

COPY

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Deborah S. Stimpson
Adams County Recorder IN
Recorded as Presented



Cross Reference: Instrument Nos. 2012000035 and 2019002795

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("ERC") is made this 25th day of July, 2019, by 822 Dayton, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Adams, Indiana, which is located at 822 Dayton Street in Decatur 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 July 25, 2019, and recorded on July 25, 2019, as Deed Record 2019002795, in the Office of the Recorder of Adams County, Indiana. The Real Estate consists of approximately 6.89 acres and is identified by the State by parcel identification number 01-02-34-300-013.014. The Real Estate to which this Covenant applies is depicted on a map attached hereto as Exhibit "B".

WHEREAS: The Real Estate was subject to an ERC recorded on January 4, 2012 ("2012 ERC") (Instrument Number 2012000035) in conjunction with issuance of a Site Status Letter by the Indiana Department of Environmental Management ("IDEM" or the "Department") on November 30, 2011 ("2011 SSL"). The 2012 ERC established certain restrictions and/or obligations pertaining to use of the Real Estate to ensure the protection of public health, safety or welfare and the environment due to a release of hazardous substances and petroleum products relating to historical operations on the Real Estate (Brownfield Program Site #4070501).

WHEREAS: In conjunction with a request by the Owner for a Comfort Letter, the Indiana Brownfields Program ("Program") re-evaluated environmental conditions on the Real Estate under the currently applicable IDEM *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions) and determined that the restrictions in the 2012 ERC could be terminated and the 2012 ERC be replaced with this Covenant. Therefore, an agreement terminating the 2012 ERC ("ERC Termination Agreement") was executed by IDEM and the Owner and recorded in the Office of the Recorder of Adams County, Indiana on July 25, 2019 as instrument Number 2019002794.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as Exhibit "C", was prepared and issued by IDEM pursuant to the Program's recommendation at the request of the Owner to address the redevelopment potential of the Real Estate.

WHEREAS: The Comfort Letter, as approved by the Department, provides that naphthalene was detected in ground water on the Real Estate but will not pose an unacceptable risk to human health at the detected concentration provided that the land use restriction contained herein is implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment.

WHEREAS: Soil and ground water on the Real Estate were sampled for total petroleum hydrocarbons—gasoline range organics ("TPH-GRO"), TPH – extended range organics ("TPH-ERO"), semi-volatile organic compounds ("SVOCs"), volatile organic compounds ("VOCs"), polychlorinated biphenyls ("PCBs"), and/or priority pollutant list ("PPL") metals and barium. Investigations detected a naphthalene concentration in ground water above its residential tap ground water screening level ("Res TAP GWSL") established by IDEM's RCG. Ground water analytical results above applicable RCG screening levels are summarized on Table 1, attached hereto as Exhibit "D". A site map, attached hereto as "Exhibit E", depicts the sample location on the Real Estate at which the COC was detected in ground water above applicable RCG screening levels.

WHEREAS: With the recent issuance of the Comfort Letter, IDEM determined environmental conditions on the Real Estate satisfy conditional residential criteria under the current RCG since: 1) benzo(a)pyrene was detected below the current RCG residential direct contact screening level ("RDCSL"), 2) the calculated ProUCL concentrations of arsenic and benzene detected in soil on the Real Estate did not exceed their respective RDCSLs; and, 3) although a detected concentration of naphthalene in ground water on the Real Estate exceeds the Res TAP GWSL, the exposure pathway to ground water contamination detected on the Real Estate can be addressed through an institutional control. Therefore, environmental conditions on the Real Estate meet applicable conditional residential cleanup criteria in the RCG so long as the land use restriction required by this Covenant is 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, 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, 822 Dayton, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on 822 Dayton, LLC and all future owners:

I. RESTRICTION

1. Restriction. The Owner and all future owners:
 - a) 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. Restriction to Run with the Land. The restriction 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 July 25 2019, RECORDED IN THE OFFICE OF THE RECORDER OF ADAMS COUNTY ON _____, 2019, 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 restriction 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 Adams 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:
822 Dayton, LLC
906 North 10th Street
Decatur, IN 46804
ATTN: Keith Gerber

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

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

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

EXHIBIT A

Deed for the Real Estate

2019002795 WD \$25.00
07/25/2019 12:58:39P 3 PLS
Deborah S. Stimpson
Adams County Recorder IN
Recorded as Presented



Mail Tax Bills to:
822 Dayton, LLC
906 N. 10th Street
Decatur, IN 46733

Tax Key No. 01-02-34-300-018.000-014

WARRANTY DEED

THIS INDENTURE WITNESSETH, That CITY OF DECATUR, a Municipal Corporation, Adams County, Indiana, ("Grantor")

