

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 8 day of September, 2020, by Commerce Center Development, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of St. Joseph, Indiana, which is located at 401 E. Colfax Avenue in South Bend 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 January 27, 2015, and recorded on February 2, 2015, as Deed Record 1502288, in the Office of the Recorder of St. Joseph County, Indiana. The Real Estate consists of approximately 2.143 acres and partially comprises property that is identified by the State by parcel identification number 71-08-12-129-011.000-026. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of the Owner to address the redevelopment potential of the Real Estate, a portion of which is a brownfield site resulting from a release of hazardous substances relating to historical operations on or in the vicinity of the Real Estate, Program site number BFD #4191106.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in soil and groundwater on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are lead and arsenic in soil and groundwater.

WHEREAS: Soil and groundwater on the Real Estate were sampled for volatile organic compounds ("VOCs"), polycyclic aromatic hydrocarbons ("PAHs"), total and dissolved resource conservation and recovery act ("RCRA") metals, hexavalent chromium, ethylene dibromide ("EDB"), and polychlorinated biphenyls ("PCBs"). Investigations detected levels of lead and arsenic in soil and groundwater above levels established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions). Soil sample analytical results detected arsenic and lead above their respective residential direct contact screening levels ("RDCSLs"), but below their respective commercial/industrial direct contact screening levels ("IDCSLs"). Dissolved arsenic was detected in groundwater at levels above its Res TAP GWSLs in multiple samples and dissolved lead was detected in groundwater in sample SB-4 GW. Soil and groundwater analytical results above applicable RCG screening levels are summarized on Tables 1 and 2, attached hereto as **Exhibit "D"**. A site map, attached hereto as "**Exhibit E**", depicts sample locations on the Real Estate at which the COCs were detected in soil and groundwater above applicable RCG screening levels.

WHEREAS: Environmental work on the Real Estate is ongoing under the oversight of IDEM's State Cleanup Program because of the contamination detected in soil and groundwater and was assigned site #0000884.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the *Remediation Closure Guide*. The Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for conditional residential use.

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

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

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:

- (a) Shall prohibit any activity on the affected area ("Affected Area") on the Real Estate, depicted on **Exhibit "F"**, attached hereto, that interferes with any ongoing response activities, long-term groundwater monitoring, or measures necessary to assure the effectiveness and integrity of any response action or engineering control, or component thereof, implemented at the Real Estate.
- (b) Shall neither engage in nor allow drilling or excavation of soil during any residential construction on the Affected Area of the Real Estate without first submitting a soil management plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from the Affected Area of the Real Estate during any residential construction must be conducted in accordance with a Department-approved soil management plan, including all applicable requirements of IOSHA/OSHA.
 - i. Soil in any area on the Affected Area of the Real Estate on which standalone single-family or duplex residential housing will be constructed must be sampled down to 10 feet below ground surface ("bgs"). Any soil determined through such sampling to be contaminated above applicable RCG residential screening levels must be excavated, leaving only soil that meets RCG RDCSLs in place.
 - ii. Shall restore soil disturbed as a result of excavation and construction activities during any residential construction on the Affected Area of the

Real Estate in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels).

- iii. Any soil that is removed, excavated or disturbed on the Affected Area of the Real Estate during any construction must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- (c) Shall not use or allow the use or extraction of groundwater on the Affected Area of 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 groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (d) If contaminated soil is not removed from the Affected Area of the Real Estate, install a two-foot clean (constituents not exceeding RCG residential direct contact screening levels) soil and vegetative barrier in areas not covered by buildings, parking lots, or sidewalks and maintain their integrity. Buildings, parking lots, sidewalks, and soil capped areas will serve as engineered barriers to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair without replacement by a barrier that will provide equal or better protection, unless it can be demonstrated to IDEM that the underlying contaminated soil has been remediated to RCG RDCSLs.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable

times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.

5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

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

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 15-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that

contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.

10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of St. Joseph 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:

Commerce Center Development, LLC
401 E. Colfax Avenue, Suite 277
South Bend, IN 46617

David Matthews

To Department:

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

Any party may change its address or the individual to whose attention a

notice is to be sent by giving written notice in compliance with this paragraph.

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

PROOF BY A DISINTERESTED WITNESS

EXECUTED AND DELIVERED in my presence:

Zachary Braswell

Witness's Signature

Witness: Zachary Braswell

Witness's Printed Name

STATE OF Indiana)

) SS:

COUNTY OF St. Joseph)

Before me, a Notary Public in and for said County and State, personally appeared Zach Braswell [Witness's Name], being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by David Mathews [Grantor's or other Signer's Name] in the above-named subscribing witness's presence, and that the above-named subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this 8th day of September, 2020.



Bridget Beattie
Brigid Beattie, Notary Public

Residing in St. Joseph County, IN

My Commission Expires: 7/7/2024

This instrument prepared by: DAVID MATHEWS

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.

DAVID MATHEWS (Printed Name of Declarant)

EXHIBIT A

Special Warranty Deed to the Real Estate

10

HOLD FOR MERIDIAN TITLE CORP

Com-5B

Transfer 5/16

Taxing Unit SB

Date 2-2-15



1502286

RECORDED AS PRESENTED ON

02/02/2015 01:01:50:04

FILED G. 901504

ST. JOSEPH COUNTY

RECORDED

2/2/2015 12:24:00

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that GRE CT 21 OTHER LLC, a Delaware limited liability company ("Grantor"), CONVEYS AND SPECIALLY WARRANTS to COMMERCE CENTER DEVELOPMENT, LLC, an Indiana limited liability company, having a post office address of 121 S. Niles Ave., South Bend, IN 46617 (hereinafter "Grantee"), for the sum of Ten Dollars (\$10,00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the real estate, including the improvements created thereon, in St. Joseph County, in the State of Indiana, which is more particularly described in Exhibit A attached hereto (the "Property").

