

Cross Reference: Instrument No. A201700101449

**MODIFICATION OF
ENVIRONMENTAL RESTRICTIVE COVENANT**

THIS MODIFICATION of Environmental Restrictive Covenant ("ERC") is made this 21st day of September, 2018, by Sulfeworks District, LLC ("Owner") with the approval of the Indiana Department of Environmental Management ("IDEM")

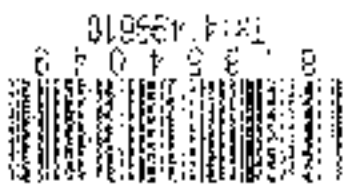
I. Recitals

A. Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 801 Carrollton Avenue (811 E. 10th Street) and 804-812 Massachusetts Avenue in Indianapolis ("Real Estate"). The Real Estate, totaling 11.99 acres and identified by the State by parcel identification numbers 49-11-01-230-003-000-101 (Brownfield Site #4151104) and 49-11-01-237-023-000-101 (Brownfield Site #4170806), was acquired by deed on September 1, 2017 and recorded on September 11, 2017 as Deed Record A201700101832 in the Office of the Recorder of Marion County, Indiana. The Real Estate is described on the deed attached hereto as "Exhibit A" and depicted on the map attached hereto as "Exhibit B";

B. Parcel number 49-11-01-230-003-000-101 of the Real Estate is subject to an environmental restrictive covenant ("Original ERC") recorded on September 8, 2017, as Instrument Number A201700101449. The Original ERC established certain restrictions and/or obligations on the Real Estate and its future use to ensure the protection of public health, safety or welfare and the environment due to a release of petroleum and/or hazardous substances relating to the historical operations at the Site;

C. Paragraph 10 of the Original ERC provides that, if any owner desires to modify the Original ERC, the person shall obtain IDEM's prior written approval;

D. Since the Original ERC was recorded, analytical results from additional soil and ground water investigation of recognized environmental conditions on Parcel number 49-11-01-237-023-000-101 of the Real Estate became available and IDEM issued the Owner a Comfort Letter for Parcel number 49-11-01-237-023-000-101 of the Real Estate, attached hereto as "Exhibit C", which includes information summarizing the sampling performed on Parcel number 49-11-01-237-023-000-101 and the new analytical results. Tetrachloroethene ("PCE") and/or trichloroethene ("TOE") were detected in ground water samples at SB-365-GW through SB-366-GW at concentrations above their respective residential tap ground water screening levels ("Res TAP GWSLs") and/or residential vapor exposure ground water screening levels ("Res VE GWSLs") established by IDEM's Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). The locations of the additional sampling points



containing contaminant levels above their respective screening levels are depicted on a site map attached hereto as "Exhibit D". This new information pertaining to contamination detected on Parcel number 49-11-01-237-023.000-101 necessitates that the scope of the Original ERC be expanded to include Parcel number 49-11-01-237-023.000-101.

E. Paragraph 5 of the Original ERC requires the owner to provide written notice of the presence of contamination when conveying any interest in any portion of the Real Estate, including leases and subleases. A portion of the Real Estate will be redeveloped with multi-tenant residential apartment and condominium buildings with individual leased units. Potential exposure of tenants to contaminated vapors will be controlled through vapor mitigation measures applied to the whole building rather than installation of vapor mitigation systems in individual residential units. Therefore, the Owner has requested the Original ERC be modified to exclude written notice of the presence of contamination in individual unit leases. IDEM hereby agrees to such modification.

II. Modification of Original ERC

A. Owner desires to modify the Original ERC described in Section I, Paragraph B of this instrument.

B. The Original ERC only applies to Parcel number 49-11-01-237-023.000-101 of the Real Estate by its recordation on Deed Record A201709100665.

C. Ground water samples from temporary well locations SB-365-GW through SB-368-GW were collected to investigate RECs on parcel 49-11-01-237-023.000-101 of the Real Estate as depicted on "Exhibit D".

D. PCE and TCE were detected in ground water samples at SB-365-GW through SB-368-GW at concentrations above their respective Res TAP GWSLs and/or Res VE GWSLs.

E. The Comfort Letter, attached hereto as "Exhibit C", issued by IDEM for Parcel number: 49-11-01-237-023.000-101 of the Real Estate (Brownfield site #4170806) on February 28, 2018, documents the latest sampling conducted on the Real Estate and associated analytical results.

F. The Owner desires, with IDEM concurrence, to extend the existing land use restrictions in the Original ERC to Parcel number 49-11-01-237-023.000-101 of the Real Estate.