CONVEYS AND WARRANTS to 822 DAYTON, LLC, a Limited Liability Company, 906 N. 10th Street, Decatur, IN 46733 ("Grantee") of Adams County in the State of Indiana in consideration of One Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate in Adams County, in the State of Indiana:

Document Number 2014004550

Commencing at a point which is 8 chains and 99 links South of a point which is 18 chains and 31 links east of a stone at the Northwest corner of the Southwest Quarter of Section 34, Township 28 North, Range 14 East in Adams County, Indiana, thence running South on a line parallel with the West line of said Section 10 chains and 60 links; thence East to the line of the right of way of the Grand Rapids & Indiana Railroad, thence North along the West line of said right of way to the South line of Meibers Street in the City of Decatur when extended across said right of way, thence West on said line to the place of beginning.

Also:

Commencing at a point which is 8 chains and 23 links South of a stone in the center of the public highway 18 chains and 31 links East of a stone at the Northwest corner of the Southwest Quarter of Section 34, Township 28 North, Range 14 East; thence running South 76 links, thence East to the West line of right of way of the Cincinnati, Richmond and Fort Wayne Railroad (also known as the Grand Rapids & Indiana Railroad) thence North along the West line of said right of way 76 links, more or less to a point due East of the place of beginning; thence West to the place of beginning.

EXCEPT THEREFROM

Document Number 2010001322

A parcel of land located in the Southwest One-quarter of Section 34, Township 28 North, Range 14 East, Adams County, Indiana, more particularly described as follows:

COMMENCING at the Northeast corner of Lot #1 in Homewood Addition to the City of Decatur, recorded in Plat Book 2, page 119, Adams County Recorder's Office, said Northeast corner being on the South line of Meibers Street; thence North 88 degrees 44 minutes 57 seconds East (bearing based on true, astronomic North) along the Easterly extension of the South right-of-way line of Meibers Street, a distance of 238.52 feet to the point of beginning of the herein described lease area. BEGINNING at the above described point; thence continuing along the aforementioned Easterly extension, North 88 degrees 44 minutes 57 seconds East, a distance of 75.00 feet to the Westerly right-of-way of the Conrail Railroad right-of-way; thence along said Westerly right-of-way, South 11 degrees 06 minutes 15 seconds East, a distance of 90.74 feet; thence South 88 degrees 44 minutes 57 seconds West, a distance of 76.12 feet; thence North 46 degrees 15 minutes 03 seconds West, a distance of 20.37 feet; thence North 1

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE FOR
TRANSFER

JUL 25 2019

Mary B. Beery
AUDITOR ADAMS COUNTY

degree 15 minutes 03 seconds West, a distance of 75.00 feet to the point of beginning. Parcel contains 0.167 acres.

ALL OF THE ABOVE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Part of the Southwest Quarter of Section 34, Township 28 North, Range 14 East of the Second Principal Meridian, Root Township in Adams County, Indiana, based on an original survey by Brett R. Miller, Indiana Professional Surveyor Number 20300059 of Miller Land Surveying, Inc., Survey No. 07120595, dated June 26, 2019 and being more particularly described as follows:

