

RECEIVED

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DEC 18 2017

09/18/2017 3:30 PM
KATHERINE SENESEY BELL
MARION COUNTY CLERK RECORDER
FEE: \$ 38.00
PAGES: 00
By: [Signature]

INDIANA FINANCE AUTHORITY
ENVIRONMENTAL PROGRAMS

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 18th day of September, 2017, by Henderson Development LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 3746 North College Avenue 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 September 30, 2016, and recorded on October 7, 2016 as Deed Record A201600111731 in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 0.28 acres and is identified by the State by parcel identification number 49-06-24-124-018.000-101. 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 Owner to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances and/or petroleum relating to historical operations on or in the vicinity of the Real Estate, Program site number BFD #4161019.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in soil and 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 chromium¹ in soil and tetrachloroethene ("PCE") in ground water.

WHEREAS: Soil and ground water on the Real Estate were sampled for polynuclear aromatic hydrocarbons ("PAHs"), volatile organic compounds ("VOCs"), and/or Resource Conservation and Recovery Act ("RCRA") metals. Investigations detected levels of chromium in soil and PCE in ground water above their applicable screening levels established by IDEM in the Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). Analytical results detected a total chromium concentration in soil at soil boring SB-2 above the residential direct contact screening level ("RDCSL") for hexavalent chromium ("Chromium VI") but below the Chromium VI commercial/industrial direct contact screening level ("IDCSL"). Analytical results detected the PCE level in ground water collected at soil boring SB-2 above its residential tap ground water

¹ Because the chromium was not speciated between trivalent chromium (chromium III) and the more toxic hexavalent chromium (chromium VI), IDEM, in the most conservative approach, compared the analytical results to hexavalent chromium

30

screening level ("Res TAP GWSL") but below its residential vapor exposure ground water screening level ("Res VE GWSL"). Soil and ground water analytical results above applicable RCG screening levels are summarized on Tables 1 and 2, attached hereto as **Exhibit "D"**. A site map, attached hereto as **Exhibit "E"**, depicts the sample location on the Real Estate at which the COCs were detected in soil and/or ground water above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under 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 residential and/or commercial 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, Henderson Development LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on Henderson Development LLC and all future owners:

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:

- (a) Shall place all plantings in raised beds filled with a minimum depth of at least 18 inches of "clean" soil (demonstrated not to contain contaminants of concern above RCG RDCSLs).
- (b) Shall restore soil disturbed as a result of excavation and construction activities on the Real Estate in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels). Upon the Department's request, the Owner shall provide the Department with documentation showing the excavated and restored area, and any other area affected by excavation or construction activities, does not represent such a threat. Any soil that is removed, excavated or disturbed on the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- (c) Shall not use or allow the use or extraction of ground water at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.
5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the

Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.

7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Marion County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.

13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

Henderson Development LLC
~~7245 North Pennsylvania Street~~
~~Indianapolis, IN 46240~~
 ATTN: Alan Henderson

1575 Broad Ripple Ave. #539
 Indianapolis, IN 46220

To Department:

Indiana Brownfields Program
 100 N. Senate Avenue, Rm. 1275
 Indianapolis, Indiana 46204
 ATTN: Kyle Hendrix

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

General Warranty Deed for the Real Estate



A201600111731

10/07/2016 7:01 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: \$ 27.50
PAGES: 4
By: ER

JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR
Oct 06 2016 PM 02:09
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER
E-023949507 TR

GENERAL WARRANTY DEED

THIS INDENTURE WITNESSETH: That West Ford Group, LLC, an Indiana limited liability company ("Grantor"), CONVEYS AND WARRANTS to Henderson Development, LLC, an Indiana limited liability company ("Grantee"), for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, that certain Real Estate situated in Marion County, in the State of Indiana, being more particularly described in Exhibit A attached hereto and made a part hereof, including all of the oil, gas and other minerals in and under and that may be produced therefrom (hereinafter the "Real Estate").

This conveyance is subject to those matters set forth in Exhibit B attached hereto and made a part hereof.