This conveyance is made subject to any and all liens, easements, encumbrances, agreements, restrictions, conditions, limitations, zoning ordinances, roadways, rights of way, and highways and matters of record; and further subject to the taxes due and payable, and all subsequent taxes and assessments.

The warranties of Grantor hereunder are limited to its own acts and deeds and those of persons claiming by, through and under Grantor, and not otherwise, and such warranty is subject to the exceptions to title set forth herein.

Grantor represents that the person executing this deed on behalf of Grantor is fully empowered, to execute and deliver this deed; that Grantor has full capacity to convey the Property; and that all necessary action for the making of such conveyance has been taken and done.

[SIGNATURES ON FOLLOWING PAGE]

Parcels:

71-08-12-129-002,000-026 / 018-5003-006001

71-08-12-129-001,000-026 / 018-5003-0059

71-08-12-129-011,000-026 / 018-5003-0066

Grantee's address
121 S. Niles Ave.
So. Bend, IN 46617

Mail taxes to:

PO BOX 338

Notre Dame, IN 46556

Attn: David M. Matthews

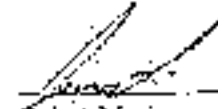
M-REUS (B)

1054764-01-00
571,570-0054011-26-15/2014

DULY ENTERED FOR TAXATION
ST. JOSEPH CO. INDIANA

IN WITNESS WHEREOF, Grantor has caused this deed to be executed and delivered as
of the 27th day of January, 2015.

CRB CT 21 OTHER LLC,
a Delaware limited liability company

By:  Jason Keith
Print Name: Jason Keith
Print Title: Authorized Signatory
Authorized Signatory

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ILLINOIS
County of COOK

FOR CRE CT 21 OTHER LLC

On 1/27/15, before me, JOSIE VOIT
(name of notary)

Notary Public, personally appeared JASON KEITH Authorized Signatory
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

(Seal)



My Commission Expires:
9/20/2019

My County of Residence is:
COOK

Send Tax Statements to:

Commerce Center Development, LLC
121 S. Niles Ave.
South Bend, IN 46617
Attn: David M. Matthews
PO Box 338
Notre Dame, IN
46550

Return Deed to:

Commerce Center Development, LLC
121 S. Niles Ave.
South Bend, IN 46617
Attn: David M. Matthews

This instrument prepared by Nathan T. Danielson, Bose McKinney & Evans J.L.P.,
111 Monument Circle, Suite 2700, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Nathan T. Danielson

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of South Bend, County of St. Joseph, State of Indiana, described as follows:

PARCEL I: The North 65.00 feet of Lot Numbered Fourteen (14) as shown on the recorded Plat of the Original Plat of the Town of Lowell as recorded in the Office of the Recorder of St. Joseph County, Indiana, EXCEPTING the East 26.5 feet thereof.

PARCEL II: A lot or parcel of land 65.00 feet in length North and South taken off of and from the entire width of the North end of Lot Numbered Fifteen (15) as shown on the recorded Plat of the Original Plat of the Town of Lowell, now a part of the City of South Bend, St. Joseph County, Indiana, EXCEPTING THEREFROM a strip of land 2 feet in width, East and West, taken off of and from the entire East end thereof.

PARCEL III: A strip of land 2 feet in width, East and West, taken off of and from the East side of the North 65 feet of Lot Numbered Fifteen (15) as shown on the recorded Plat of the Original Plat of the Town of Lowell, now a part of the City of South Bend, St. Joseph County, Indiana.

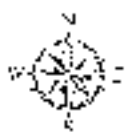
PARCEL IV: Lots Numbered nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23) and Twenty-four (24) as shown on the recorded Plat of the Original Plat of the Town of Lowell, now a part of the City of South Bend, St. Joseph County, Indiana, ALSO, the following vacated alley: Beginning at the Northwest corner of said Lot Numbered Twenty-two (22); thence East on the North line of said Lot Numbered Twenty-two (22), to the Northeast corner of said lot; thence North to the Southeast corner of said Lot Numbered Twenty-one (21) to the Southwest corner of said Lot Numbered Twenty-one (21); thence South 14 feet to the place of beginning. Together with the East 22 feet of vacated Bridge Street lying South of the South line of LeSalle Street and North of the North line of Colfax Avenue, in St. Joseph County, Indiana.

PARCEL V: A non-exclusive Easement as set out in a Special Warranty Deed by and between Indiana S. Michigan Electric Company, an Indiana corporation and East Bank Center, an Indiana partnership recorded September 29, 1980 as Document Number 8613929 in the Office of the Recorder of St. Joseph County, Indiana.

