4	SB-5	SB-6	SB-7	FD-1	FD-1	FD-1			
Benzene	<5.0	<5.0	<5.0	<b>17.5</b>	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	5	28	120
Lead	<b>66.2</b>	<b>608</b>	<b>454</b>	<b>3,650</b>	<b>682</b>	<b>154</b>	<b>607</b>	<b>40.3</b>			15	NE	NE
1-Methylnaphthalene	<1.0	6.4	<b>33.1</b>	<b>588</b>	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	17	NE	NE
2-Methylnaphthalene	<1.0	11	2.5	<b>526</b>	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	36	NE	NE
Naphthalene	<1.0	<b>10.2</b>	<b>5.7</b>	<b>402</b>	<0.1	<0.1	<b>3.0</b>	<0.1	<0.1	<0.1	17	110	460
1,2,4-Trimethylbenzene	<5.0	<b>299</b>	<5.0	<b>178</b>	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	56	NE	NE
1,3,5-Trimethylbenzene	<5.0	<b>130</b>	<5.0	<b>87.1</b>	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	60	NE	NE

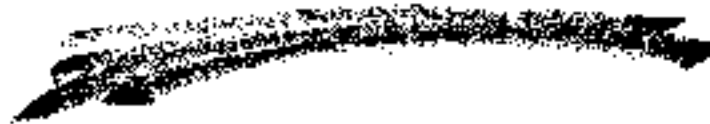
Notes: **bold** = above RCG Residential TAP Ground Water  
*italics* = above RCG Residential Vapor Exposure Ground Water Screening Level  
 NE = not established

EXHIBIT D

TABLE

TABLE 1

*Former Auto Service Station, Indianapolis – BFD #4160814*  
January 2017 Ground Water Analytical Results above RCG Screening Levels



**TABLE 1**  
**Former Auto Service Station, Indianapolis – BFD #4160814**  
**January 2017 Ground Water Analytical Results above RCG Screening Levels**

Contaminant	Sample Location										Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	Results in parts per billion (ppb)												
	SB-1	SB-2	SB-3	SB-4	SB-5	SB-6	SB-7	FD-1					
Benzene	<5.0	<5.0	<5.0	17.5	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	5	28	120
Lead	66.2	608	454	3,650	682	154	607	40.3			15	NE	NE
1-Methylnaphthalene	<1.0	6.4	33.1	588	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	11	NE	NE
2-Methylnaphthalene	<1.0	11	2.5	526	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	36	NE	NE
Naphthalene	<1.0	10.2	5.7	402	<0.1	<0.1	3.0	<0.1	<0.1	<0.1	1.7	110	460
1,2,4-Trimethylbenzene	<5.0	299	<5.0	178	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	56	NE	NE
1,3,5-Trimethylbenzene	<5.0	130	<5.0	87.1	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	60	NE	NE