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

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RECORDED ELECTRONICALLY

Marion County Assessor
Oct 06 2016
Received BW

GENERAL WARRANTY DEED

THIS INDENTURE WITNESSETH: That West Ford Group, LLC, an Indiana limited liability company ("Grantor"), CONVEYS AND WARRANTS to Henderson Development, LLC, an Indiana limited liability company ("Grantee"), for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, that certain Real Estate situated in Marion County, in the State of Indiana, being more particularly described in Exhibit A attached hereto and made a part hereof, including all of the oil, gas and other minerals in and under and that may be produced therefrom (hereinafter the "Real Estate").

This conveyance is subject to those matters set forth in Exhibit B attached hereto and made a part hereof.

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

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EXHIBIT A

LEGAL DESCRIPTION

LOTS NUMBERED 17 AND 19 IN MENDENHALL'S 38TH STREET BOULEVARD ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 16, PAGE 23, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

EXHIBIT B

Permitted Exceptions

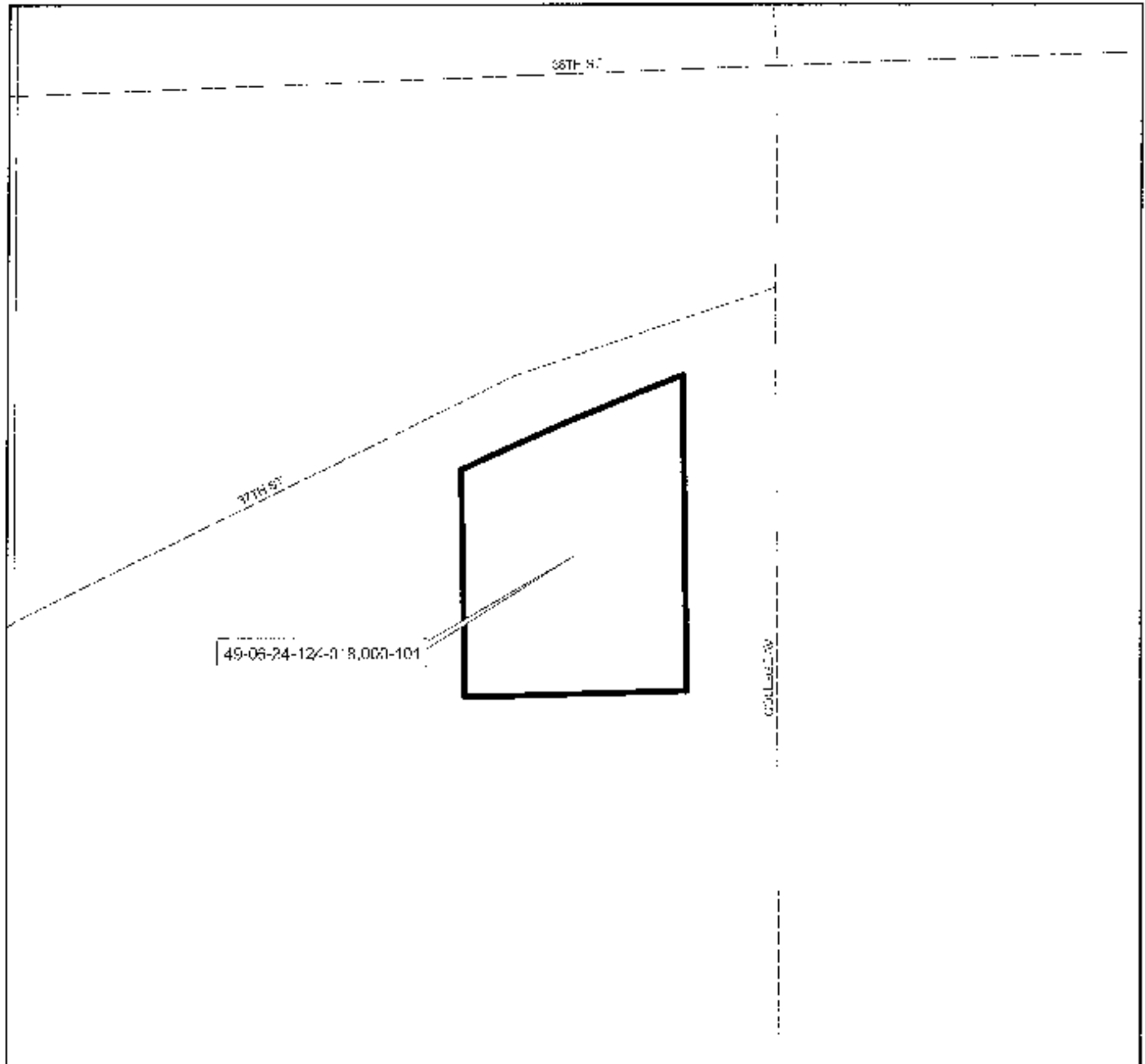
1. Real Estate Taxes for the year(s) 2016, (payable 2017) are a lien but not yet due and payable.
2. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Mendenhall's 38th Street Boulevard Addition, as recorded in Plat Book 16, Page(s) 23.

