



Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 21st day of May, 2024, by Olin Kirkman ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Lawrence, Indiana, which is located at State Road 58 & Bailey Scales Road in Bedford 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 October 19, 2023, and recorded on October 27, 2023, as Deed Record 2023006450, in the Office of the Recorder of Lawrence County, Indiana. The Real Estate consists of approximately 0.7 acres and is identified by the State by parcel identification numbers 47-06-13-220-007.000-010 and 47-06-13-220-008.000-010. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A No Further Action ("NFA") 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 to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of petroleum contamination, relating to historical operations on the Real Estate, Program site number BFD #4220715 (the "Site").

WHEREAS: The NFA Letter, as approved by the Department, provides that a certain contaminant of concern ("COC") was detected in soil on parcel number 47-06-13-220-007.000-010 of 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 COC is benzo(a)pyrene in soil.

WHEREAS: Soil, groundwater, and exterior soil gas on the Real Estate were sampled for volatile organic compounds ("VOCs"), polycyclic aromatic hydrocarbons ("PAHs"), Resource Conservation and Recovery Act Metals ("RCRA Metals"), and/or total and dissolved lead. Investigations detected a level of benzo(a)pyrene in soil above its residential soil published level ("RSPL") established by IDEM in the *Risk-based Closure Guide* ("R2") (July 8, 2022 and applicable revisions). The soil analytical result above applicable R2 published 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 soil above applicable R2 published levels.

WHEREAS: Notwithstanding the detection of the COC above R2 published levels, IDEM approved conditional residential closure of environmental conditions on the Real Estate under R2 since: (1) five test pits revealed that all underground storage tanks had previously been removed from the Real Estate and discovered UST system parts were

removed from the Real Estate; (2) no constituents analyzed in groundwater or external soil gas were detected at concentrations above applicable R2 published levels; (3) although benzo(a)pyrene was detected in soil, contaminated soil is confined to an "affected area" ("Affected Area") in the southern portion of the Real Estate; and (4) potential exposure to the detected soil contamination in the Affected Area can be controlled through this Covenant. Therefore, environmental conditions on the Real Estate meet applicable residential cleanup criteria in R2 so long as the land use restrictions required by this Covenant are maintained.

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

NOW THEREFORE, Olin Kirkman subjects parcel number 47-06-13-220-007.000-010 of the Real Estate to the following restriction and provisions, which shall be binding on Olin Kirkman and all future owners:

I. RESTRICTION

1. Restriction. The Owner and all future owners:

- (a) Shall neither engage in nor allow drilling or excavation of soil in the "Affected Area" on parcel number 47-06-13-220-007.000-010 of the Real Estate identified via GPS coordinates and depicted on the attached **Exhibit "E"** during any residential construction without first submitting a work 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 on the Real Estate during any residential construction must be conducted in accordance with a Department-approved work plan, including all applicable requirements of IOSHA/OSHA.
 - i. Soil in any area in 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 R2 residential published levels must be excavated, leaving only soil that meets R2 RSPLs 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 R2 using residential screening levels).

- iii. Any soil that is removed, excavated or disturbed on the Affected Area of the Real Estate during any residential construction must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

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 restriction 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 the restriction 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 restriction set forth in paragraph 1 above is 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 LAWRENCE COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

- 6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the

Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.

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

III. ENFORCEMENT

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

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The 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 Lawrence 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:
Olin Kirkman
412 Bailey Scales Road
Bedford, Indiana 47421

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

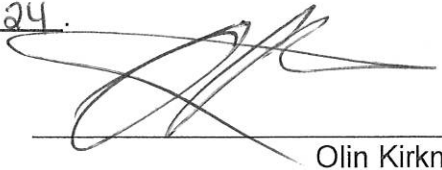
Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

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.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

ACKNOWLEDGMENT BY A NOTARY

IN WITNESS WHEREOF, Olin Kirkman, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 21st day of May, 2024.



Olin Kirkman

OLIN R. KIRKMAN
Printed Name of Signatory

STATE OF Indiana)
) SS:
COUNTY OF Lawrence)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Olin R. Kirkman, the owner of the Owner, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 21st day of May, 2024.