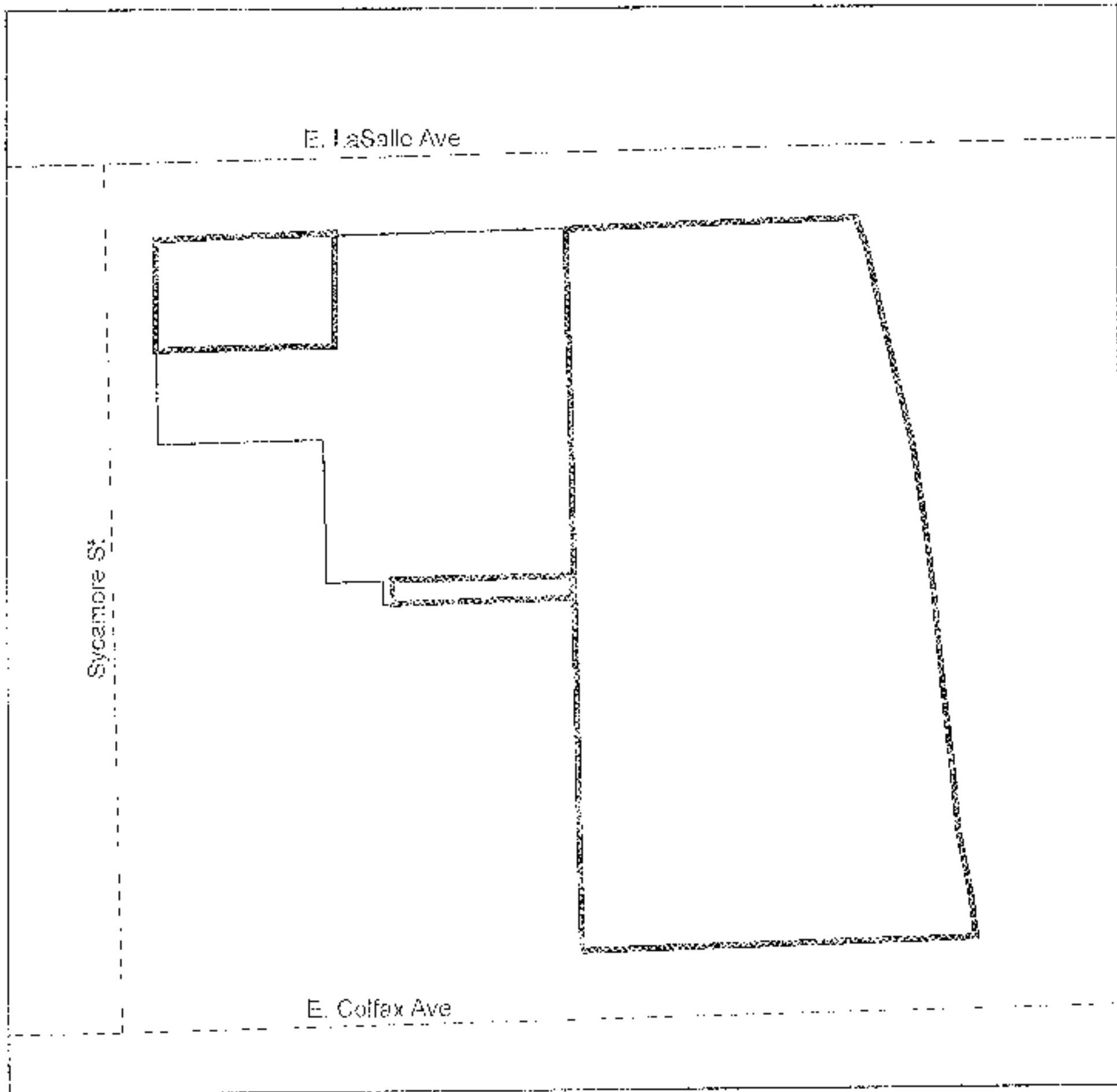
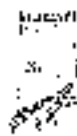
Property Address: 401 East Colfax Avenue, South Bend, IN 46617

EXHIBIT B

Map of the Real Estate



Indiana Brownsfields Program # 4191106 Real Estate Map



Deed Info: Social Warranty Deed, Recorded 2/2/2015, Instrument # 1502285

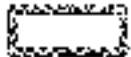
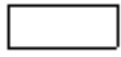
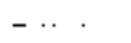
Source: Phase I Environmental Site Assessment prepared by Heartland Environmental Associates, Inc. (HEA), dated December 15, 2014 (VFC # 82874492, page 45)



Parcel ID: Portion of # 71-08-12-20-011,000-023 (401 East Colfax Ave, South Bend, IN)

PLSS Info: Section 12, T37N, R2E, Portage Township, St. Joseph County, Indiana

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

Mapred By: KAV, JEM, April 15, 2020

 Real Estate  Parcel
 Street

 Project Area  St. Joseph County

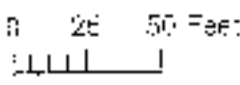
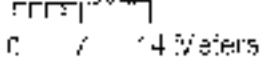



EXHIBIT C

Copy of Comfort Letter



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(502) 451-9027 • (317) 232-8603 • www.idem.in.gov

Eric J. Hecomb
Governor

Frank Pigott
Commissioner

April 22, 2020

David Matthews
Commerce Center Development, LLC
401 E. Colfax Avenue, Suite 277
South Bend, IN 46317

Re: **Comfort Letter**
Bona Fide Prospective Purchaser
East Bank Flats
401 E. Colfax Avenue
South Bend, St. Joseph County
State Cleanup #0000884
Brownfield #4191106

Dear Mr. Matthews:

In response to the request by August Mack Environmental, Inc. (August Mack) on behalf of Commerce Center Development, LLC (Commerce Center Development or Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 401 E. Colfax Avenue, South Bend (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Owner must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(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 1.96 acre Site is the eastern lot of four parcels of land that comprise property identified by the State as parcel #71-06-12-129-011.000-026. The Site is developed with a four-story office building constructed in approximately 1893, with asphalt parking lots



on the remainder of the Site. The Site and two other parcels of land were acquired by the Owner in 2015. In 2018, the additional property located in between the parcels acquired in 2015 was acquired and combined with the property acquired in 2015. Parcel #71-08-12-129-011.000-026 was then re-platted to encompass all four parcels. (See the enclosed parcel map depicting the Site and the additional off-Site properties that comprise Parcel #71-08-12-129-011.000-026).

The Site was initially developed with residential dwellings and the Winkler Brothers Wagon & Carriage Company (Winkler Brothers) which operated on the Site from 1885 through 1891. Winkler Brothers operations included coal and lumber sheds, a blacksmith, paint shop, a repository, stockroom, and repair shops. The South Bend Electric Company operated on the Site and the off-Site northwestern portion, from 1893 until 1917. A Michigan Central Rail Road railway, the Indiana & Michigan Electric Power Plant, residences and light commercial businesses occupied the Site between 1917 and 1980. Operations at the Indiana & Michigan Electric Power Plant between 1917 and 1980 included a coal pile located north of the on-Site building and generator room. The off-Site northwestern portion of the larger parcel historically contained generators, generating stokers, transformers, a large coal storage yard, and five drywells. An auto repair shop, that contained a paint spraying room at its southwestern corner, also operated off-Site on the northwestern portion of the parcel between 1949 and 1980 and was demolished between 1998 and 2005. There are no current redevelopment plans for the Site.