EXHIBIT B

Map of the Real Estate



Indiana Brownfields Program # 4161019 - Real Estate



Mapped By: Mike Hill, IEM, Office of Land Quality, Science Services Branch,
Engineering & GIS Services, July 11, 2017

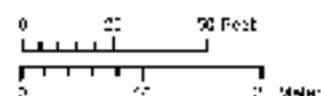
Deed Info: Instrument # A201603111701 Recorded 10/27/2015
General Warranty Deed

Parcel ID: 49-06-24-124-018.000-101

PLSS Info: Section 24, T16N, R0E
Center Township, Marion County, IN

Property Info: 3746 North College Avenue, Indianapolis, IN

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



Marion County



Project Area

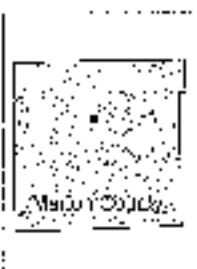


EXHIBIT C

Copy of Comfort Letter





INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-5027 • (317) 232-8605 • www.idem.in.gov

Eric J. Helton
Governor

Bruno L. Pigott
Commissioner

July 14, 2017

Alan Henderson
Henderson Development LLC

[REDACTED]
Indianapolis, IN [REDACTED]

Re: **Comfort Letter –
Bona Fide Prospective Purchaser**
Commercial Property on College
3746 North College Avenue
Indianapolis, Marion County
Brownfield #4161019

Dear Mr. Henderson:

In response to the request by Henderson Development LLC (Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 3746 North College Avenue, 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 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 0.28-acre Site is one parcel identified by the State by parcel #49-06-24-124-018.000-101. Historical records indicate the Site was undeveloped prior to 1930. From approximately 1935 through 1950, the Site was used for automotive repair, tires, and/or sales. The Grimes Tire Company was listed as the owner/occupant in 1935. Tri-Motors, Inc. (3750 North College) was listed as an owner/operator in 1945. From approximately



1956 through 2000, the Site was used for various retail and/or commercial uses including television sales and service (1959 through 1964), electrical contractor (1975), and retail furniture sales (1985). The Site is currently vacant. The redevelopment plans will either be commercial or mixed commercial and residential.

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment* dated June 21, 2016 (2016 Phase I ESA) prepared for Henderson Development LLC by Nederveld Inc. (Nederveld) (IDEM Virtual File Cabinet (VFC) Document (Doc) #80380640). 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 BFPF, Alan Henderson, Principal for Henderson Development LLC, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The 2016 Phase I ESA identified the following recognized environmental condition (REC) associated with the Site:

On-Site:

- Potential for soil and ground water contamination from historical use of the Site as an auto repair shop from approximately 1935 through at least 1950.

In addition to the above-noted REC, the Phase I ESA identified the following Non-Scope Issues:

- One empty above ground storage tank (AST) was observed in the basement of the on-Site building during the Site reconnaissance.
- Partial roof collapse and water damage were observed during the Site reconnaissance.

In addition to the REC identified above, IDEM would identify the following conditions in the area of the Site as RECs:

- Potential for documented tetrachloroethene (PCE) ground water contamination from the upgradient IDEM State Cleanup (SCU) facility known as Rally's (incident #200608127), a former Shell Oil Company service station located at 3801 North College Avenue, to migrate onto the Site.
- Potential for ground water contamination from the historical operations of multiple dry cleaning facilities located upgradient and cross-gradient of the Site to migrate onto the Site.

In addition to the REC identified above, IDEM would also identify the following conditions on the Site as de minimis conditions:

- Multiple 5-gallon or less containers of paints, used oil and dye chemicals were observed throughout the interior portions of the on-Site building. No significant staining was observed.
- Two 55-gallon containers that appeared to be empty were observed in the southern interior portions of the on-Site building. The materials listed on the containers were a vegetation killer concentrate and methanol. No significant staining was observed in the immediate area of these containers.