G. The Owner also desires, with IDEM concurrence, to modify Paragraph 5 of the Original ERC entitled "Written Notice of the Presence of Contamination" to specifically exclude individual unit leases from the written notice requirement. This instrument modifies Paragraph 5 of the Original ERC as follows and indicated in **bold**: "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 (with the exception of individual unit leases and excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be

filled in):

H. The Owner shall execute this Modification of ERC and record it with the Office of the Recorder of Marion County on the Deed for the Real Estate (Deed Record A201700101832) in order to extend the existing land use restrictions in the Original ERC to Parcel number 43-11-01-237-023.000-101 of the Real Estate and modify Original ERC Paragraph 5 using the language outlined in Paragraph G. of this document, above. The Owner shall provide a certified copy of the recorded document to IDEM within 30 days of recordation.

I. Except as expressly modified by this instrument, all restrictions, obligations and requirements established in the Original ERC recorded on September 8, 2017, as Instrument Number A201700101449 shall remain in full force and effect.

J. This Modification of ERC is effective when signed by the parties.

iii. Approval

Pursuant to the terms of Paragraph 10 of the Original ERC, IDEM has reviewed and approves the Modification of ERC.

IV. Authorization

The undersigned persons executing this Modification of ERC on behalf of Owner and IDEM represent and certify that they are empowered and duly authorized by their respective entities to execute this document. The undersigned person on behalf of the Owner further represents and certifies that Owner is the current owner of the Real Estate.

OWNER
By: [Signature]
Printed: Diane M. Hendricks
Title: Manager & Chairperson of the Board

Affirmation of Notary for the Owner

STATE OF INDIANA)
 WISCONSIN) SS:
COUNTY OF MARION)
 Rock

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Diane M. Hendricks, the Manager & Chairperson of the Board of the Owner, who acknowledged the execution of the foregoing Modification of ERC and on behalf of said entity.

Witness my hand and Notarial Seal this 26 day of June, 2018.



[Signature]
(Signature)

Lori A. Goff
(Printed Name) Notary Public

Residing in Rock County, WI

My Commission Expires:

6-5-20

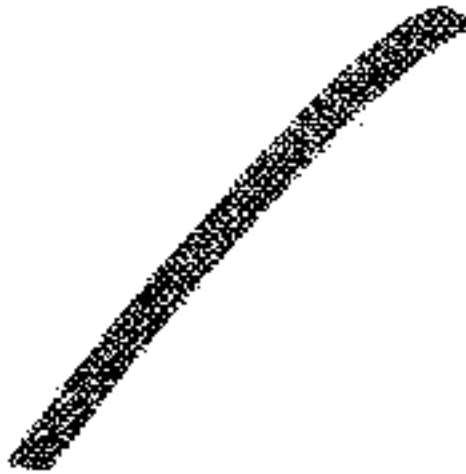
This instrument prepared by:

Allison Wells Critton
Wooden & McLaughlin LLP
One Indiana Square, Suite 1800
Indianapolis, IN 46204

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document as required by law

EXHIBIT A

Quitclaim Deed for the Real Estate



JOSEPH S. O'CONNOR
MARION COUNTY ASSESSOR
Sep 08 2017 PM 03:59
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER
E-005422561 AR

A201700101832

09/11/2017 7:04 AM
KATHERINE SWEENEY MAIL
MARION COUNTY IN RECORDER
FEE: \$ 32.00
PAGES: 3
By: EL

35
Cross Reference A201700101449
QUITCLAIM DEED

This indenture WITNESSETH that BOTTLEWORKS DISTRICT, LLC, an Indiana limited liability company ("Grantor"), QUITCLAIMS to BOTTLEWORKS DISTRICT, LLC, an Indiana limited liability company ("Grantee"), for consideration of mutual covenants of value but for no monetary consideration, the real estate located in Marion County, Indiana, and more particularly described on Exhibit A, attached hereto and incorporated by reference herein (the "Real Estate"). This Quitclaim Deed is for the purpose of conveying any and all rights, title and interests Grantor may have to the property described in the consolidated legal description attached hereto

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED September 1, 2017 2017, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON September 8, 2017, 2017, INSTRUMENT NUMBER A201700101449 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this

2nd day of August, 2017.