Doris M. Dalton
Doris M. Dalton, Notary Public

Residing in Lawrence County, IN
My Commission No: NPO716118

My Commission Expires 9/28/2026

This instrument prepared by: For recording by Brent E. Steele, Steele + Steele, LLC, Attorney at Law, 11002 I St. Ste 1, Bedford, IN 47421

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.

OLIN R. KIRKMAN (Printed Name of Declarant)

EXHIBIT A

Warranty Deed for the Real Estate

AFTER RECORDING RETURN TO:)
 Classic Title, Inc.)
 1526 I Street)
 Bedford, Indiana 47421)
 File No. 23-15490)
)
)
)
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)
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)

2023006450 WD \$25.00
 10/27/2023 09:11:55A 2 PGS
 Jessica Allen
 Lawrence County Recorder IN
 Recorded as Presented


Property Address: State Road 58, Heltonville & Bailey Scales Rd, Bedford, IN 47421 ---Above This Line Reserved For Official Use Only---

WARRANTY DEED

Parcel Number 47-06-13-220-007.000-010,47-06-13-220-008.000-010

KNOW ALL MEN BY THESE PRESENTS THAT:

FOR VALUABLE CONSIDERATION OF TEN DOLLARS (\$10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, **Perry E. Mullis**, hereinafter referred to as "Grantor", does hereby give, grant, bargain, sell and warrant unto **Olin R. Kirkman**, of legal age hereinafter "Grantee", the following lands and property, together with all improvements located thereon, lying in the County of Lawrence, State of Indiana, to-wit:

Lots Numbered 1 and 2 in Caress Out Lots to the City of Bedford, Indiana, as per plat thereof recorded April 2, 1904 in Plat Book 1, Page 154 in the Office of the Recorder of Lawrence County, Indiana.

Excepting Therefrom:

A part of Lot 1 in the Caress Addition to the City of Bedford, Indiana, the plat of which is recorded in Plat Book 1, page 154, in the Office of Recorder of Lawrence County, Indiana, described as follows: Beginning at the southwest corner of said Lot 1; thence Northeasterly 41.33 feet along the western line of said lot; thence Southeasterly 41.76 feet along an arc to the left and having a radius of 18.00 feet and subtended by a long chord having a length of 33.01 feet to the southeastern line of said lot at a point 41.33 feet northeasterly from the southwest corner of said lot; thence Southwesterly 41.33 feet along the southeastern line of said lot to the Point of Beginning and containing 368.100 square feet, more or less.

SUBJECT to all easements, rights-of-way, protective covenants and mineral reservations of record, if any.

BEING portion of the same property conveyed to Perry E. Mullis and Elsie Mullis from Opal Hall and Helen Hall and William E. Bunch and Dorothy Bunch by Warranty Deed dated November 21, 1994, and recorded on May 12, 1999, in Book 112, Page 505, as Instrument NO. 9900004438 and being a portion of the same property conveyed to Perry E. Mullis and Elsie K. Mullis, husband and wife, from Opal Hall and Helen Hall, husband and wife, by Warranty Deed dated April 12, 1994, and recorded on May 12, 1999, in Book 112, Page 504, as Instrument NO. 9900004437.

TO HAVE AND TO HOLD same unto Grantee, and unto Grantee's heirs and assigns forever, with all appurtenances thereunto belonging.

GRANTOR does for Grantor and Grantor's heirs, personal representatives, executors and assigns forever hereby covenants with Grantee that Grantor is lawfully seized in fee simple of said premises; that the premises are free from all encumbrances, unless otherwise noted above; that Grantor has a good right to sell and convey the same as aforesaid; and to forever warrant and defend the title to the said lands against all claims whatever.

Taxes for tax year 2023 shall be prorated between Grantor and Grantee as of the date selected by Grantor and Grantee, or paid by Grantee, or paid by Grantor.


The property herein conveyed is not a part of the homestead of Grantor, or is part of the homestead of Grantor and if Grantor is married, the conveyance is joined by both Husband and Wife.

Grantors certify that the above described real estate is not "property" as defined in Indiana Code 13-11-2-174. It has not been used as a landfill or dump, contains no underground gas storage tank(s) and contains no hazardous wastes. Thus no disclosure statement as required by Indiana Code 13-25-3-1, et.seq., is required.