Commencing at 1" bar marking the Northwest corner of said Southwest Quarter; thence North 88 degrees 17 minutes 20 seconds East (Indiana East SPC, 1983 bearing and basis of bearings to follow), a distance of 1208.46 feet (Deed - 18 chains 31 links) along the North line of said Southwest Quarter and within the right-of-way of Washington Street; thence South 00 degrees 04 minutes 29 seconds East, a distance of 542.92 feet (543.18 foot Deed - 8 chains 23 links) parallel with the West line of said Southwest Quarter to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set on the Easterly extension of the North right-of-way line of Meibers Street, said point also being the POINT OF BEGINNING of the herein described tract; thence continuing South 00 degrees 04 minutes 29 seconds East, a distance of 757.62 feet along the East lines of Lots numbered 1 through 15 in Homewood Addition as shown in Plat Book 2, Page 119 in the Office of the Recorder of Adams County, Indiana also being parallel with the West line of said Southwest Quarter to the North right-of-way line of Dayton Street, said point being referenced by a 5/8" steel rebar with a "Ford" identification cap found 0.64 feet North and 0.35 feet East; thence North 88 degrees 11 minutes 20 seconds East, a distance of 454.80 feet along said North right-of-way line to a 5/8" steel rebar with a "Ford" identification cap found on the West right-of-way line of the Conrail Railroad (AKA Grand Rapids & Indiana Railroad, Penn Central Railroad, Cincinnati Richmond & Fort Wayne Railroad, et. al.); thence North 11 degrees 28 minutes 08 seconds West, a distance of 626.70 feet along said West right-of-way line to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set on the South line of an existing 1.67 acre lease area described in Document Number 2010001322 in the Office of the Recorder of Adams County, Indiana; thence South 88 degrees 11 minutes 20 seconds West, a distance of 76.12 (Deed) feet along said South line to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set on the Southwesterly line of said lease area; thence North 46 degrees 35 minutes 44 seconds West, a distance of 20.37 feet (Deed) along said Southwesterly line to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set on the West line of said lease area; thence North 01 degrees 13 minutes 28 seconds West, a distance of 75.00 feet (Deed) along said West line to 5/8" steel rebar with a "Miller Firm #0095" identification cap set the North line of said lease area, also being the Easterly extension of the South right-of-way line of Meibers Street; thence North 88 degrees 11 minutes 20 seconds East, a distance of 74.48 feet (75.00 feet Deed) along said North line and along said Easterly extension to a 3" steel fence post found on the West right-of-way line of said Conrail Railroad; thence North 11 degrees 28 minutes 08 seconds West, a distance of 50.72 feet (50.16 feet Deed) along said right-of-way line to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set on the Easterly extension of the North right-of-way line of Meibers Street; thence South 88 degrees 11 minutes 20 seconds West, a distance of 302.97 feet along said Easterly extension to the Point of Beginning. Containing 6.420 acres, more or less. Subject to easements of record.

Subject to all easements, right-of-ways, covenants, restrictions and public roads of record.

Subject to all applicable zoning and subdivision control ordinances of record as well as all rules and regulations of any governmental agencies or regulatory bodies having jurisdiction over the above described real estate.

Subject to all real estate taxes and assessments.

The undersigned person(s) executing this deed represent(s) and certify (certifies) on behalf of the Grantor, that (each of) the undersigned is a duly elected officer of the Grantor and has been fully empowered by proper resolution, or the by-laws of the Grantor, to execute and deliver this deed; that the Grantor is a corporation in good standing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full corporate capacity to convey the real estate described; and that all necessary corporate action for the making of this conveyance has been duly taken.

EXECUTED this 25th day of July, 2019.

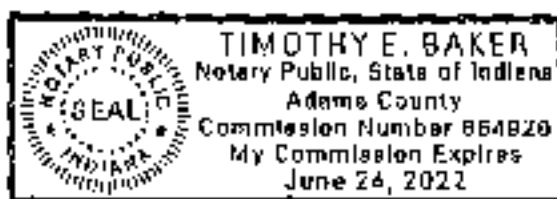
Kenneth L. Meyer
City of Decatur
By: Kenneth L. Meyer

STATE OF INDIANA
COUNTY OF ADAMS, SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 25th day of July, 2019, personally appeared Kenneth L. Meyer, Mayor for the City of Decatur, of legal age and acknowledged the execution of the foregoing deed. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My commission expires: June 24, 2022 (#654926)
Resident of Adams County