[Remainder of page intentionally blank; signature on following page]

First American Title
251 E. Ohio Street, Suite 555
Indianapolis, IN 46204
FILE NO: 613750

Marion County Assessor
Sep 08 2017
KATHERINE SWEENEY

Exhibit A

REAL ESTATE

Part of Young's Corrected Plat of Out Block 161 recorded in Plat Book 1 at Page 41, Part of Coburn's Subdivision of Out Lot 182 recorded in Plat Book 1 at Page 179, Part of H. R. Allen's Subdivision of Out Lot 181 recorded in Plat Book 3 at Page 215, Part of The Exchange Land Company's Subdivision of part of Out Lot 189 recorded in Plat Book 7 at Page 67, Gale's Subdivision of part of Out Lot 653 recorded in Plat Book 8 at Page 183, The Coca-Cola Bottling Co. Addition recorded in Plat Book 26 at Page 149, The Coca-Cola Bottling Co. 2nd Addition recorded in Plat Book 26 at Page 191, a 0.216 acre parcel conveyed to D.A.J. Realty Co. in Instrument Number 1993-0199125 all in the Office of the Recorder of Marion County, Indiana, including various vacated streets and alleys generally being bounded by the south line of 10th Street, the west line of Bellefontaine Street, the northwest line of Massachusetts Avenue and the east line of College Avenue, more particularly described as follows:

Beginning at the southwest corner of The Coca-Cola Bottling Co. 2nd Addition as recorded in Plat Book 26, page 191 in the Office of the Recorder of Marion County, Indiana also being the intersection of the east right-of-way line of vacated Edison Avenue and the northerly right-of-way line of Massachusetts Avenue; thence South 45 degrees 01 minutes 20 seconds West (Indiana East Zone Grid Bearings) along said northerly right-of-way line of Massachusetts Avenue a distance of 194.52 feet to the south corner of said 0.216 acre parcel; thence North 59 degrees 23 minutes 44 seconds West along the southwest line of said parcel a distance of 50.84 feet to the east right-of-way line of College Avenue; thence along said east right-of-way for the following four (4) courses: 1) North 04 degrees 41 minutes 01 seconds East a distance of 31.00 feet; 2) thence North 04 degrees 40 minutes 09 seconds East a distance of 59.41 feet; 3) thence North 04 degrees 40 minutes 45 seconds East a distance of 81.29 feet; 4) thence North 01 degree 50 minutes 40 seconds East a distance of 720.31 feet to the southwest corner of Instrument Number 75-25054, appropriated for highway purposes under Marion County Super or Court Cause Number S173-223, as recorded in said Recorder's office; thence North 46 degrees 22 minutes 13 seconds East along the southerly line of said instrument a distance of 27.52 feet to the south right-of-way line of vacated 10th Street; thence along said south right-of-way line for the following five (5) courses: 1) South 87 degrees 52 minutes 30 seconds East a distance of 56.92 feet; 2) thence North 03 degrees 29 minutes 35 seconds East a distance of 66.66 feet to a point on a non-tangent curve to the left having a radius of 617.96 feet, the radius point of which bears North 07 degrees 45 minutes 24 seconds West; 3) thence easterly along said curve an arc distance of 275.93 feet to a point of a reverse curve having a radius of 591.62 feet which bears South 33 degrees 19 minutes 50 seconds East from said radius point; 4) thence easterly along said curve an arc distance of 251.88 feet to a point which bears North 08 degrees 58 minutes 06 seconds West from said radius point; 5) thence North 59 degrees 25 minutes 21 seconds East a distance of 34.03 feet to the east line of Instrument Number 81-61767 as recorded in said Recorder's office; thence South 44 degrees 28 minutes 27 seconds East along said east line a distance of 57.13 feet to the southeast corner of Lot 2 of The Exchange Land Company's Subdivision as recorded in Plat Book 7, page 67 in said Recorder's office and being the northeast corner of an exception area described in Instrument Number 80-82326; thence along the north, west and south lines of said exception area for the following three (3) courses: 1) South 69 degrees 23 minutes 39 seconds West a distance of 5.00 feet; 2) thence South 00 degree 02 minutes 27 seconds East a distance of 33.33 feet; 3) thence North 08 degrees 25 minutes 39 seconds East a distance of 5.00 feet to the west right-of-way line of Bellefontaine Street; thence South 00 degrees 02 minutes 17 seconds East along said west right-of-way line a distance of 345.16 feet to the southeast corner of Parcel 8 described in Instrument Number 65-5556 as recorded in said Recorder's office; thence along the southerly line of said Parcel 8 for the following three (3) courses: 1) North 88 degrees 58 minutes 15 seconds West a distance of 55.00 feet; 2) thence South 00 degree 01 minutes 45 seconds West a distance of 25.50 feet; 3) thence South 45 degrees 03 minutes 20 seconds West a distance of 189.50 feet to the centerline of vacated Horizon Place per Declaratory Resolution Number 25969 as recorded in Deed Record 1166, page 136 in said Recorder's office; thence South 01 degree 55 minutes 52 seconds West along said centerline a distance of 80.57 feet to the northerly right-of-way line of Massachusetts Avenue; thence South 45 degrees 01 minutes 20 seconds West along said northerly right-of-way line a distance of 516.89 feet to the point of beginning, containing 11.56 acres of land, more or less.