Properties surrounding the Site include E. LaSalle Avenue and multi-family residences to the north; property on which an auto repair shop historically operated to the northwest;¹ the east face of the St. Joseph River, the East Bank Trail, and a commercial office building to the east; E. Colfax Avenue, a multi-family residential building, and vacant lot to the south; two former gasoline stations (440 E. Colfax and 501 E. Colfax Avenue) to the southeast; and, an electrical substation, an art studio (former gasoline station), and Sycamore Street to the west.

The Site is located in a designated Opportunity Zone which allows for preferential tax treatment of eligible investments designed to spur economic development and job creation in distressed communities.

Due Diligence

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment* dated December 15, 2014 (December 2014 Phase I ESA) prepared for Commerce Center Redevelopment, LLC and Centier Bank by Heartland Environmental Associates, Inc. (Heartland) (IDEM Virtual File Cabinet (VFC)

¹ This property, which is currently being redeveloped with a four-story multi-tenant building over a parking garage, is owned by the Owner but is not part of the Site for purposes of this letter because it was outside the scope of the Phase I Environmental Assessment.

Document #82874492, page 46). The December 2014 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 BFFP, David Matthews, Member with Commerce Center Development, LLC, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

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

- South Bend Electric Company and the Indiana & Michigan Electric Company historically operated at the Site, generating electricity and providing service from at least 1901 through 1975. During electric company operations several generators, generating stokers, transformers, and a large coal storage yard were located on-Site. Electricity generation represents a REC.
- At least 10 drywells were observed on-Site, located on the adjoining parking lots to the north and west of the Site building. The installation and depths of the drywells are unknown. A majority of the drywells are located in the direct vicinity of the former coal storage yard, historically present in the northern portion of the Site, and represents a REC.

In addition to the above-noted RECs, the December 2014 Phase I ESA identified the following business environmental risk (BER) associated with the Site:

- During the Site inspection, asbestos containing materials (ACM) in the form of potential thermal systems insulation (TSI) pipe wrapping, former boiler materials, drywall, plaster, and resilient vinyl flooring materials, and associated mastics were observed.

Heartland defined the following Site condition as a de minimis condition in its December 2014 Phase I ESA; however, IDEM would characterize it as a REC:

- A former transformer room was observed in the basement of the Site building. Oil staining on the concrete floors was observed in the former area of the transformers. Sampling was not conducted in the area of the staining and the extent of the staining is unknown. Polychlorinated Biphenyls (PCBs) contaminants are commonly detected in transformer oil and staining indicates a possible release; therefore, IDEM considers the staining to be a REC.

Pursuant to ASTM E2656-10 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, Heartland 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 groundwater either on or near the Site. Heartland did not identify any potential vapor encroachment conditions (VECs) associated with the Site.

State Cleanup Program

In September 2013, lead and arsenic were detected in groundwater at the Site during an investigation conducted on behalf of a bank potentially issuing financing for the Site. A release was reported to IDEM and assigned #0000884 by IDEM's State Cleanup Program (SCP). On July 24, 2019, the SCP issued a Notice of Liability letter to Commerce Center Development, LLC and Indiana Michigan Power Company (I&M) and requested information regarding historical ownership and operations at the Site. On October 25, 2019, a former property owner, American Electric Power on behalf of I&M, provided responses to IDEM's request for information (Document #82853332).

Historical Environmental Conditions

Phase I Environmental Site Assessment -- January 2006

A Phase I FSA dated January 23, 2006 (Document #82874492, page 482) was completed for the eastern portion of the Site for CB Richard Ellis and Fifth Third Bank and identified the following RECs:

- An electric company operated on the Site from 1901 to 1978, this type of business historically has contaminated soil and groundwater associated with its operations. Potential contaminants associated with this type of business include PCBs, chlorinated compounds, metals, phthalates, carbon disulfide, and others. Potential for subsurface contamination from historical power plant operations represents a REC.
- During the inspection, five drywells were identified on-Site. Two drywells were located on the northern portion of the parking lot along LaSalle Avenue, one was located on the southwestern portion of the back parking lot, one in the parking lot adjacent to the property to the west, and one in the parking lot associated with the property to the west. Automotive oil, lubricants, and other chemicals found on the parking lots can enter the drywells during periods of precipitation and cause subsurface soil and groundwater contamination. Therefore, the drywells are considered a REC.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents. These documents may be viewed electronically by searching

online by the noted document number in IDEM's VFC accessible through IDEM's website.

- *Phase I Environmental Site Assessment*, (July 2013 Phase I ESA) dated July 29, 2013, prepared by AEI Consultants (AEI) (Document #82874492, page 500)
- *Limited Phase II Subsurface Investigation* (Limited Phase II - October 2013), dated October 8, 2013, prepared by AEI (Document #82874492, page 508)
- *Supplemental Limited Phase II Environmental Site Assessment* (Supplemental Phase II - May 2019), dated May 8, 2019, prepared by Dominion Due Diligence Group (Dominion) (Document #82874492, Page 892)
- *Phase I Environmental Site Assessment* (Phase I ESA - May 2019), dated May 22, 2019, prepared by Dominion (Document #82874492, page 698)

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); and, soil samples collected between 0 and 18 feet bgs were compared to the excavation worker direct contact screening levels (EX DCSLs). 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. Groundwater samples were compared to residential tap groundwater screening levels (Res TAP GWSLs) and residential vapor exposure groundwater screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure groundwater screening levels (Indus VE GWSLs).

Phase I ESA - July 2013

The July 2013 Phase I ESA prepared for One West Bank - SB identified the following REC's associated with the Site:

- Electricity and steam heat were produced on the Site for at least 87 years and relatively little is known about the specific nature of these operations. It appears that the several coal rooms and coal ovens were located on the Site between 1893 and 1980. A large coal pile occupied the northern half of the Site between 1917 and 1980. Six boilers were used to produce electricity and four smoke stacks located on top of the power plant building vented fumes from the burning of coal. Coal storage and the likely presence of coal ash represents a REC.
- Ten drywells in the asphalt parking lots north and northwest of the property building were used for storm water drainage of the parking area. Drywells can act as conduits and preferential pathways for contaminants to enter the subsurface in waste streams and represent a REC.