Pursuant to ASTM E1527-13, Standard Practice for Environmental Site Assessment, Nederveld evaluated the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or ground water either on or near the Site. Based on a VFC search of documented ground water releases and the distance, topography, and/or groundwater flow of these releases, Nederveld identified the following potential vapor encroachment condition (VEC) associated with an off-Site property:

- Rally's, SCU facility (incident #200608127), which is upgradient of the Site with documented PCE contaminated ground water.

Although not identified as VECs in the 2016 Phase I ESA, multiple historical dry cleaning operations documented in the 2016 Phase I ESA within 1/8th of a mile of the Site could pose potential VECs at the Site.

Environmental Conditions

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

- *Phase II Investigation* (Phase II), dated July 18, 2016, prepared by Nederveld (VFC Doc #80380641)

This report and the 2016 Phase I ESA may be viewed electronically by searching online by the document # referenced above in the Virtual File Cabinet on IDEM's website.

For purposes of this letter, sample analytical results were compared to IDEM's Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively); soil samples collected between 0 and 18 feet bgs were compared to the excavation worker soil exposure direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because of the unlikely risk of

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

Phase II – July 2016

On July 1, 2016, two soil borings (SB-1 and SB-2) were advanced on-Site. The soil sample collected from boring SB-1 at a depth of 12 – 12.5 feet bgs was analyzed for polynuclear aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), and Resource Conservation and Recovery Act (RCRA) metals. The soil sample collected from boring SB-2 at a depth of 0.5 – 1.0 feet bgs was analyzed for RCRA metals and from a depth of 1.0 – 1.5 feet bgs was analyzed for PAHs and VOCs. The ground water sample collected from boring SB-2 at 18 – 22 feet bgs was analyzed for PAHs and VOCs. Analytical results detected the following:

- Soil analytical results for SB-2 detected total chromium at a level above the hexavalent chromium (Chrome VI) RDCSL¹ but below the Chrome VI IDC SL;
- Multiple PAHs were detected in soil sample SB-2, but all were at levels below their respective RCG screening levels;
- Ground water analytical results in the sample collected at soil boring SB-2 detected tetrachloroethene (PCE) in ground water above its Res TAP GWSL but below its Res VE GWSL;
- 1,1,1-trichloroethane and toluene were detected in ground water collected at SB-2 but at levels below their applicable RCG screening levels; and
- No other constituents sampled in soil and ground water were at levels above laboratory detection limits.

See Tables 1 and 2, below, for contaminant concentrations and locations in soil and ground water, respectively.

¹Because the chromium was not speciated between trivalent chromium (chromium III) and the more toxic hexavalent chromium (chromium VI), IDEM, in the most conservative approach, compared the analytical results to hexavalent chromium.

TABLE 1
July 2016 Soil Analytical Results Above RCG Screening Levels

| Sample Info | | Detected Constituent & Result (parts per million (ppm)) |
|-------------|------------------|---|
| Location | Depth (feet bgs) | Chromium ¹ |
| SB-2 | 0.5 - 1 | 11 |
| | RDCSL | 4.2 |
| | IDCSL | 63 |
| | EXDCSL | 2,700 |

Notes: **bold** = above RCG Residential Direct Contact Screening Level
 bgs = below ground surface
¹ Because the chromium was not specified between trivalent chromium (chromium III) and the more toxic hexavalent chromium (chromium VI), IDEM, in the most conservative approach, compared the analytical results to hexavalent chromium.

TABLE 2
July 2016 Ground Water Analytical Results Above RCG Screening Levels

| Sample Info | | Detected Constituent & Result (parts per billion (ppb)) |
|-------------|------------------|---|
| Location | Depth (feet bgs) | Tetrachloroethylene (PCE) |
| SB-2 | 18 - 22 | 24 |
| | Res TAP GWSL | 5 |
| | Res VEGWSL | 110 |
| | Ind VEGWSL | 470 |

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
 bgs = below ground surface

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 a 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 30, 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.

Recommendations

IDEM recommends the removal and proper disposal of the following items observed within the on-Site building:

- The empty AST observed in the basement.
- The multiple containers of paints, used oil and dye chemicals observed throughout the interior portions of the on-Site building.
- The two, empty 55-gallon containers observed in the southern interior portions of the on-Site building.