Exhibit B

Map of the Real Estate

Parcel #49-11-01-237-023.000-101 (BFD #4170806)

and

Parcel #49-11-01-230-003.000-101 (BFD #4151104)



Exhibit C

**Copy of Comfort Letter
Sablosky Store, Indianapolis - BFD #4170806
Parcel #49-11-01-237-023,000-101**





INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 454-6027 • (317) 232-8508 • www.idem.in.gov

Eric J. Holcomb
Governor

Brian L. Fogel
Commissioner

February 28, 2012

Robert Gerbitz
Bottleworks District, LLC
525 3rd Street, Suite 300
Beloit, WI 53511

Re: Comfort Letter -
Bona Fide Prospective Purchaser
Sablosky Store
804 - 812 Massachusetts Avenue
Indianapolis, Marion County
Brownfield #4170806

Dear Mr. Gerbitz:

In response to the request by Wooden McLaughlin LLP (Wooden McLaughlin) on behalf of Bottleworks District, LLC (Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 812 Massachusetts 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 and/or petroleum 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(f)) 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 0.78-acre Site is one parcel identified by the State by parcel #48-11-01-237-023,000-101 and is currently a vacant gravel covered lot. The north portion of the Site was developed with residences from at least 1887 until the mid-1960s, when the residential structures were removed and the area became vacant. The south portion of the Site was developed with a mixture of stores, outbuildings, and residential

units by 1887. Commercial occupants have included, but are not limited to a cigar store, grocery store, clothing stores, Sablosky's Department Store, and a liquor store; as well as an auto repair facility/garage from approximately 1920 until 1930. By 1956, the residential structures and outbuilding were removed from the south and central portions, at which time the Site was exclusively used for commercial purposes. By 1965, an additional commercial structure was built on the central portion, which appeared to be an addition to the commercial building on the south portion. According to City directories, the Site was occupied by Sablosky's Department Store until the early 1980s. The Site was occupied by Jackson Control Inc. heating and air conditioning distributors from approximately 1985 until 1990 and Nelson Tricolors (commercial printers) in approximately 1990. By 1997, all structures were removed from the Site. The Owner acquired the Site on August 29, 2017 from D.A.J. Realty Company. The Site is part of the larger, mixed use Bottleworks District development, plans for which include a cinema, hotel, office and retail space, apartments, and condominiums.

The Site is bordered to the north by a parking lot associated with the former IPS Service Center property; to the east by the former IPS Service Center property followed by Massachusetts Avenue; to the south by the intersection of Massachusetts Avenue and College Avenue followed by a bank and a mixed-use commercial/residential building; and, to the west by College Avenue followed by a dentist office, residential property, and a parking lot.

Due Diligence

As part of this request, the Owner provided the Program with a *Final Report - Phase I Environmental Site Assessment* (July 2017 Phase I ESA) dated July 25, 2017 prepared for Woodard & McLaughlin LLP by August Mack Environmental, Inc. (August Mack) (IDEM Virtual File Cabinet (VFC) Document #80515798). Section 2.7 of the Phase I ESA report allows Bottleworks District, LLC to rely on the report. The Phase I ESA was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312. In an effort for the Owner to qualify as a BFPF, Isaac Bamgbose, Vice President – Asset Management with Bottleworks District, LLC, 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:

- The historical use of the Site as an auto repair shop/garage prior to environmental regulations, and use as a commercial printer.
- The historical use of surrounding properties prior to environmental regulations.
- The unknown extent of the trichloroethene (TCE) and tetrachloroethene (PCE) ground water contaminant plume identified on the southern portion of the east, adjoining, and up-gradient IPS Service Center property (Brownfield site #4151104 and State Cleanup site #0000313), and the presence of a vapor encroachment condition (VEC).

Sablosky Store, Indianapolis – BFPF Comfort Letter
BFD #4170806
February 28, 2018
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Pursuant to ASTM E1527-13, Standard Practice for Environmental Site Assessment and ASTM E2600-15 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, August Mack conducted a Tier 1 evaluation to assess 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. August Mack identified one potential VEC associated with the known ground water contamination on the east, adjoining IPS Service Center property.