Record title was acquired by Perry E. Mullis and Elsie Mullis from Opal Hall and Helen Hall and William E. Bunch and Dorothy Bunch by Warranty Deed dated November 21, 1994, and recorded on May 12, 1999, in Book 112, Page 505, as Instrument NO. 9900004438 and being a portion of the same property conveyed to Perry E. Mullis and Elsie K. Mullis, husband and wife, from Opal Hall and Helen Hall, husband and wife, by Warranty Deed dated April 12, 1994, and recorded on May 12, 1999, in Book 112, Page 504, as Instrument NO. 9900004437. Be it known to all, that Perry E. Mullis and Elsie Mullis remained Husband and Wife until the death of Elsie Mullis on June 24, 2015, and that said Estate was not subject to Federal Estate Tax.

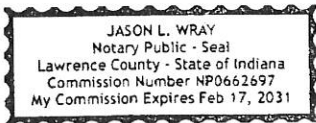
Elsie Mullis was also known as Elsie K. Mullis.

WITNESS Grantor's hand this 19th day of October, 2023.

 (Seal)
Perry E. Mullis by Timothy S. Mullis, His Attorney in
Fact by POA Recorded on February 19, 2019
as instrument number 2019000882

STATE OF INDIANA
COUNTY OF LAWRENCE

On this the 19th day of October, 2023, before me, Jason L. Wray, the undersigned officer, personally appeared Perry E. Mullis by Timothy S. Mullis, His Attorney in Fact, known to me (or satisfactorily proven) to be the party executing the foregoing instrument and he acknowledged the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.




Jason L. Wray
My Commission expires: 2/17/31

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 A. Smith

This Instrument was prepared by David A. Smith, Attorney at Law, 1522 I Street, Bedford, Indiana, 47421, at the specific request of the Grantor, based solely on information supplied by one or more of the parties to this conveyance. The drafter assumes no liability for any errors, inaccuracy, or omissions in this instrument resulting from the information provided, the parties hereto signifying their assent to this disclaimer by the execution and the acceptance of this instrument.

Send Tax Bills to: 412 Bailey Scales Rd, Bedford IN 47421

Grantees Address: SAME

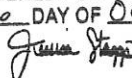
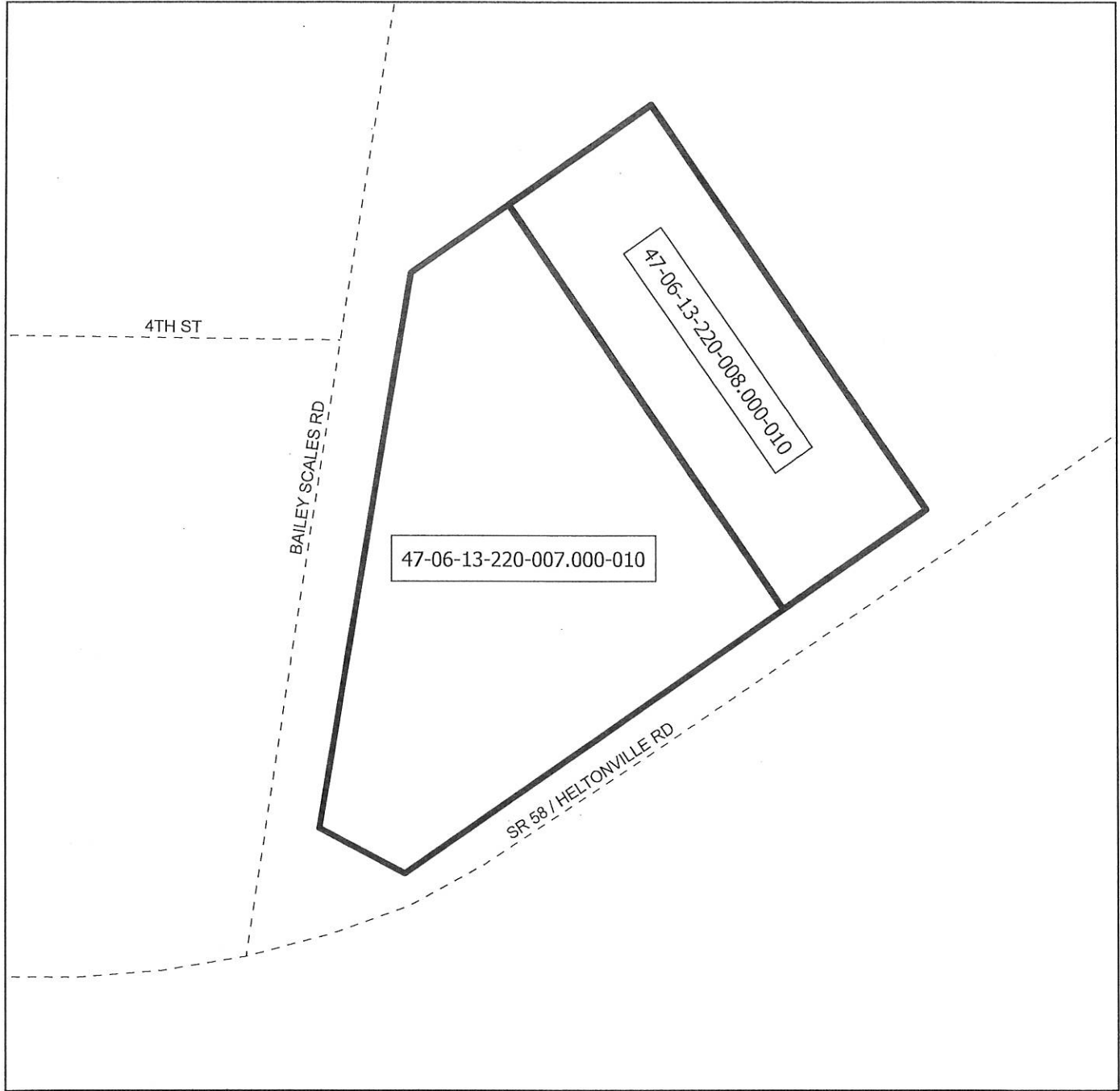
DULY ENTERED FOR TAXATION
THIS 26 DAY OF October 2023