Reasonable Steps

As of the date of issuance of this Comfort Letter, limited sampling of soil and ground water has occurred on the Site to confirm the presence or absence of soil and ground water contamination that may underlie the Site as a result of the RECs identified in the 2016 Phase I ESA and those identified by IDEM, including historical use of the Site as an auto repair shop from approximately 1937 though at least 1950, documented PCE ground water contamination at the upgradient SCU facility known as Rally's (incident #200608127), and the potential for ground water contamination from multiple historical dry cleaning operations located upgradient and cross-gradient of the Site. Therefore, at this time, IDEM has insufficient information to provide a comprehensive technical opinion regarding reasonable steps for the Site. According to the "Reasonable Steps Questions & Answers" within the U.S. Environmental Protection Agency's "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements)" (May 6, 2003), doing nothing to investigate a suspected environmental hazard would likely be insufficient to meet the reasonable steps requirement for protection as a BFPP (See Appendix B, p.4). Additional phase II investigation results would enable the Owner to make an informed determination of the reasonable steps necessary to prevent any exposure to hazardous and/or petroleum substances that may be contaminating the Site as is required to maintain BFPP status under the applicable statutes. If requested by the Owner, the Program will review a Phase II investigation report if one is completed and, as a follow-up to this letter, provide a technical opinion regarding any additional recommended reasonable steps for the Site.

At this time, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the hazardous substances and/or 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.
- Further investigate the RECs identified by IDEM after its review of the 2016 Phase I ESA:
 - Documented PCE ground water contamination associated with the upgradient SCU Rally's facility (incident #200608127), located at 3801 North College Avenue.
 - Potential for ground water contamination from the historical operations of multiple dry cleaning facilities located upgradient and cross-gradient of the Site.
- 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 levels of chromium detected in soil, when compared to chromium VI screening levels, and PCE levels detected in ground water are above applicable RCG residential screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- All plantings must be in raised beds with clean fill.
- Restore soil conditions after excavation and construction activities to ensure risk of exposure to contaminated soil is eliminated.
- Prohibit use of Site ground water.

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 parcels comprising the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the 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 requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP. 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.

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: Kyle Hendrix

Commercial Property on College, Indianapolis – BFPP Comfort Letter
BFD #4161019
July 14, 2017
Page 11 of 11

IDEM is pleased to assist Henderson Development LLC with this redevelopment project. Should you have any questions or comments, please contact Kyle Hendrix at 317-234-4860. He can also be reached via email at: lhendrix@ifa.in.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Peggy Dorsey". The signature is fluid and cursive, with the first name "Peggy" and last name "Dorsey" clearly distinguishable.

Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Enclosure

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)
Kyle Hendrix, Indiana Brownfields Program (*electronic copy*)
Gregg Henry, Nederveld (*electronic copy*)

EXHIBIT D

TABLE 1

Commercial Property on College, Indianapolis – BFD #4161019
July 2016 Soil Analytical Results
Above RCG Screening Levels

TABLE 2

Commercial Property on College, Indianapolis – BFD #4161019
July 2016 Ground Water Analytical Results
Above RCG Screening Levels

TABLE 1
Commercial Property on College, Indianapolis – BFD #4161019
July 2016 Soil Analytical Results
Above RCG Screening Levels

| Sample Info | | Detected Constituent & Result (parts per million (ppm)) |
|-------------|------------------|---|
| Location | Depth (feet bgs) | Chromium ¹ |
| SB-2 | 0.5 - 1 | 11 |
| | RDCSL | 4.2 |
| | IDCSL | 63 |
| | EXDCSL | 2,700 |

Notes: **bold** = above RCG Residential Direct Contact Screening Level
 bgs = below ground surface
¹ Because the chromium was not speciated between trivalent chromium (chromium III) and the more toxic hexavalent chromium (chromium VI), IDEM, in the most conservative approach, compared the analytical results to hexavalent chromium.