AEI defined the following Site condition as a de minimis condition in its July 2013 Phase I ESA; however, IDEM would characterize it as a REC associated with the Site:

- Oil staining was observed on several unused transformers in the former transformer room in the basement.

The July 2013 Phase I ESA identifies the following BERs associated with the Site:

- Due to the age of the site building, there is potential for the presence of ACMs and/or lead-based paint (LBP).
- The significant presence of mold was identified within the building during the Site inspection. Damaged ceiling tiles and standing water were observed in multiple locations throughout the basement.
- Potentially high radon levels on the Site are not expected to represent a significant health concern to the occupants working in the building; however, sampling would be necessary to determine Site-specific radon conditions.
- Properties surrounding the Site were historically utilized for industrial purposes or utilized hazardous materials and operated during a time period when the oversight of hazardous materials was limited. According to the Site contact, dewatering activities are conducted at the Site via two sumps located in the building basement. Based on the presence of the nearby St. Joseph River and the historical industrial nature of the surrounding properties, dewatering activities at the Site represent a BER.
- The Site building is equipped with two hydraulic elevators. Based on the pre-1978 construction date of the building, potential exists for the hydraulic fluid within the elevator systems to contain PCBs. During the inspection, the elevators were not functional or accessible and are, therefore, not maintained. Based on the age of the building and inaccessibility of the mechanical room or elevator pits, the hydraulic elevators are considered a BER.

Limited Phase II – October 2013

In September 2013, a Limited Phase II investigation was completed for One West FSB. As part of the Phase II investigation, nine borings (EC-1 through EC-9) were advanced on-Site in the vicinity of the drywells, west of elevators at the northeast corner of the building, and at the corners of the parking lot for the collection of soil and groundwater samples. Soil borings were advanced to a maximum depth of 32 feet bgs. Temporary monitoring wells were constructed in four of the soil borings (EC-1W, EC-3W, EC-5W and EC-9W).

Nine soil and four groundwater samples were collected for analysis of some or all of the following: volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), total and dissolved Resource Conservation and Recovery Act (RCRA) metals and PCBs. Six of the collected soil samples were collected from depths

greater than 10 feet bgs and detected contaminant levels were below their respective EX DCSLs. Dissolved arsenic was detected in groundwater at levels above its Res TAP GWSL in multiple samples. No other constituents analyzed in soil and/or groundwater were detected at levels above applicable RCG screening levels. Refer to Table 1, below, for a summary of groundwater analytical data above applicable RCG screening levels.

**TABLE 1
 2013 and 2019 Groundwater Concentrations Exceeding
 Applicable IDEM RCG Screening Levels**

Sample		Contaminants and Concentrations (parts per billion (ppb))	
ID	Date	Dissolved Arsenic	Dissolved Lead
EC-1W	2013	14	15
EC-3W		12	15
EC-5W		19	15
SB-4 GW	2019	NA	20.2
Res TAP GWSL		10	15
Res VE GWSL		NE	
Indus VE GWSL		NE	

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level
 NE = not established
 NA = not analyzed

Supplemental Phase II – May 2019

In April 2019, on behalf of Midland State Bank, three soil borings were advanced on-Site (SB-2 through SB-4) and one boring off-Site (SB-1) to a maximum depth of 17 feet bgs. A temporary monitoring well was constructed in each boring. Eight soil and four groundwater samples were collected for analysis of some or all of the following: VOCs, PAHs, RCRA metals (total), hexavalent chromium, ethylene dibromide (EDB) and lead.

Soil sample analytical results detected arsenic and lead above their respective RDCSLs, but below their respective LDCSLs. Groundwater sample analytical results detected lead above its Res TAP GWSL in SB-4. No other constituents analyzed in soil and groundwater were detected at levels above applicable RCG screening levels. Refer to Table 2, below, for a summary of soil analytical data above applicable RCG screening levels. Refer to Table 1, above, for a summary of groundwater analytical data above applicable RCG screening levels.

TABLE 2
April 2019 Soil Concentrations Exceeding Applicable IDEM RCG Screening Levels

Sample		Contaminants and Concentrations (parts per million (ppm))	
ID	Depth (feet bgs)	Arsenic	Lead
SB-2	1-2	9.89	13.4
SB-3	1-2	13.2	522
RDCSL		9.5	400
IDCSL		30	800
EX DC SL		920	1,000

Notes: **bold** = above RCG Residential Direct Contact Screening Level
 bgs = below ground surface

Phase I ESA – May 2019

The May 2019 Phase I ESA completed on the behalf of Midland State Bank did not identify any new RECs associated with the Site. It did, however, recommend the development of a site-specific Soil and Groundwater Management Plan for use during Site redevelopment activities.

Technical Summary

Twelve borings have been completed at the Site. Of the 12 collected soil samples, only six were compared to RCG RDCSL and IDCSL screening levels since six of the samples were collected from depths greater than 10 feet bgs. Arsenic was detected in two of those six soil samples at levels above its RCG RDCSL but below its IDCSL, and lead was detected in one sample (SB-3) at a level above its RDCSL, but below its IDCSL. In the absence of additional soil data from across the Site, IDEM has concluded that there is not enough information to calculate average concentrations of arsenic and lead in on-Site soil and, therefore, a soil management plan will be required for any residential construction activities on the Site.

Dissolved arsenic and lead were detected in groundwater samples above their respective Res TAF GWSLs. This contamination may be attributable to the method used to collect the groundwater samples which was through temporary wells. Samples collected in this manner are typically used for screening purposes only, in part because they do not follow IDEM protocols for complete site characterization, including the installation of permanent monitoring wells to facilitate groundwater sample collection. Notwithstanding the potential for sample results to be biased high due to the sampling methodology used, since arsenic and lead were detected in soil, to be protective of potential exposure pathways and in the absence of additional groundwater data, use of groundwater on the Site should be restricted. State Cleanup (SCP) may require the responsible party/ies to delineate lead and arsenic contamination in groundwater.