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 document. This document may be viewed electronically by searching online by the noted document number in IDEM's VEC accessible through IDEM's website.

- *Final Report -- Phase II Subsurface Investigation (Phase II Subsurface Investigation – September 2017)*, dated September 18, 2017, prepared by August Mack (Document #80525189)

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 direct contact screening levels (EX DCGLs); 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 Subsurface Investigation – September 2017

In August 2017, five soil borings (SB-365 through 369) were advanced around the perimeter of the Site to a maximum depth of 30 feet bgs to investigate the RECs identified in the July 2017 Phase I ESA. Each boring was converted into a temporary monitoring well. Soil and ground water samples were analyzed for volatile organic compounds (VOCs) and polycyclic aromatic hydrocarbons (PAHs).

Slight staining was observed in soil at 12 to 14 feet bgs in boring SB-366 and at 2 to 4 feet bgs in boring SB-367. However, no constituents analyzed in soil were detected at levels above applicable RCG screening levels. PCE was detected in ground water in SB-366-GW at a level above its Res TAP GWSL but below its Res VE GWSL. TCE was detected in ground water in samples SB-365-GW through SB-368-GW at levels above its Res TAP GWSL, with levels in SB-365-GW, SB-366-GW, and SB-368-GW above its Res VE GWSL but below its Indus VE GWSL. No other constituents analyzed

If ground water were detected at levels above applicable RCG screening levels. Refer to Table 1, below, for a summary of ground water analytical data above applicable RCG screening levels.

TABLE 1
August 2017 Ground Water Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Contaminant Detected	Sample Location & Results (parts per billion (ppb))				Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	SB-355-GW	SB-366-GW	SB-367-GW	SB-368-GW			
Trichloroethene	14.2	11.6	8.35	9.25	5	9.1	36
Tetrachloroethene	<5.0	7.85	<5.0	<5.0	5	110	470

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
italics = above RCG Residential Vapor Exposure Ground Water Screening Level

Adjoining Former IPS Service Center Property

Subsurface investigations associated with the adjoining former IPS Service Center property (State Cleanup site #0000613) detected PCE and TCE at concentrations in ground water above their respective Res TAP GWSLs, Res VE GWSLs, and/or Indus VE GWSLs at the southern end of the property adjoining the Site, which have not been vertically or horizontally delineated and may originate from an off-site source. In addition, a TCE concentration in ground water at sample location SB-129 (80 feet to the east of the Site) collected in October 2015 on the former IPS Service Center property exceeded its Res VE GWSL, and is within the critical distance of 100-feet of the Site. Ground water flow direction across the adjoining former IPS Service Center property was determined to be to the west, towards the Site.

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 and/or petroleum at the Site, and;
- (5) the Owner is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPF) exception to liability for hazardous substance contamination found in IC §13-25-4-8(b) and/or for petroleum

Sablowsky Store, Indianapolis – BFPP Comfort Letter
BFD #4170806
February 28, 2018
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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(d) 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 August 29, 2017 after January 11, 2002 and June 30, 2006, and the disposal of hazardous substances and petroleum at the Site occurred prior to that date. See 42 U.S.C. § 9601(40)(A); IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Owner has conducted all appropriate inquiries into

the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Owner has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Owner meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPF under 42 U.S.C. § 9601(40).

The continuing obligations the Owner must undertake to qualify as a BFPF 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(i), and 13-11-2-151(g), the continuing obligations the Owner must undertake to maintain BFPF 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 BFPF, 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 BFPF 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.

Modification of Environmental Restrictive Covenant

On August 4, 2017, a BFPF Consent Letter and environmental restrictive covenant (ERC) (Document #80500106) were issued to Bottleworks District, LLC for the north and east adjoining former IPS Service Center property located at 901 Carrollton Ave. (811 E. 10th St.) (parcel #49-11-01-235-003.000-101). On September 5, 2017, the ERC (Instrument #A201700101449) was recorded on the deed for the adjoining former IPS Service Center property (now Bottleworks District) in the Marion County Recorder's Office. The land use restrictions in the recorded ERC (Original ERC) (Document #80525377) are summarized under the *Institutional Control* section, below.

After the Owner acquired the Site via Quitclaim Deed and Limited Warranty Deed on September 1, 2017 from D.A.J. Realty Company, the Owner subsequently combined the Site with the adjoining former IPS Service Center parcel via a Quitclaim Deed. (Refer to the enclosed map to see the entire project property.) Since the Site is now included on a deed with the Bottleworks District property to the north and east, and sampling was conducted on the Site after the Original ERC was recorded, IDEM is proposing to modify the Original ERC to expand its scope to include the Site and reflect current information on known environmental conditions on the entire project property.