Signature Timothy E. Baker
Timothy E. Baker, Notary Public



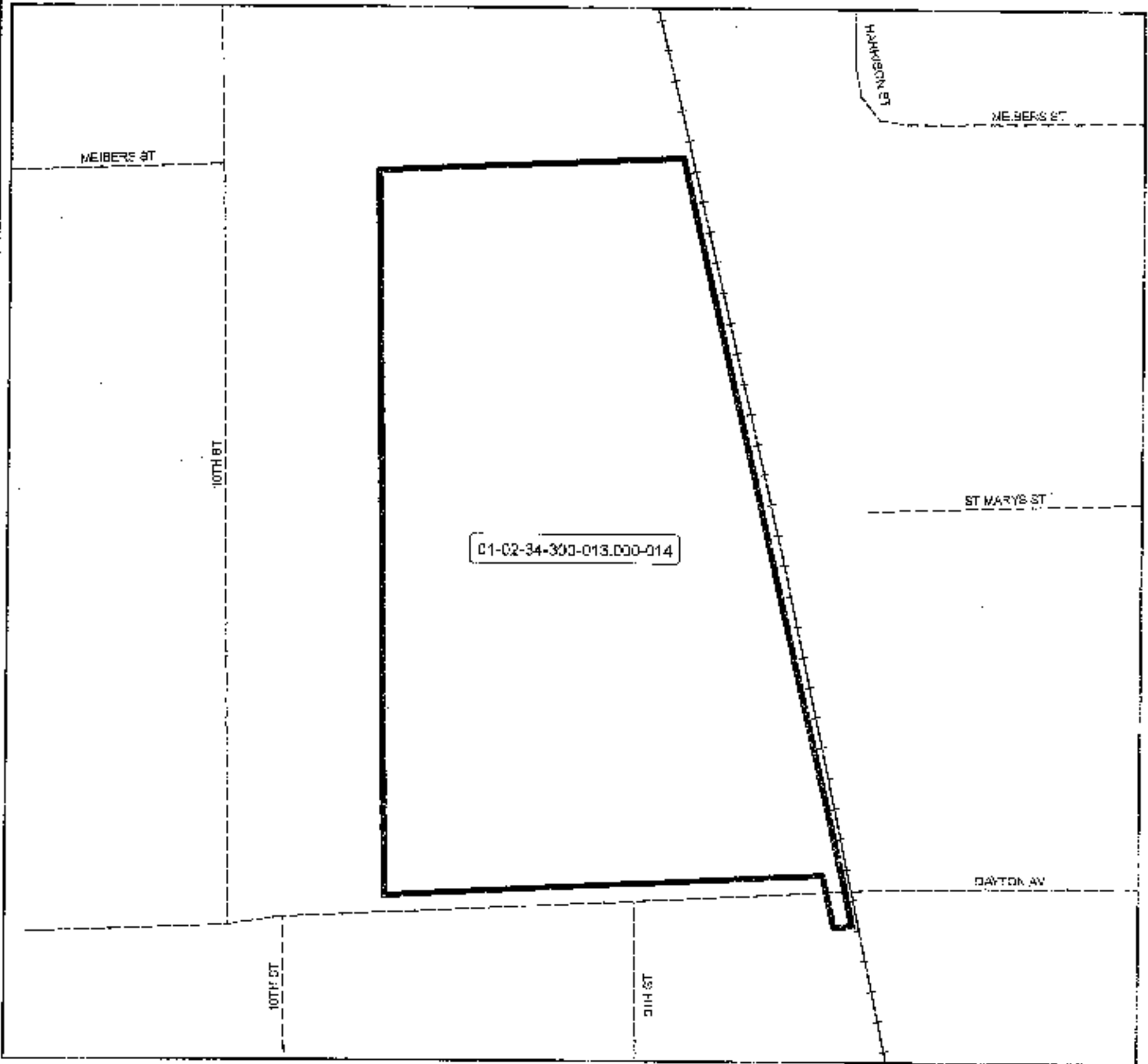
I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law, Timothy E. Baker.

*This instrument prepared by Timothy E. Baker, (#2534-01) Attorney At Law
DeVoss, Baker, Ainsworth & Razo, P.C., 147 South Second Street, P.O. Box 30, Decatur, Indiana 46733
Telephone 260-724-2129; Facsimile 260-724-4426.*

EXHIBIT B

Map of the Real Estate

Indiana Brownfields Program # 4070501 - Real Estate



01-02-34-300-013.000-014

Mapped By: Matt Curran, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, May 20, 2019


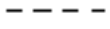

Deed Info: Instrument # 2007001983 Recorded 3/8/2007
Quitclaim Deed

Parcel ID: 01-02-34-300-013.000-014

PLSS Info: Section 34 T28N. R14E
Root Township
Adams County, Indiana

Property Info: 822 Dayton Street
Decatur 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.

	Real Estate
	Street
	Railroad

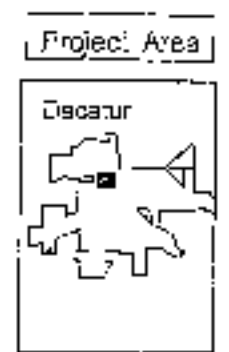
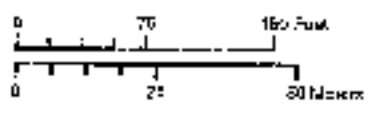
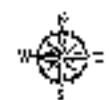


EXHIBIT C

Copy of Comfort Letter



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-9027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

June 5, 2019

Mr. Keith Gerber
822 Dayton, LLC
906 North 10th Street
Decatur, IN 46733

Re: **Bona Fide Prospective Purchaser
Comfort Letter**

Decatur Castings, Inc.
822 Dayton Street
Decatur, Adams County
UST FID #1517
incident #199106026
EPA ID # IND005081682
CERCLIS #INN000510201
Brownfield #4070501