The August 2019 Phase I ESA identified oil staining beneath several unused transformers as a de minimis condition; however, IDEM views this Site condition as a REC. SCP may require the responsible party/ies to investigate the oil staining beneath the unused transformers in the former transformer room of the basement.

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
- (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 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), 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 BFPF exemption from liability for hazardous substance 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 BFPF 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 BFPF does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r).

² Although the Site is an active State Cleanup site, the Program has discussed the redevelopment with State Cleanup staff who do not object to the agency's use of enforcement discretion as it pertains to the Owner.

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 January 27, 2015, after January 11, 2002 and June 30, 2009, 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 BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Owner must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to -- (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance." 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Owner must undertake to maintain BFPP status

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

Recommendations

IDEM has the following recommendation for the Site:

- Properly abate and/or manage ACM and LSP during any renovations or demolition of the existing building on the Site in accordance with applicable Federal, State, and local laws and regulations.

Reasonable Steps

Limited shallow soil (<10 feet bgs) sampling has occurred on the Site to confirm the presence or absence of contamination that may be in Site soil as a result of historical power generation on-Site, which was identified as a REC. Therefore, at this time, IDEM has insufficient information to provide a comprehensive technical opinion regarding reasonable steps for the Site. According to the *“Reasonable Steps Categories and Examples”*, Attachment B of the U.S. Environmental Protection Agency’s *“Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA bona fide prospective purchasers, Contiguous Property Owners, or Innocent Landowners”* (Updated Common Elements Guidance) (July 29, 2019), doing nothing to investigate a known or suspected environmental hazard would likely be insufficient to satisfy the reasonable steps obligation for protection as a BFPP (See Appendix B, p.4). Additional Phase II investigation results from samples collected within the top 10 feet of surface elevation would enable the Owner to make an informed determination of the reasonable steps necessary to prevent any exposure to hazardous and/or petroleum substances that may be contaminating the Site as is required to maintain BFPP status under the applicable statutes. If requested by the Owner, the Program will review a Phase II investigation report if one is completed and, as a follow-up to this letter, provide a technical opinion regarding any additional recommended reasonable steps for the Site.

At this time, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the hazardous substances 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:

- Implement and maintain the land use restrictions required by this letter.
- Investigate the REC identified in the various Phase I ESAs as oil staining beneath several unused transformers in the former transformer room in the basement of the on-Site building and mitigate any exposure risks associated with any contamination detected above RCG screening levels.
- Investigate shallow soil (<10 feet bgs) conditions to confirm the presence or absence of contamination that may be in Site soil as a result of historical power generation on-Site.
- Locate and properly close drywells located on the Site.
- Reasonably cooperate with and do not impede any third party's undertaking of any response actions required by IDEM's SCP to address incident number 0000884.
- 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. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

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

Since levels of contaminants detected in soil and groundwater on-Site were above applicable RCG residential screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the real estate that includes the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restrictions in the enclosed ERC, which are summarized below:

- Prohibit any activity at the Site that interferes with any ongoing response activities, long-term groundwater monitoring, or measures necessary to assure the effectiveness and integrity of any response action or engineering control, or component thereof, implemented at the Real Estate.
- Neither engage in nor allow drilling or excavation of soil during any residential construction on the Site without first submitting a soil management plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil during any residential construction on the Site must be conducted in accordance with a Department-approved soil management plan, including all applicable requirements of IOSHA/OSHA.
- Not use or allow the use or extraction of groundwater 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 groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- If contaminated soil is not removed from the Site, install a two-foot clean (constituents not exceeding RCG residential direct contact screening levels) soil and vegetative barrier in areas not covered by buildings, parking lots, or sidewalks and maintain their integrity. Buildings, parking lots, sidewalks, and soil capped areas will serve as engineered barriers to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair without replacement by a barrier that will provide equal or better protection, unless it can be demonstrated to IDEM that the underlying contaminated soil has been remediated to RCG RDCSLs.

As environmental work at the Site is currently ongoing under the oversight of IDEM's SCP, the foregoing restrictions may be eliminated or modified in the future by a subsequent written agreement between IDEM and Owner (or a subsequent owner of the Site) pursuant to the terms and conditions of the ERC.

Conclusion

IDEM encourages the continued commercial use of the Site. Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps

requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status, including, perhaps, implementing land use restrictions through an environmental restrictive covenant.

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

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

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

East Bank Flats, South Bend -- BFPF Comfort Letter
BFD #4191106
April 22, 2020
Page 15 of 15

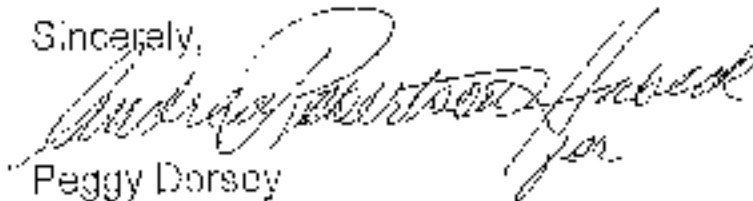
give rise to full liability. This letter does not constitute an assurance that the Site is safe for any particular use.

In order for IDEM to consider this letter effective, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the deed for the real estate that includes the Site in the Saint Joseph County Recorder's Office. Enclosed are recording instructions explaining the process of how to correctly record the ERC. 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: Tracey Michael

IDEM is pleased to assist Commerce Center Development, LLC with this commercial project. Should you have any questions or comments, please contact Tracey Michael at 317-232-4432. She can also be reached via email at tmichael@fa.in.gov.