Sablowsky Store, Indianapolis - BFP^o Comfort Letter
BFD #4170306
February 28, 2018
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Therefore, a *Modification of Environmental Restrictive Covenant*, which has been executed and notarized by IDEM, is enclosed with this Comfort Letter and should be recorded on the Quitclaim Deed for the entire Bottleworks District project property (Instrument No. A201700101832) to ensure the land use restrictions necessary to ensure no exposure to the known contamination in the area are applicable to the Site.

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/or petroleum contamination found at the Site in order to qualify as a BFPF, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Execute and record the enclosed *Modification of Environmental Restrictive Covenant*.
- Implement and maintain the land use restrictions in the Original ERC which will, upon recording of the *Modification of Environmental Restrictive Covenant*, apply to the Site.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance 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 BFPF 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

IDEM required an ERC be recorded on the deed for the north and east adjoining property in conjunction with issuance of the 2017 IPS Service Center BFPF Comfort Letter to ensure no exposure to TCE, PCE, and cis-1,2-dichloroethene detected in ground water, TCE detected in exterior soil gas, TCE detected in slab soil gas, and TCE and PCE detected in indoor air above RCG residential screening levels. In order to qualify for liability protection as a BFPF, and 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 recorded ERC (applicable to the Site through the *Modification of Environmental Restrictive Covenant*) which are summarized below:

- Prohibit any activity at the Site that interferes with any ongoing response activities: long-term ground water monitoring, or measures necessary to assure

the effectiveness and integrity of any response action or engineering control, or component thereof, implemented at the Site with respect to IDEM State Cleanup site #0000513.

- Not use or allow the use or extraction of ground water at the Site for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior IDEM approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities.
- Not occupy any renovations/additions to the existing buildings on the Site, and/or any existing buildings on the Site, and/or any human-occupied building(s) constructed on the Site 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 building(s) on the Site; or, Option 2) Install, operate and maintain a vapor mitigation system (in accordance with U.S. EPA *Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and IDEM *Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014)) within any renovations/additions to the existing buildings on the Site, and/or any existing buildings on the Site, and/or any newly-constructed human-occupied building(s) on the Site, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of the applicable IDEM RCG residential subslab soil gas screening levels and residential indoor air vapor exposure screening levels and/or commercial/industrial subslab soil gas screening levels and commercial/industrial indoor air vapor exposure screening levels based upon then-current use of the Site or site-specific action levels approved by IDEM.

Conclusion

IDEM encourages the mixed use 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 BFPF status. In particular, if new areas of

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contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status.

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP. 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 §§ 13-25-4-6(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 and in order for the modification to the Original ERC to be given effect by IDEM, the Owner must execute and record the enclosed *Modification of Environmental Restrictive Covenant* in the Marion County Recorder's Office on the Quitclaim Deed for the entire project property (Instrument No. A201700101832). Please return a certified copy of the filed document to the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Tracy Concannon

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February 26, 2016
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IDEM is pleased to assist Botileworks District, LLC with this redevelopment project. Should you have any questions or comments, please contact Tracy Concannon at 317/233-2801. She can also be reached via email at: tconcann@ifa.in.gov.