EXHIBIT B

Map of the Real Estate

Indiana Brownfields Program Number 4220715 - Real Estate



Mapped By: Vickey Robinson, GIS & Digital Services Specialist, Indiana Brownfields Program, February 2, 2024

Real Estate: Warranty Deed – Instrument Number 2023006450
Recorded 10/27/2023

Parcel Info: The Real Estate consists of Parcel Identification Numbers:
47-06-13-220-007.000-010
47-06-13-220-008.000-010

PLSS Info: Section 13, T5N, R1W, Shawswick Township, Lawrence County, Indiana

Property Info: SR 58 & Bailey Scaled Rd, Bedford, Indiana

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

 REAL ESTATE

 STREET

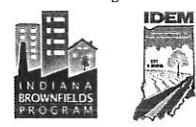
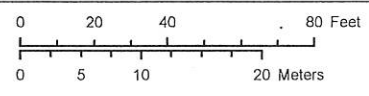


EXHIBIT C

Copy of the No Further Action Letter



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

April 18, 2024

Tim Mullis
P.O. Box 517
Bedford, Indiana 47421

Olin Kirkman
412 Bailey Scales Road
Bedford, Indiana 47421

Re: **No Further Action Determination
Pursuant to Risk-based Closure Guide
LUST POSI**
Smoots Service Station
State Road 58 & Bailey Scales Road
Bedford, Lawrence County
UST FID #15823
LUST #201610514
Brownfield #4220715

Dear Mr. Mullis and Mr. Kirkman:

Indiana Brownfields Program (Program) staff have reviewed the following reports documenting environmental activities conducted at the property located at State Road 58 & Bailey Scales Road in Bedford, Lawrence County (Site), which were funded, in part, by the Program through its Petroleum Orphan Site Initiative (POSI) and by the Southern Indiana Development Commission (SIDC) through a U.S. Environmental Protection Agency (U.S. EPA) Brownfields Assessment Grant to facilitate redevelopment of the Site. These documents may be viewed electronically by searching online by the noted document number referenced below in IDEM's Virtual File Cabinet (VFC) accessible through IDEM's website.