Dear Mr. Gerber:

In response to the request by IWM Consulting Group, LLC (IWM) on behalf of 822 Dayton, LLC (822 Dayton or Prospective Purchaser) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 822 Dayton Street, Decatur (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 Prospective Purchaser must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-3(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Prospective Purchaser undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

Site Description and History

The 6.89-acre Site is one parcel identified by the State by parcel #01-02-34-300-013.000-014 and is currently vacant, with the southern portion of the Site covered by scrub vegetation and the northern portion mostly covered with dense native vegetation. A gravel parking lot is located on the far north-central portion, with a cell tower located near the northeastern corner of the Site. Asphalt drives were noted near the southwestern corner and the south-central portion of the Site.

The Site was occupied by a wrought iron and wire products manufacturer in the early 1900s and from the 1920s through the 1990s was occupied by Decatur Casting Company (Decatur Castings). Decatur Castings, a division of Hamilton Allied Corporation (aka Hamilton Foundry & Machine Co.), was a gray iron foundry that produced castings ranging from a few ounces to 200 pounds by melting of raw materials including: scrap steel, cast iron, and pig iron. The facility generated more than 1,200 pounds of D008 (lead) baghouse dust annually and the dust was reportedly disposed of at a permitted landfill during facility operations. After closure of the foundry in the 1990s, the Site operated as a recycling facility from 2005 until 2008, when the Site buildings were demolished. Commercial/industrial redevelopment of the property is expected to be undertaken by Hoosier Pattern, Inc. (Hoosier Pattern), a metal products machine shop and foundry pattern manufacturer, which operates a facility immediately north of the Site.

In April 1986, Decatur Castings notified IDEM of its intent to remove a 1,000-gallon underground storage tank (UST) from the southwestern portion of the Site. (No documents are available to the Program to confirm the removal of the UST). Incident #199105026 regarding the spill of 100 pounds of D006 (cadmium) and D008 waste on a concrete pad affecting an area of 300 square feet, which was contained, was reported to IDEM in June 1991. (No additional information regarding the spill is available to the Program for review). Prior to building demolition in February 2008, approximately 115 drums of unknown contents were removed by the Superfund Emergency Response Program of the United States Environmental Protection Agency (USEPA) as Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) #INN000510201. Additionally, approximately 270 tons of industrial solid and municipal waste found on the Site were removed and disposed by the city/county.

Site Status Letter

On November 30, 2011, IDEM issued the Adams County Commissioners a Site Status Letter (2011 SSL) and an Environmental Restrictive Covenant (ERC) (IDEM Virtual File Cabinet (VFC) Document #64211830) approving a conditional commercial/industrial closure of environmental conditions on the Site per the then-applicable IDEM Risk Integration System of Closure (RISC) Technical Resource

Guidance Document (February 15, 2001 and applicable revisions). On January 4, 2012, the ERC (2012 ERC) was recorded on the deed as instrument number 2012000035 (Document #64623968) in the Adams County Recorder's Office. The land use restrictions in the 2012 ERC include the following:

- Shall not use or allow the use of the Site for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- Shall not use ground water for consumption.
- Shall not use for agriculture unless agricultural plantings are placed in raised beds.

As discussed below, certain land use restrictions in the 2012 ERC are no longer necessary at the Site based on currently applicable closure screening criteria. An agreement to terminate the recorded ERC that has been approved by IDEM will need to be recorded by 822 Dayton upon its acquisition of the Site in order to remove the land use restrictions that are no longer applicable.

Due Diligence

As part of its December 2018 Comfort Letter request, 822 Dayton provided the Program with a *Phase I Environmental Site Assessment* dated October 16, 2018 (October 2018 Phase I ESA) (Document #82683355) and *Phase I Environmental Site Assessment Update* dated April 12, 2019 (April 2019 Phase I ESA Update) (Document # 82751694), both prepared for 822 Dayton by IWM. The October 2018 Phase I ESA and April 2019 Phase I ESA Update were conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312. In an effort for the Prospective Purchaser to qualify as a BFPP, Mr. Keith Gerber, representative of 822 Dayton, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The recognized environmental conditions (RECs) identified in the May 9, 2007 Phase I ESA (Document #27659335) were investigated and results are discussed in the November 2011 SSL & 2012 ERC, recorded on the deed for the Site. The October 2018 Phase I ESA and April 2019 Phase I ESA Update did not identify any new RECs associated with the Site, but identified the environmental conditions necessitating the land use restrictions in the recorded 2012 ERC as Controlled Recognized Environmental Conditions (CRECs):

- Operations relating to a ductile iron and gray iron foundry;
- The presence of foundry sand throughout the property;
- Dust from the baghouse;

- A gasoline UST located near the southwest corner of the building with no record of removal or closure report;
- Approximately 115 drums with unknown contents (removed from the Site);
- The use of oil-based core/mold releasing agents; and,
- Equipment pits with water in them.