Sincerely,

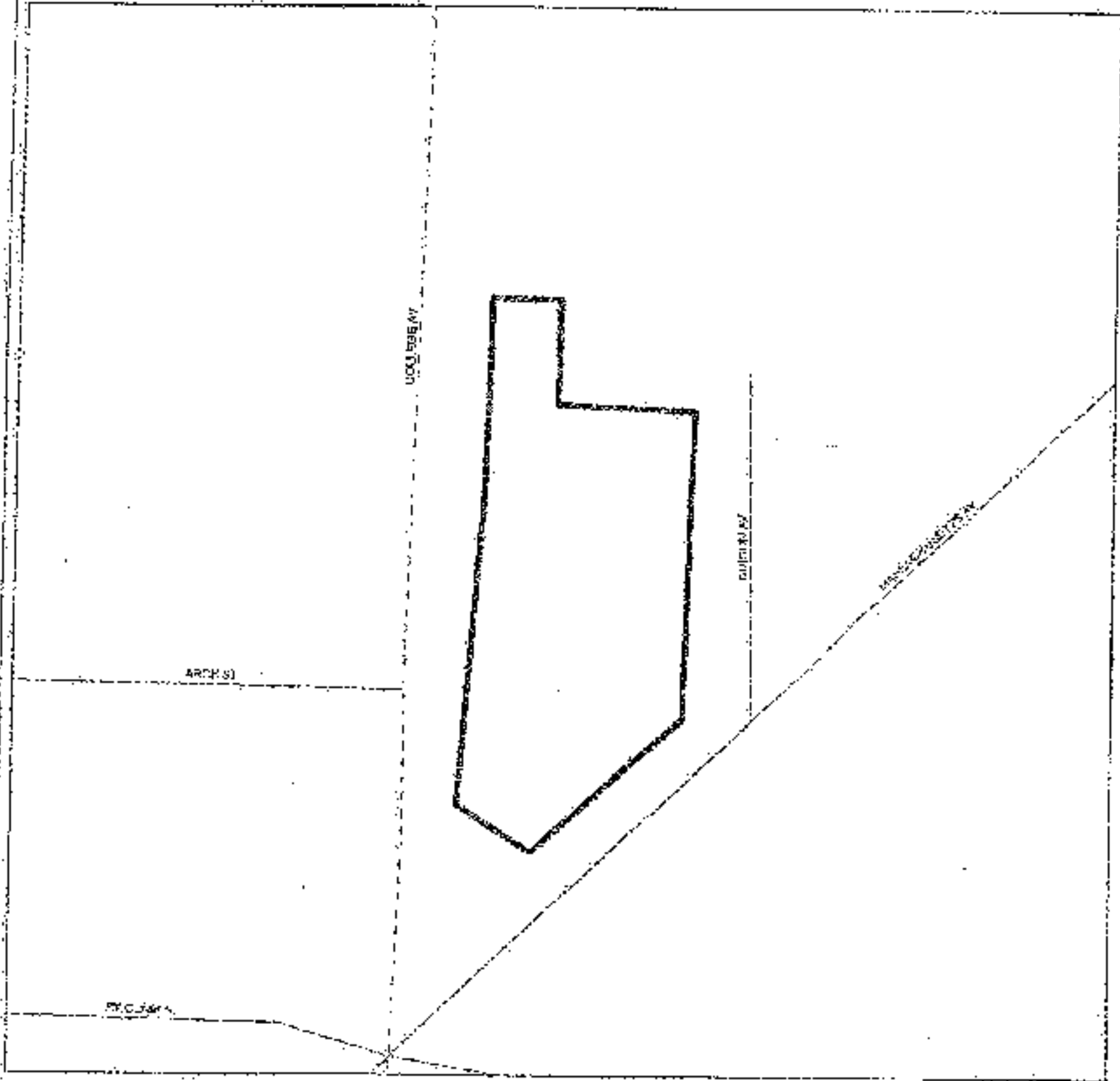


Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Enclosure (Modification to ERC)
Attachment (Map)

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)
Meredith Giamelspacher, Indiana Brownfields Program (*electronic copy*)
Tracy Concannon, Indiana Brownfields Program (*electronic copy*)
Christopher Abel, August Mack (*electronic copy*)
Allison Wells Gritton, Wooden McLaughlin (*electronic copy*)

Indiana Brownfields Program # 4179806 - Real Estate



Maped By: Mike Hill, LDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, September 11, 2007
Source Info: ALTAMISPS Loan Title Survey, Boundary-Reference Survey of Civil & Environmental Consultants, Inc. Docket # 5114, dated February 16, 2007. No report description, map or plat(s) attached to said docket #41936.
Parcel ID: 48-11-01-207-075, 003-101
PLSD info: Section 1, T18N, R5E
 Center Township
 Marion County, IN
Property info: 850 Massachusetts Avenue, Indianapolis, IN
Disclaimer: This map is intended to serve as an informational reference only. This information is not warranted for accuracy or other purposes.