- *Initial Site Characterization Report* (ISC Report), dated December 20, 2016, prepared by Golars, LLC (Golars) (Document #80394118)
- *Phase I Environmental Site Assessment* (Phase I ESA), dated October 14, 2022, prepared by SME-USA Inc (SME) (Document #83388873)
- *Geophysical Survey*, dated January 2, 2023, Prism Geolmaging, Inc. (Document #83566174)
- *UST Closure Report and Phase II Environmental Site Assessment*, dated August 17, 2023, prepared by SME (Document #83542079)

Site Description and History

The 0.7-acre Site is comprised of two parcels identified by the State by parcel numbers 47-06-13-220-007.000-010 and 47-06-13-220-008.000-010. The Site is currently vacant with concrete building slabs in the northwestern and southeastern portions of the Site. In addition, a concrete slab consistent with an underground storage tank (UST) system is present in the central portion of the Site. The western portion of the Site is covered with gravel and asphalt and the eastern portion is covered with grass. The Site was first developed for unknown use by 1934 and was redeveloped for use as a gasoline filling station and an auto sales facility in 1946. Auto sales operations continued until 1995 and filling station operations continued until approximately 2001. All on-Site structures were razed by approximately 2013. Olin Kirkman acquired the Site in October 2022 and intends to remove the existing asphalt/gravel and plant grass.

Properties adjoining the Site are as follows: to the north and east, residential dwellings; to the south, Heltonville Road (State Road 58) followed by a radio station with a wooded area beyond; and to the west, Bailey Scales Road followed by residential dwellings.

Historical Environmental Conditions

A Notification for Underground Storage Tanks (UST Notification) dated March 20, 1989, identified three kerosene underground storage tanks (USTs) of unspecified sizes that had been installed at the Site in approximately 1969 (Document #25318644). An updated UST Notification dated November 13, 1998, identified Mullis Petroleum as the owner of the tanks and indicated that the facility had closed. The UST Notification also described one 10,000-gallon gasoline UST, one 1,000-gallon gasoline UST, and one 500-gallon kerosene UST as being present in the subsurface at the Site (Document #25318644). On October 10, 2000, the Indiana Department of Environmental Management (IDEM) issued a Notice of Violation to Mullis Petroleum because the UST system had been temporarily closed for longer than twelve months (Document #64290683). On March 2, 2001, Mullis Petroleum entered into an Agreed Order with IDEM requiring Mullis Petroleum to permanently close the UST system and to submit a closure report (Document #25318653). In June 2001, the three USTs were reportedly removed from the Site; however, IDEM determined that the UST Closure Assessment was inadequate and requested that Mullis Petroleum address the issues (Document #25318683). No additional information was provided to IDEM at that time. The 2001 UST Closure Assessment was not available on the VFC for review.

Leaking Underground Storage Tank (LUST) Incident #201610514

ISC Report – December 2016

In October 2016, four soil borings (B-1 through B-4) were advanced to a maximum depth of 32 feet below ground surface (bgs) in the four cardinal directions around the former UST basin in the central portion of the Site and completed as temporary monitoring wells. Two soil samples were collected from each boring and

submitted for laboratory analysis of volatile organic compounds (VOCs). Groundwater was not encountered; therefore, no groundwater samples were collected. Several contaminants were detected in soil at B-2 and B-3 at levels above then-applicable screening levels established by IDEM in the *Remediation Closure Guide* (RCG) (March 22, 2012 and applicable revisions). Based on laboratory analytical results, a release was reported to IDEM and assigned LUST incident #201610514 (Document #80394118). No other investigation documents related to this LUST incident were available for review.

Agreed Judgement

On February 15, 2019, an Agreed Judgement (AJ) was entered into by Mullis Petroleum, IDEM, and the Indiana Finance Authority (IFA). The AJ identifies 14 properties currently or formerly owned by Mullis Petroleum with noncompliant UST systems and/or open IDEM incidents. The AJ permits the IFA, through the Program, to remove UST systems and to perform corrective action for petroleum releases. The Site is referred to as "Site N" in the AJ. (Document #82709703).

Environmental Conditions

For purposes of evaluating Site conditions for closure, sample analytical results were compared to IDEM's *Risk-based Closure Guide* (R2) (July 8, 2022 and applicable revisions) published levels as follows: soil samples collected at depths between 0 and 10 feet bgs were compared to R2 residential and commercial soil published levels (RSPLs and CSPLs, respectively); soil samples collected between 0 and 15 feet bgs were compared to the excavation worker soil published levels (XSPLs); and, soil samples collected at depths greater than 15 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 groundwater published levels (GWPLs). If total and dissolved/filtered groundwater samples were collected per Section 2.2.5 of R2 and IDEM Nonrule Policy Document (NPD) Waste-0057, only the dissolved/filtered groundwater samples were compared to GWPLs. Exterior soil gas samples were compared to R2 residential soil gas published levels (RSGPLs), commercial soil gas published levels (CSGPLs), and large commercial soil gas published levels (LCSGPLs).