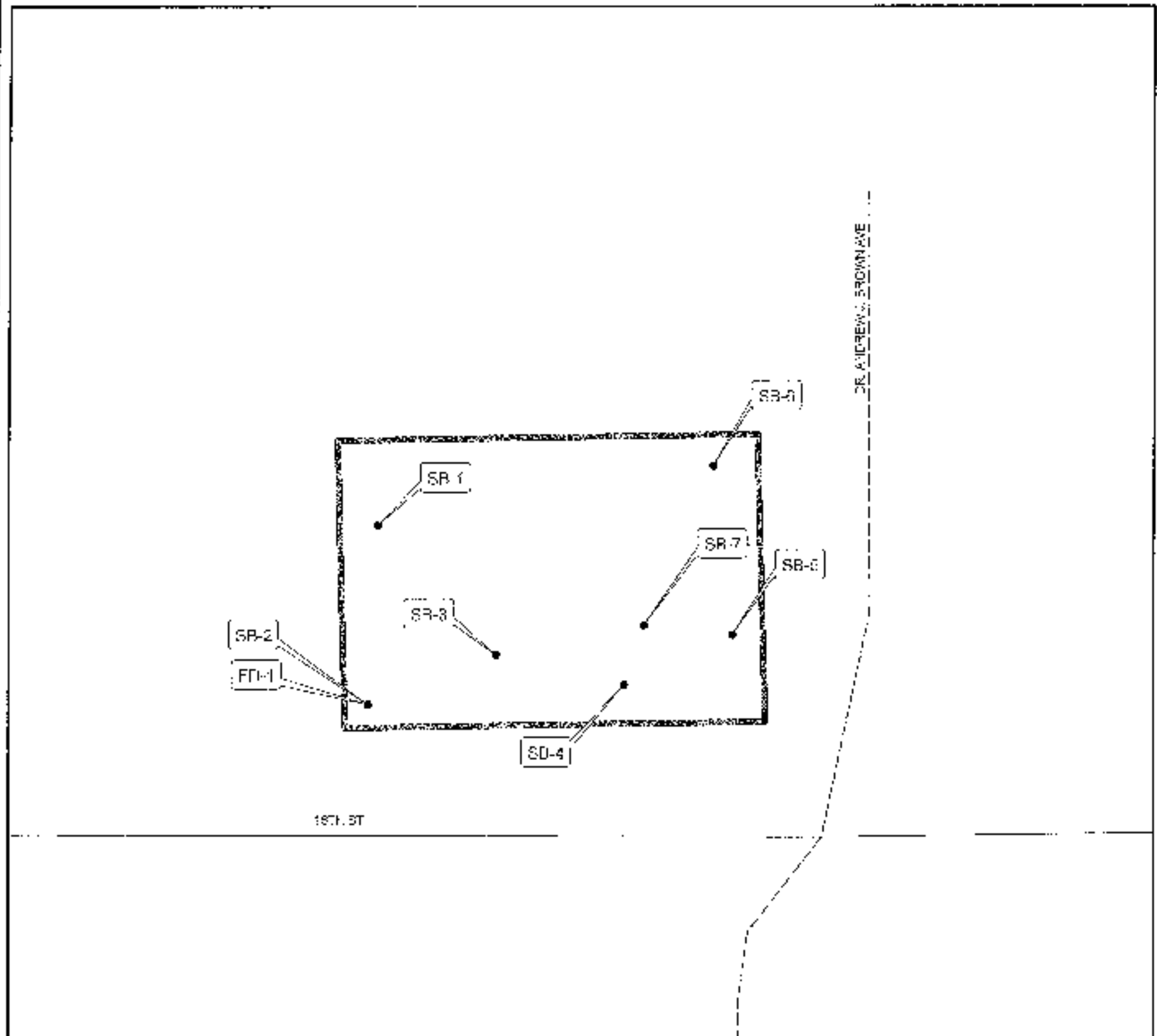
Notes: **bold** = above RCG Residential TAP Ground Water  
*italics* = above RCG Residential Vapor Exposure Ground Water Screening Level  
 NE = not established

## EXHIBIT E

***Former Auto Service Station, Indianapolis – BFD #4160814  
Site Map Depicting Sampling Locations at Which  
COCs Were Detected Above Applicable IDEM RCG Screening Levels***

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

## BFD 4160814 - Site Map Depicting Sample Location Where COCs Were Detected Above Applicable IDEM RCG Screening Levels



**Mapped By:** Mike Hill, IDEM, Office of Land Quality, Solstice Services Branch  
Engineering & GIS Services, June 22, 2017

**Sample Info:** Sample locations for soil borings (SB-1 through SB-7) based on "Figure 4, Soil Boring Location Map", by Hearland Environmental Associates, Inc., dated 11/5/17. Sample SR 1 is a Field Duplicate.

**Parcel ID:** 49-07-21-213-415-000-101

**PLSS Info:** Section 31, T48N, R12E  
Center Township  
Marion County, IN

**Property Info:** 1324 East 10<sup>th</sup> Street, Indianapolis, IN

**Disclaimer:** This map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purposes.

	Sample location
	Real Estate
	Street

Marion County

Project Area