Sincerely,



Peggy Dorsey
Assistant Commissioner
Office of Land Quality

cc: Patricia Polston, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramolspacher, Indiana Brownfields Program (*electronic copy*)
Tracey Michael, Indiana Brownfields Program (*electronic copy*)
Syed Jaffrey, State Cleanup Program (*electronic copy*)
Sarah E. Young, August Mack Environmental (*electronic copy*)
Jon Grosshans, U.S. EPA Region 5 (*electronic copy*)
St. Joseph County Health Department

EXHIBIT D

TABLE 1

East Bank Flats, South Bend – BFD #4191106
April 2019 Soil Concentrations Exceeding Applicable IDEM RCG Screening Levels

TABLE 2

East Bank Flats, South Bend – BFD #4191106
**2013 and 2019 Groundwater Concentrations Exceeding
Applicable IDEM RCG Screening Levels**

TABLE 1
East Bank Flats, South Bend – BFD #4191106
April 2019 Soil Concentrations Exceeding Applicable IDEM RCG Screening Levels

Sample		Contaminants and Concentrations (parts per million (ppm))	
ID	Depth (feet bgs)	Arsenic	Lead
SB-2	1-2	9.89	11.4
SB-3	1-2	13.2	522
RDCSL		9.5	400
IDCSL		30	800
EX DC SL		920	1,000

Notes: **bold** = above RCG Residential Direct Contact Screening Level
bgs = below ground surface

TABLE 2
East Bank Flats, South Bend – BFD #4191106
2013 and 2019 Groundwater Concentrations Exceeding
Applicable IDEM RCG Screening Levels

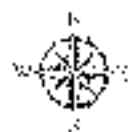
Sample		Contaminants and Concentrations (parts per billion (ppb))	
ID	Date	Dissolved Arsenic	Dissolved Lead
EC-1W	2013	14	<5
EC-3W		12	<5
EC-5W		19	<5
SB-4 GW	2019	NA	20.2
Res TAP GWSL		10	15
Res VE GWSL		NE	
Indus VE GWSL			

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level
NE = not established
NA = not analyzed

EXHIBIT E

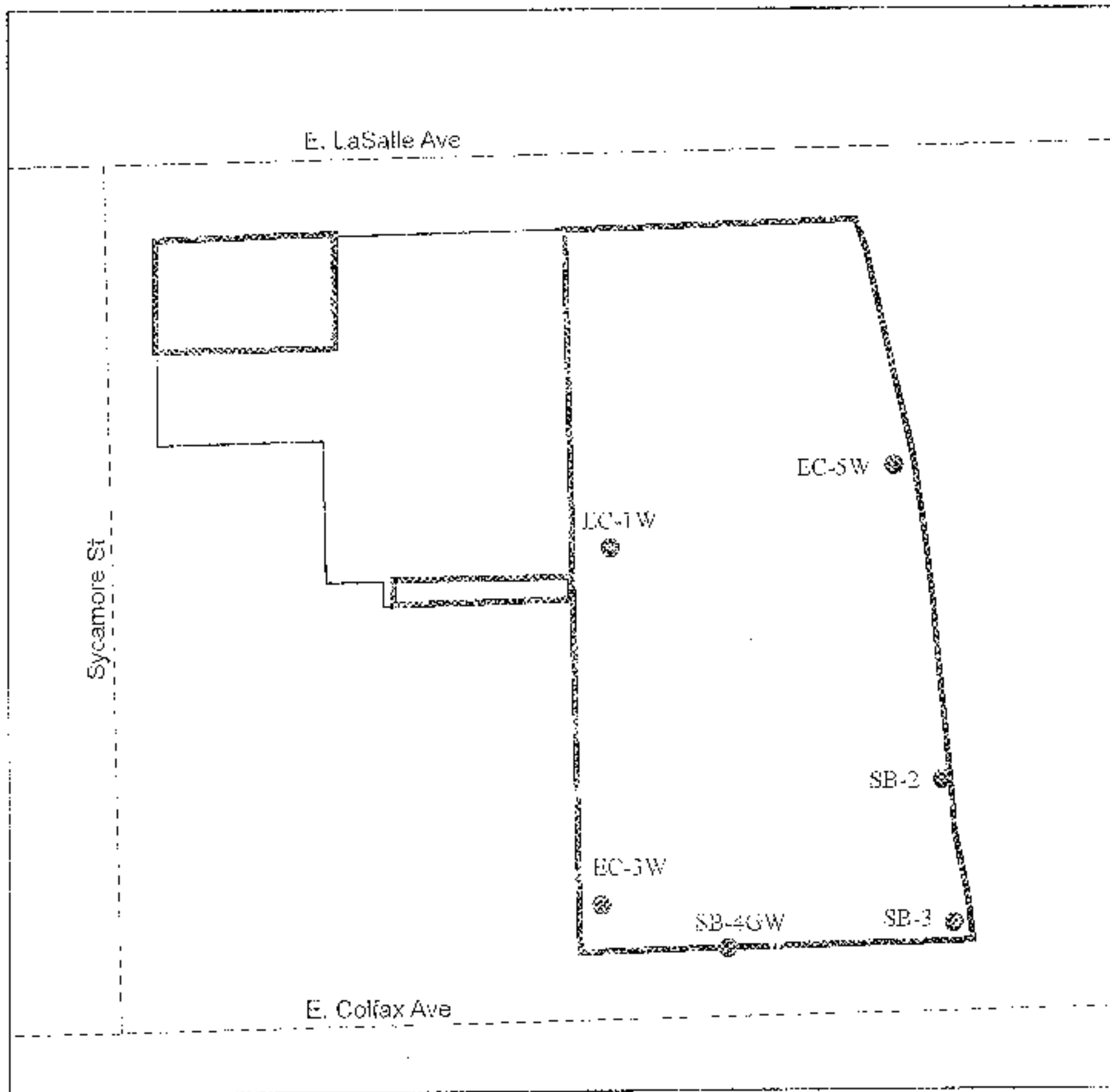
East Bank Flats, South Bend – BFD #4191106
**Site Map Depicting Sampling Locations at Which
COCs Were Detected Above Applicable IDEM RCG Screening Levels**