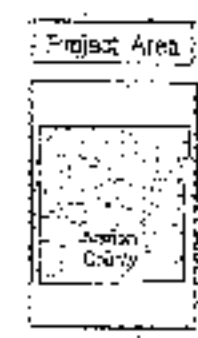
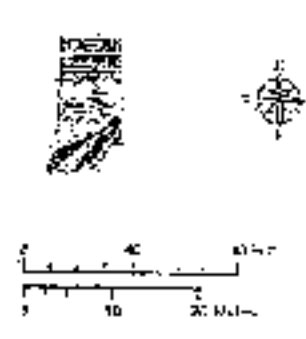
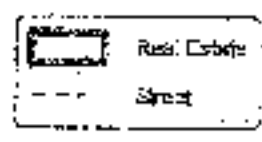
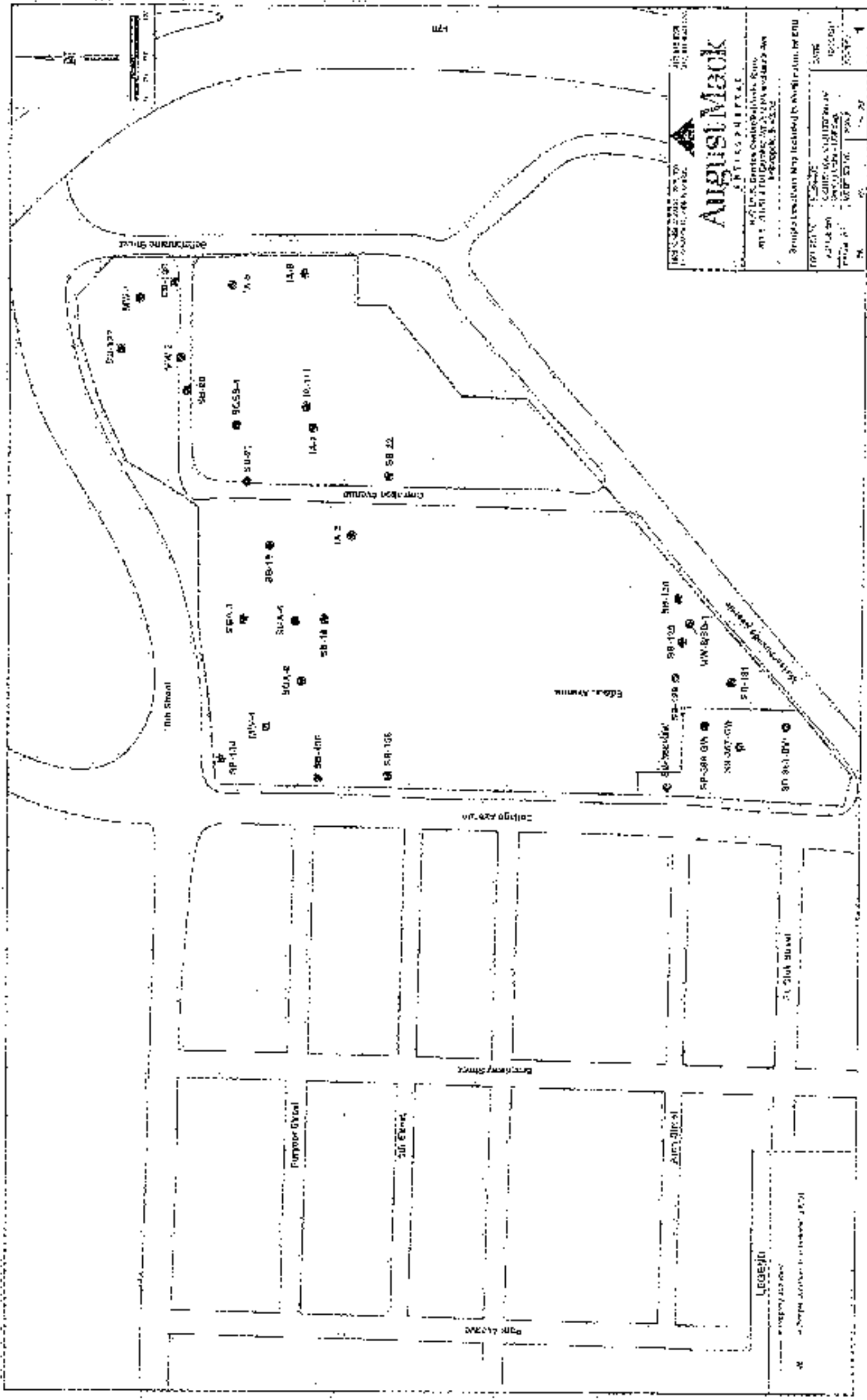


EXHIBIT D

**Site Map Depicting Sampling Locations at Which
COCs Were Detected on the Real Estate Above
Applicable IDEM RCG Screening Levels**





1850 22nd St. N.W.
 P.O. Box 10000
 Seattle, WA 98107

August Mack

1850 22nd St. N.W.
 P.O. Box 10000
 Seattle, WA 98107

2000 22nd St. N.W.
 P.O. Box 10000
 Seattle, WA 98107

2000 22nd St. N.W.
 P.O. Box 10000
 Seattle, WA 98107

2000 22nd St. N.W.
 P.O. Box 10000
 Seattle, WA 98107

Legend
 - Sample Address - 10000 1st St.