TABLE 2
Commercial Property on College, Indianapolis – BFD #4161019
July 2016 Ground Water Analytical Results
Above RCG Screening Levels

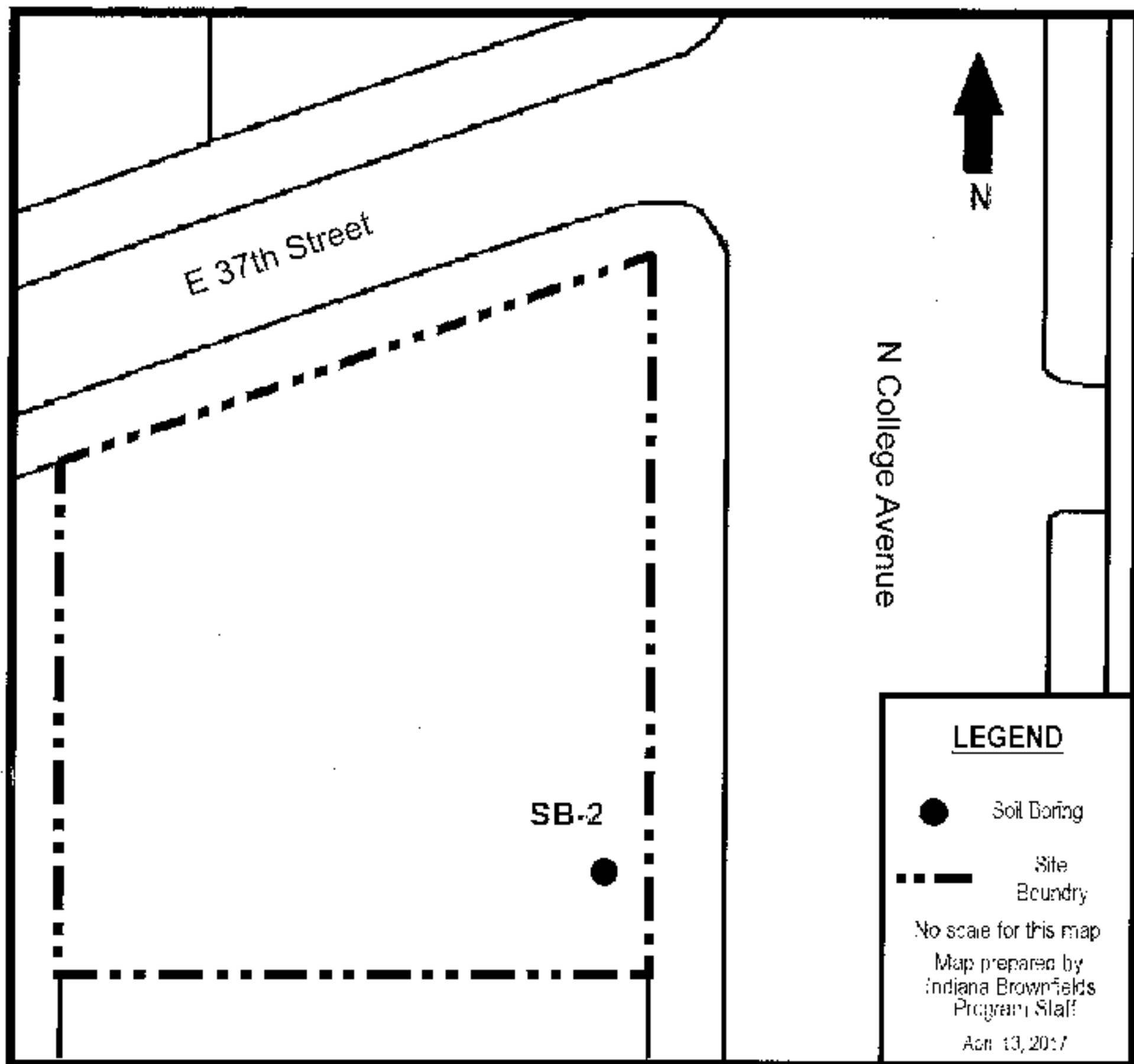
| Sample Info | | Detected Constituent & Result (parts per billion (ppb)) |
|-------------|------------------|---|
| Location | Depth (feet bgs) | Tetrachloroethylene (PCE) |
| SB-2 | 18 - 22 | 24 |
| | Res TAP GWSL | 5 |
| | Res VEGWSL | 110 |
| | Ind VEGWSL | 470 |

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
 bgs = below ground surface

EXHIBIT E

Commercial Property on College, Indianapolis – BFD #4161019
Site Map Depicting the Sampling Location 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.



Commercial Property on College, Indianapolis – BFD #4161019

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