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



Indiana Brownfields Program # 4191106 Sample Map

Sample Locations Above Applicable IDEM RCC Screening Levels



Deed Info: Special Warranty Deed, Recorded 2/2/2015, Instrument # 1802286

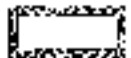

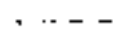

Sources: Phase I Environmental Site Assessment, prepared by Hazardous Environmental Associates, Inc. (HEA), dated December 15, 2014 (VFC # 2287449), page 46

Parcel ID: Portion of # 41-00-10-129-011,000-028 (434 East Colfax Ave, South Bend, IN)

PLSS Info: Section 13, T37N, R2E, Portage Township, St. Joseph County, Indiana

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

Maped By: KAY, IDEM, April 15, 2020

 Real Estate
  Sample Location
 Street
  Parcel

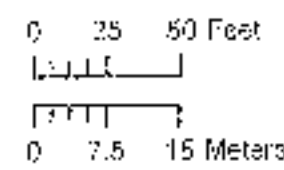
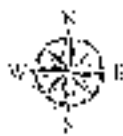


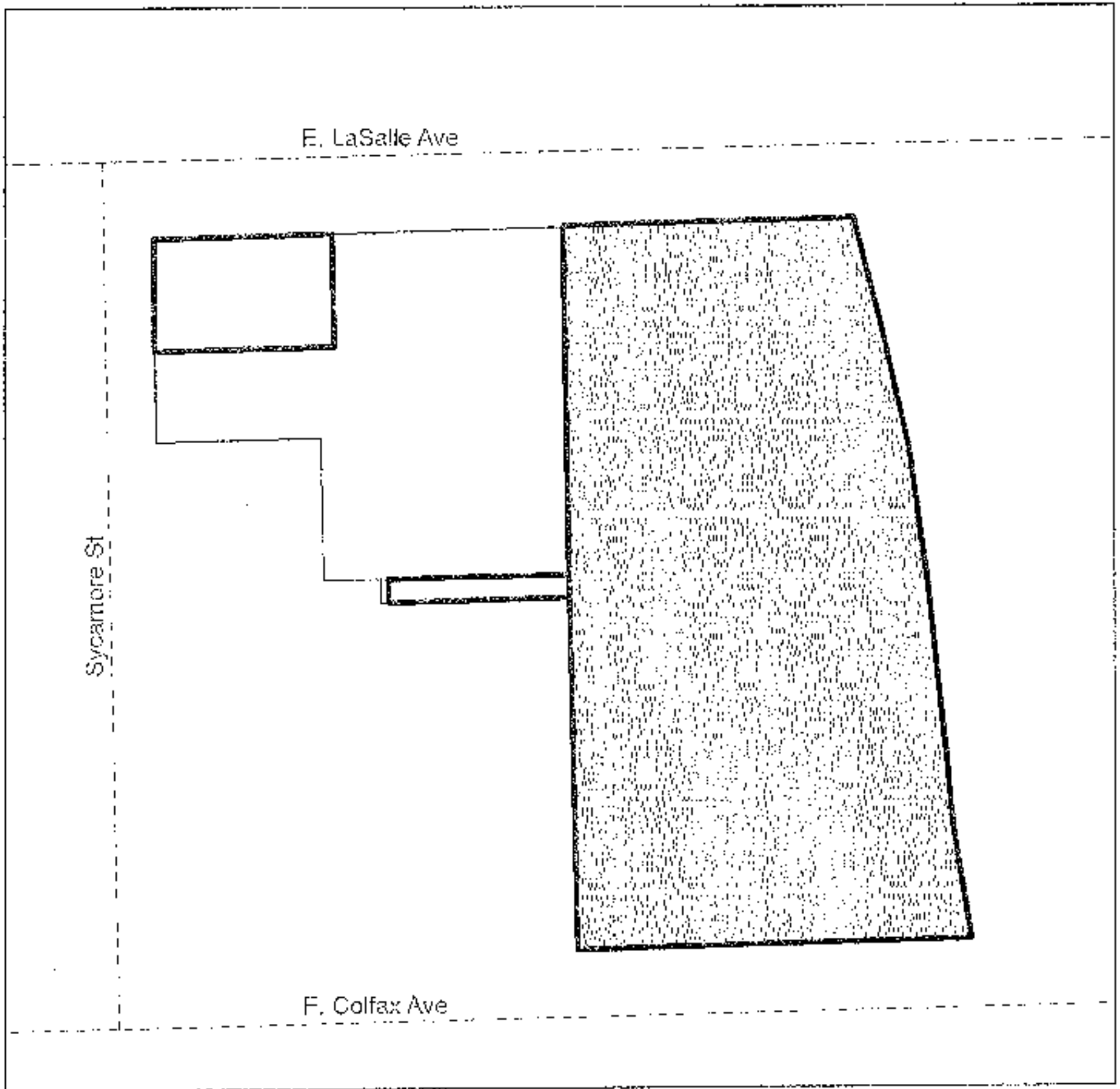
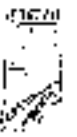
EXHIBIT F

Affected Area on the Real Estate

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 # 4191106 Affected Area Map



Doc# Info: Special Warranty Deed, Recorded 2/2/2015, Instrument # 1502288

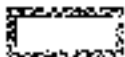
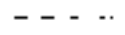


Source: Phase I Environmental Site Assessment prepared by Heartland Environmental Associates, Inc. (HEA), dated December 16, 2014 (VFC # 92574483, page 46)

Parcel ID: Portion of # 71-08-12-129-011 000-026 (551 East Colfax Ave. South Bend, IN)

PLSS Info: Section 12, T37N, R2E, Postage Township, St. Joseph County, Indiana

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

Mapped By: KAV, IDUM, April 15, 2020

-  Real Estate
-  Street
-  Affected Area
-  Parcel