Phase I ESA Report – October 2022

An October 2022 Phase I ESA identified the following recognized environmental conditions (RECs) associated with the Site:

- The ISC Report documented evidence of a release from the UST system and potential for groundwater contamination.
- Historical records indicate the potential presence of additional USTs remaining at the Site.

Geophysical Survey – January 2023

In November 2022, a geophysical survey was completed to assess the potential presence and location of USTs on the Site. Ground penetrating radar (GPR) and electromagnetic metal detection (EMD) methods were both utilized. Several metallic anomalies were identified in the southern portion of the Site, including two suspected USTs.

UST Closure Report and Phase II ESA Report – August 2023

In February 2023, five test pits (TP1 through TP5) were completed in the southern and central portions of the Site where the suspected USTs and other metallic anomalies had been identified during the geophysical survey. The test pits confirmed that all USTs had previously been removed; however, remnants of the UST systems, including steel piping, were identified and removed from the Site. A water meter was identified beneath TP3 and a metal stormwater culvert was identified beneath TP4. TP1, TP2, and TP5 were underlain by layers of metal, glass, cinder block, brick, and wood fill material to a depth of approximately 4 feet bgs. One sample was collected from the fill material observed in TP5 (TP5A). Three soil samples (TP1, TP2, and TP5B) and one duplicate sample (S-DUP1) were collected from the first-encountered native soil beneath the fill material in TP1, TP2, and TP5 for laboratory analysis of VOCs, polycyclic aromatic hydrocarbons (PAHs), and Resource Conservation and Recovery Act (RCRA) metals. No constituents analyzed in soil or fill material were detected at levels above applicable R2 published levels.

In March 2023, 15 soil borings (B1 through B6, SB6/SW1, SW2 through SW4, and SB1 through SB5) were advanced to a maximum depth of 32 feet bgs on the Site. Although no tanks were identified, appropriate UST closure confirmatory soil samples were obtained in accordance with IDEM's UST Closure Assessment Guidelines. UST Base samples were collected at B1 through B6 from a depth of 8 to 10 feet bgs and sidewall samples were collected at SB6/SW1 and SW2 through SW4 from a depth of 4 to 6 feet bgs. Following the collection of soil samples, six of the borings (SB1 through SB5 and SB6/SW1) were completed as temporary monitoring wells. Only SB3 and SB4 produced enough water to collect groundwater samples. In addition, two shallow exterior soil gas ports (SG1 and SG2) were installed to 5 feet bgs and one deep exterior soil gas port (SG3) was installed to 6 feet bgs. Due to wet weather conditions, samples were not collected from SG2 or SG3. A total of 22 soil samples (including two duplicates), three groundwater samples (including one duplicate), and one vapor sample were analyzed for some or all of the following: VOCs, PAHs, RCRA metals, and total and dissolved lead.

Benzo(a)pyrene was detected in soil at SB2 at a concentration above its RSPL. No other constituents analyzed in soil were detected at levels above applicable R2 published levels. Refer to Table 1, below, for a summary of soil analytical data above applicable R2 published levels.

TABLE 1

March 2022 Soil Concentrations Exceeding Applicable IDEM R2 Published Levels

Contaminant Detected	Sample Location (Depth bgs) & Results (parts per million (ppm))	RSPL	CSPL	XSPL
	SB2 (0-2 ft bgs)			
benzo(a)pyrene	10.4	2	20	500

Notes: **bold** = above R2 Residential Soil Published Level
 bgs = below ground surface

No constituents analyzed in groundwater or exterior soil gas were detected at levels above applicable R2 published levels.

Technical Conclusion

Notwithstanding a contaminant having been detected in soil at a level above R2 residential published levels, IDEM can approve a conditional residential closure of environmental conditions at the Site under the R2 since: (1) five test pits revealed that all underground storage tanks had previously been removed from the Site and detected UST system parts were all removed; (2) no constituents analyzed in groundwater or external soil gas were detected at concentrations above applicable R2 published levels; (3) the benzo(a)pyrene detected in soil is confined to an “affected area” in the southern portion of the Site; and (4) potential exposure to the detected soil contamination can be addressed with an institutional control.