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, IWM 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. Based on review of available regulatory database records, files of nearby release sites, historical documentation, and/or previous environmental investigation reports, IWM did not identify any potential vapor encroachment conditions (VECs) associated at the Site.

Technical Discussion

Since issuance of the 2011 SSL, IDEM closure screening levels have been updated through the *Remediation Closure Guide* (RCG) (March 22, 2012 and applicable revisions) from the residential and industrial default closure levels (RDCLs and IDCLs, respectively) previously established in IDEM's *Risk Integrated System of Closure (RISC) Technical Resource Guidance Document* (February 15, 2001 and applicable revisions). Therefore, IDEM reevaluated available analytical data for environmental conditions on the Site against currently applicable RCG screening levels in preparing this Comfort Letter. None of the concentrations of benzo(a)pyrene detected in soil samples exceed currently applicable RCG screening limits. To evaluate the statistical risk associated with the detected levels of arsenic and benzene in on-Site soil in 2011, sampling data were entered into the U.S. EPA's ProUCL 4.00.02 statistical software program. The ProUCL program output showed that the calculated 95% upper confidence level (UCL) for arsenic was 9.5 parts per million (ppm) which does not exceed the RCG RDCSL of 9.5 ppm. The calculated 95% UCL for benzene was 3.4 ppm, which is below the RCG RDCSL of 17 ppm. Refer to Table 1, attached, for individual soil sample results for arsenic and benzene above applicable RCG screening levels and their respective calculated 95% UCL concentrations. IDEM has, therefore, determined that benzo(a)pyrene, arsenic, and benzene concentrations detected in on-Site soil currently present no threat to human health or the environment.

Ground water samples collected from the Site prior to issuance of the 2011 SSL from seven permanent monitoring wells (MW-1 through MW-7) detected naphthalene at 11.7 parts per billion (ppb) in MW-1 which is above its RCG Res TAP GWSL of 1.7 ppb but below its Res VE GWSL of 110 ppb. All other results were below applicable RCG Res TAP GWSLs. Table 2, attached, documents contaminant concentrations in ground water detected above Res TAP GWSL. Although naphthalene was detected in ground

water in 2011 at a level that exceeds its Res TAP GWSL, IDEM can allow a conditional residential use of the Site under the current RCG screening levels as long the Owner complies with the land use restriction discussed under the *Institutional Control* section of this letter, below.

Liability Clarification

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

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

As discussed below, the Prospective Purchaser has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substances and/or petroleum provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

Bona Fide Prospective Purchaser

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

would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

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

To meet the statutory criteria for liability protection as a BFPF under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Prospective Purchaser will acquire the Site after January 11, 2002 (and June 30, 2009), and the disposal of hazardous substances and/or petroleum at the Site will have occurred prior to that date. See 42 U.S.C. § 9601(40) (A); IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Prospective Purchaser has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40) (B) (i). Furthermore, the Prospective Purchaser has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40) (H). Therefore, the Prospective Purchaser meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPF under 42 U.S.C. § 9601(40).

The continuing obligations the Prospective Purchaser 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(f), and 13-11-2-151(g), the continuing obligations the Prospective Purchaser

must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Prospective Purchaser recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Prospective Purchaser will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Prospective Purchaser must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

Reasonable Steps

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Prospective Purchaser to undertake with respect to the hazardous substances and/or petroleum 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:

- Execute and record the enclosed *Termination of Environmental Restrictive Covenant* terminating the recorded January 2012 ERC (Instrument #2012000035).
- Implement and maintain the land use restriction required by this letter.
- Any soil removed, excavated, or disturbed on the Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance 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 the 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

As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Prospective Purchaser must terminate the 2012 ERC, and record and abide by the land use restriction in the enclosed Replacement ERC, which is summarized below:

- Not use or allow the use or extraction of ground water at the Site for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that ground water may be extracted in conjunction with environmental investigation and/or remediation activities

Conclusion

IDEM encourages the commercial/industrial 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 Prospective Purchaser must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status.