Institutional Control

Since a level of benzo(a)pyrene was detected in soil underlying parcel #47-06-13-220-007.000-010 of the Site at a level above applicable R2 residential published levels, an environmental restrictive covenant (ERC) is required to be recorded on the deed for the Site. As a condition of the effectiveness of this No Further Action Letter, IDEM is requiring land use restriction via the enclosed ERC with the following provision, summarized below:

- Neither engage in nor allow drilling or excavation of soil on the Affected Area on the Site during any construction without first submitting a work plan for approval by the Department.

Based on the information on known contaminant levels submitted to or otherwise reviewed by IDEM, IDEM concludes that current Site conditions do not warrant a response action at this time and does not plan to take a response action at the Site at this time. If IDEM later discovers that above-referenced reports or other information submitted to IDEM was inaccurate, or if any activities undertaken by an owner or operator exacerbate the Site contamination, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Additionally, this determination does not apply to any contamination that is not described in this No Further Action (NFA) Letter or any future releases at the Site. Furthermore, this letter does not constitute an assurance that

Smoots Service Station, Bedford – No Further Action Letter
BFD #4220715
April 18, 2024
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the Site is safe or fit 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, the enclosed ERC, which includes a copy of the No Further Action Letter, must be recorded on the deed for the Site in the Lawrence County Recorder's Office. Recording instructions are enclosed explaining the process of how to correctly record the ERC. Please return a certified copy of the filed document to Tonya Keller at tokeller@ifa.in.gov or at the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Tonya Keller

IDEM is pleased to provide this NFA determination. Should you have any questions or comments, please contact Susie Holmes of the Indiana Brownfields Program at 317-232-6772 or by email at sholmes1@ifa.in.gov.

Sincerely,



Andrea Robertson Habeck
Technical Staff Coordinator
Indiana Brownfields Program

Enclosure (ERC)

cc: Ashley Green, U.S. EPA Region
Meredith Gramelspacher, Indiana Brownfields Program
Susie Holmes, Indiana Brownfields Program
Shay Hartley, Petroleum Remediation Section
Rob Walker, SME
Lawrence County Health Department
Rhonda Rumble, SIDC

EXHIBIT D

TABLE 1

Smoots Service Station, Bedford – BFD #4220715
March 2022 Soil Concentrations Exceeding
Applicable IDEM R2 Published Levels

TABLE 1
March 2022 Soil Concentrations Exceeding
Applicable IDEM R2 Published Levels

Contaminant Detected	Sample Location (feet bgs) & Results (parts per million (ppm))	RSPL	CSPL	XSPL
	SB2 (0-2ft bgs)			
Benzo(a)pyrene	10.4	2	20	500

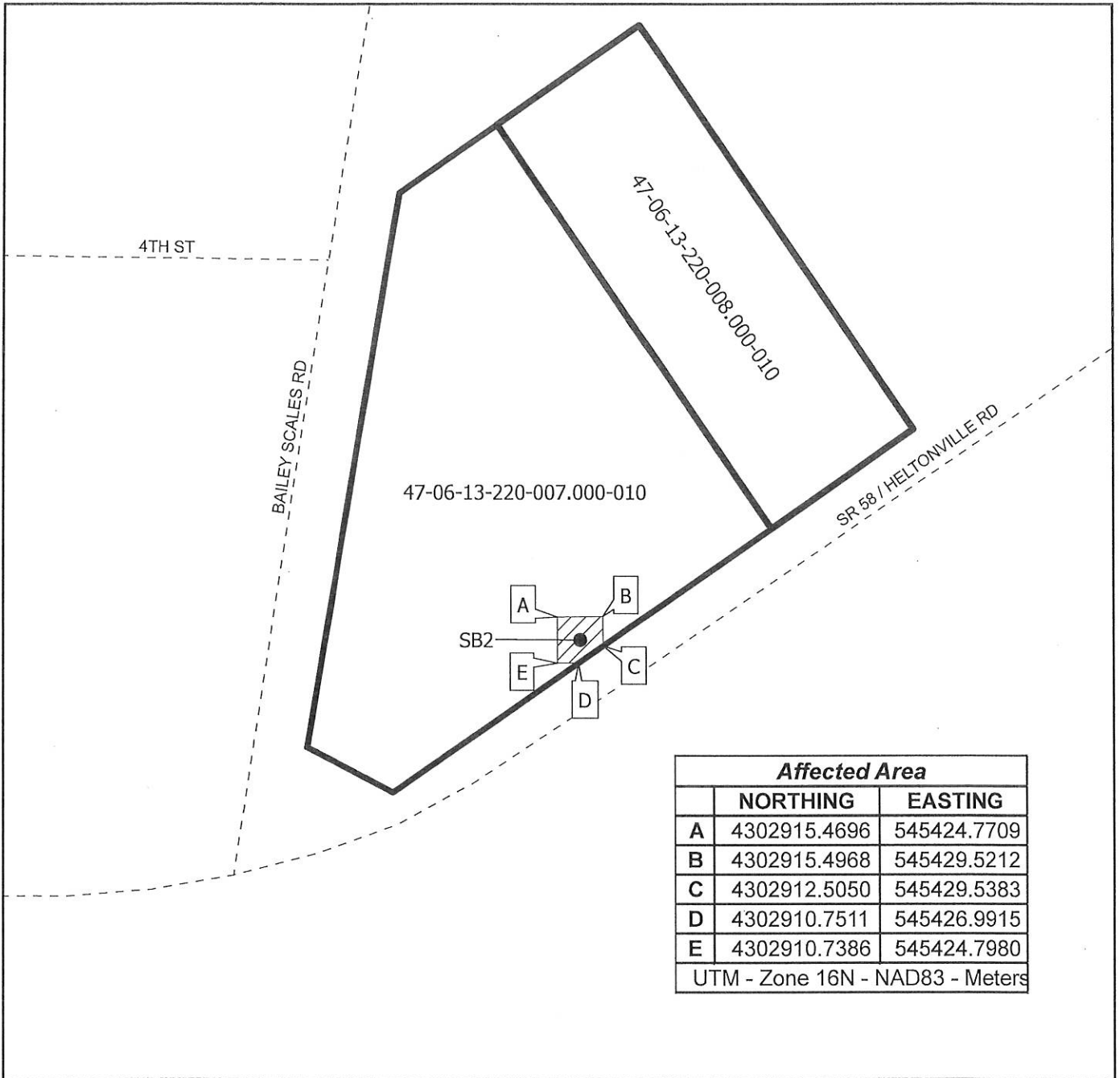
Notes: **bold** = above R2 Residential Soil Published Level
 bgs = below ground surface

EXHIBIT E

Smoots Service Station, Bedford – BFD #4220715
**Site Map Depicting Affected Area and Sampling Location At Which
COC Was Detected Above Applicable IDEM R2 Published Levels**

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

BFD 4220715 - Site Map Depicting Affected Area and Sample Location Where COCs Were Detected Above Applicable IDEM Risk-Based Closure Guide (R2) Published Levels



Affected Area		
	NORTHING	EASTING
A	4302915.4696	545424.7709
B	4302915.4968	545429.5212
C	4302912.5050	545429.5383
D	4302910.7511	545426.9915
E	4302910.7386	545424.7980
UTM - Zone 16N - NAD83 - Meters		

Mapped By: Vickey Robinson, GIS & Digital Services Specialist, Indiana Brownfields Program, February 2, 2024

Real Estate: Warranty Deed – Instrument Number 2023006450
Recorded 10/27/2023

Parcel Info: The Real Estate consists of Parcel Identification Numbers:
47-06-13-220-007.000-010
47-06-13-220-008.000-010

Sample Info: Sample Locations based on "Figure 3 – Soil Analytical Results Diagram" in the Phase II Environmental Site Assessment by SME, dated 8/17/2023

Affected Area: Affected Area coordinates provided in:
UTM – Zone 16N – NAD83 - Meters

PLSS Info: Section 13, T5N, R1W, Shawswick Township, Lawrence County, Indiana

Property Info: SR 58 & Bailey Scaled Rd, Bedford, Indiana

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

REAL ESTATE ● SAMPLE LOCATION
 AFFECTED AREA - - - STREET

Lawrence County Project Area

0 20 40 80 Feet

0 5 10 20 Meters