This letter shall not be construed as limiting the Prospective Purchaser's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Prospective Purchaser that are required to maintain the status of BFPP. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site, and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Prospective Purchaser,

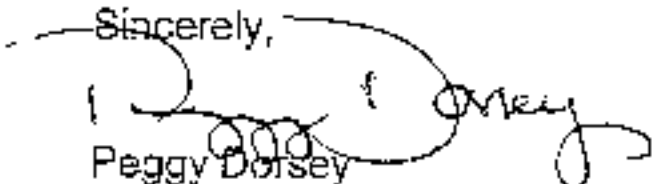
then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Prospective Purchaser result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. In addition, if any acts or omission by the Prospective Purchaser exacerbates the contamination at the Site, or if the Prospective Purchaser does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Prospective Purchaser would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. Furthermore, this letter does not constitute an assurance that the Site is safe for any particular use. Please be advised that any work performed at the Site must be done in accordance with all applicable environmental laws.

In order for IDEM to consider this letter effective, a Termination of Environmental Restrictive Covenant, executed by IDEM and notarized, and a Replacement ERC have been enclosed with this letter. The Termination of the 2012 ERC and the Replacement ERC must be recorded on the deed for the Site in the Adams County Recorder's Office in order for IDEM to consider this letter effective. Please return a certified copy of each of the filed documents to the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Ken Coad

IDEM is pleased to assist 822 Dayton, LLC with this commercial redevelopment project. Should you have any questions or comments, please contact Ken Coad at (317) 233-8409. He can also be reached via email at: kcoad@ifa.in.gov.

Sincerely,


Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Attachments

cc: Patricia Polston, U.S. EPA Region 5 (electronic copy)
Linda Mangrum, U.S. EPA Region 5 (electronic copy)
Meredith Gramelspacher, Indiana Brownfields Program (electronic copy)
Ken Coad, Indiana Brownfields Program (electronic copy)
Greg Scarpone, IWM Consulting Group, LLC (electronic copy)

Table 1
Decatur Castings, Inc. – Decatur #4070501
Soil Concentrations Above Applicable RCG Screening Levels

Sample ID	Sample Date	Depth (feet bgs)	Contaminant Concentrations in parts per million (ppm)	
			Arsenic	Benzene
B-2	2/2009	6-8	<2	31.7
B-12		0-2	20	<0.007
B-16		0-2	22	<0.005
B-17		2-4	17	<0.034
B-18		0-2	15	<0.008
B-22	6/2011	2-4	12	NA
B-24		6-8	10	
B-37		6-8	10	
Calculated ProUCL Results			9.5	3.4
RDCSL			9.5	17
IDCSL			30	51

Notes: **bold** = above Residential Direct Contact Screening Level
italic = above Industrial Direct Contact Screening Level
 bgs = below ground surface
 NA = not analyzed
 ProUCL = USEPA ProUCL is a statistical software program that calculates a 95% upper confidence limit for detected arsenic and benzene concentrations.

Table 2
Decatur Castings, Inc. – Decatur #4070501
2011 Ground Water Concentrations
Above Applicable Screening Levels

Sample ID	Contaminant Concentration in parts per billion (ppb)
	Naphthalene
MW-1	11.7
Res TAP GWSL	1.7

Notes: **bold** = above Residential Tap Ground Water Screening Level

EXHIBIT D

TABLE 1

Decatur Castings, Decatur – BFD #4070501
**2011 Ground Water Concentrations
Above Applicable IDEM RCG Screening Levels**

Table 1
Decatur Castings, Inc. – Decatur #4070501
2011 Ground Water Concentrations
Above Applicable RCG Screening Levels

Sample ID	Contaminant Concentration in parts per billion (ppb)
	Naphthalene
MW-1	11.7
Res TAP GWSL	1.7

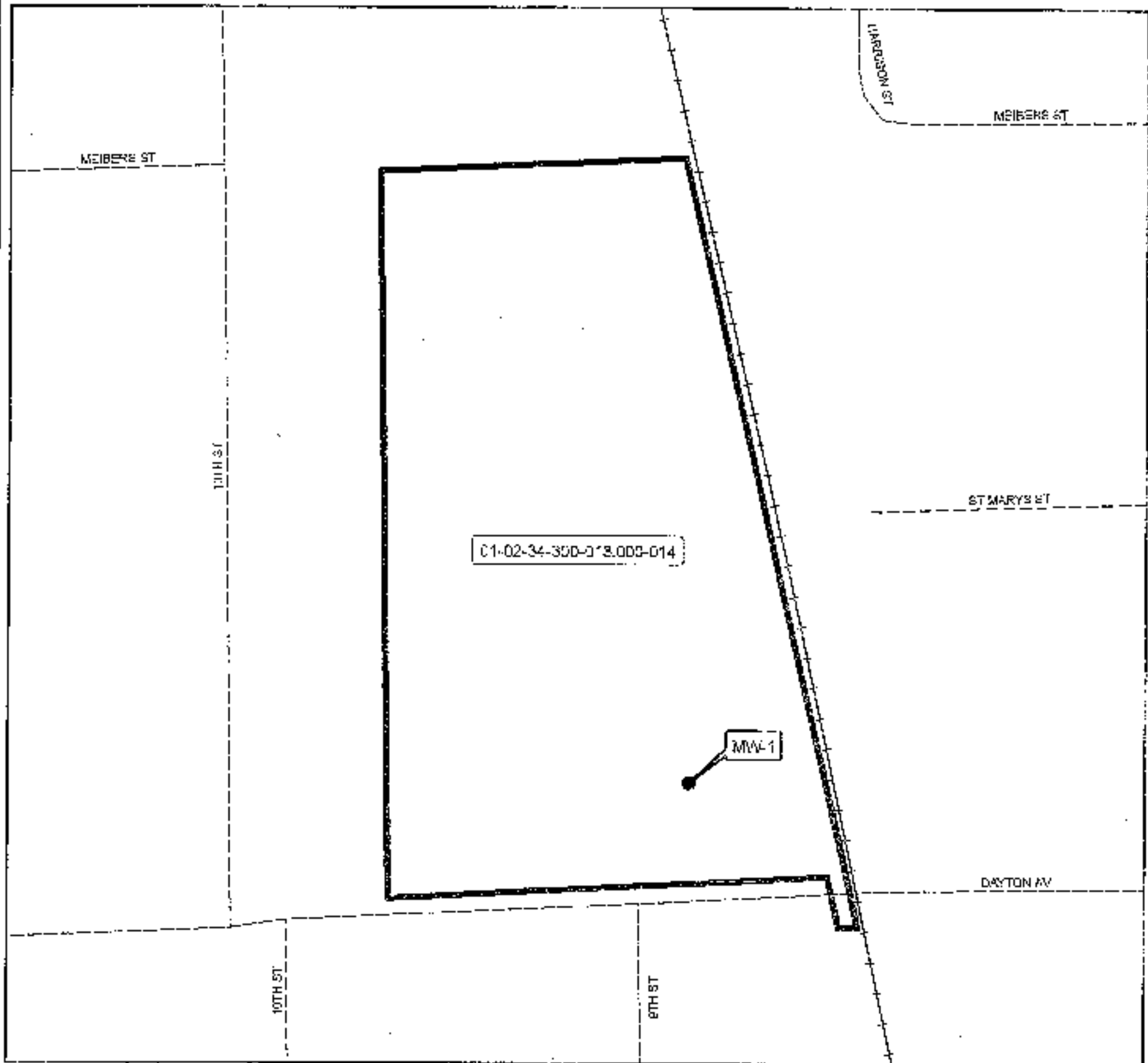
Notes: **bold** = above Residential Tap Ground Water Screening Level

EXHIBIT E

Decatur Castings, Inc. – Decatur #4070501 **Site Map Depicting Sampling Locations at Which** **COCs Were Detected Above Applicable IDEM**

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.

Indiana Brownfields Program # 4070501 - Sample Location



Mapped By: Matt Carrales, IDEM, Office of Land Quality Science Services Branch, Engineering & GIS Services, May 20, 2019

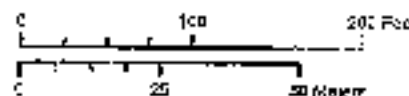
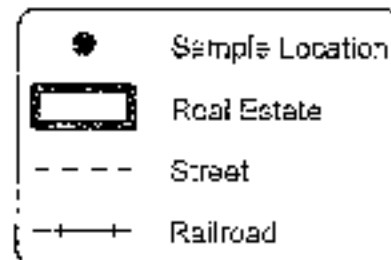
Sample Info: Sample location based on provided 'Site Map'

Parcel ID: 01-02-34-300-013.000-014

PLSS Info: Section 34, T28N, R14E
Rec: Township
Adams County, Indiana

Property Info: 822 Dayton Street
Decatur, IN

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



Adams County



Project Area

