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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2015.023439

2015 APR 20 AM 9:41

MICHAEL B. BROWN  
RECORDER

**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 12<sup>th</sup> day of January, 2015, by NWI Veterans Village, LP ("Owner").

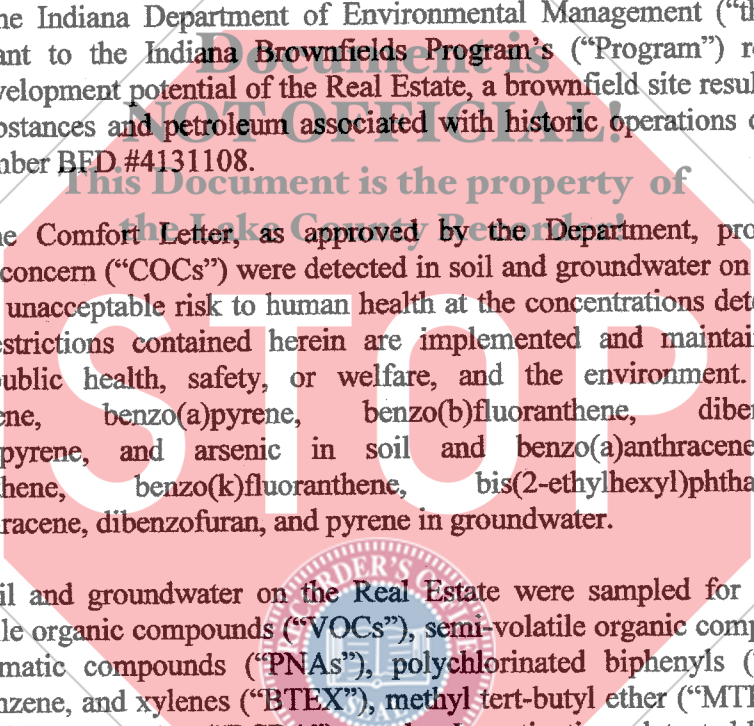
WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 839 Massachusetts Street (834 Connecticut Street) in Gary and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on December ~~20~~ 2013, and recorded on ~~December 22, 2013~~, as Deed Record 2014 010534 in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of 2.85 acres and is also identified by the county by parcel identification number 45-08-03-356-018.000-004. The Real Estate to which this Covenant applies is depicted on a map attached hereto as Exhibit "B."

\* Feb 21, 2014

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 to address the redevelopment potential of the Real Estate, a brownfield site resulting from a release of hazardous substances and petroleum associated with historic operations on the Real Estate, Program site number BFD #4131108.

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 concentrations detected 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 benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and arsenic in soil and benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, bis(2-ethylhexyl)phthalate, chrysene, dibenzo(a,h)anthracene, dibenzofuran, and pyrene in groundwater.

WHEREAS: Soil and groundwater on the Real Estate were sampled for some or all of the following: volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), polynuclear aromatic compounds ("PNAs"), polychlorinated biphenyls ("PCBs"), benzene, toluene, ethylbenzene, and xylenes ("BTEX"), methyl tert-butyl ether ("MTBE"), and Resource Conservation and Recovery Act ("RCRA") metals. Investigations detected benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and arsenic in soil above their respective residential direct contact screening level ("RDCSL") established by IDEM's Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). Investigations also detected benzo(a)pyrene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene in soil above their respective commercial/industrial direct contact screening levels ("IDCSLs"). Investigations detected levels of benzo(a)anthracene,



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benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, bis(2-ethylhexyl)phthalate, chrysene, dibenzo(a,h)anthracene, dibenzofuran, and pyrene in groundwater above their RCG residential groundwater tap screening levels ("Res Tap GWSLs"). Soil and groundwater analytical results above applicable RCG screening levels are summarized on the Tables, attached hereto as **Exhibit "D."** A site map, attached hereto as **Exhibit "E,"** depicts sample locations on the Real Estate at which COCs were detected above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the Remediation Closure Guide. However, the Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for residential 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, 12<sup>th</sup> 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, NWI Veterans Village, LP subjects the Real Estate to the following restrictions and provisions, which shall be binding on NWI Veterans Village, LP and all future owners:

Document is  
**NOT OFFICIAL!**  
I. RESTRICTIONS  
This Document is the property of  
the Lake County Recorder!

1. Restrictions. The Owner and all future owners:
  - (a) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
  - (b) Shall install a one-foot clean (constituents not exceeding RCG Residential Direct Contact Screening Levels) soil and vegetative barrier overlying a geotextile fabric in any area(s) of the Real Estate not covered by buildings, parking lots, or sidewalks and maintain the barrier's 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.
  - (c) Shall restore soil disturbed as a result of excavation and construction activities on the Real Estate in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG based on then-current land use). Upon the Department's request, the Owner shall provide the Department with documentation showing the excavated and restored area,

and any other area affected by excavation or construction activities, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws, and disposal of such soils must also be done in accordance with all applicable federal and state laws.

## 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 LAKE COUNTY ON \_\_\_\_\_, 20\_\_, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**
6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-



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

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

### III. ENFORCEMENT

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

### IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Lake 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:  
 NWI Veterans Village, LP  
 2131 Jackson Street, Suite C  
 Gary, IN 46407  
 ATTN: Vernita Leslie

To Department:  
 Indiana Brownfields Program  
 100 N. Senate Avenue, Rm. 127  
 Indianapolis, Indiana 46204  
 ATTN: John Morris

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.

IN WITNESS WHEREOF, NWI Veterans Village, LP, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this

12<sup>th</sup> day of January, 2015.

[Signature]  
NWI Veterans Village, LP

STATE OF Indiana )  
COUNTY OF LAKE ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared VERNITA LESLIE, the Agent, Ex. Director of the Owner, NWI Veterans Village, LP, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 12<sup>th</sup> day of January, 2015.

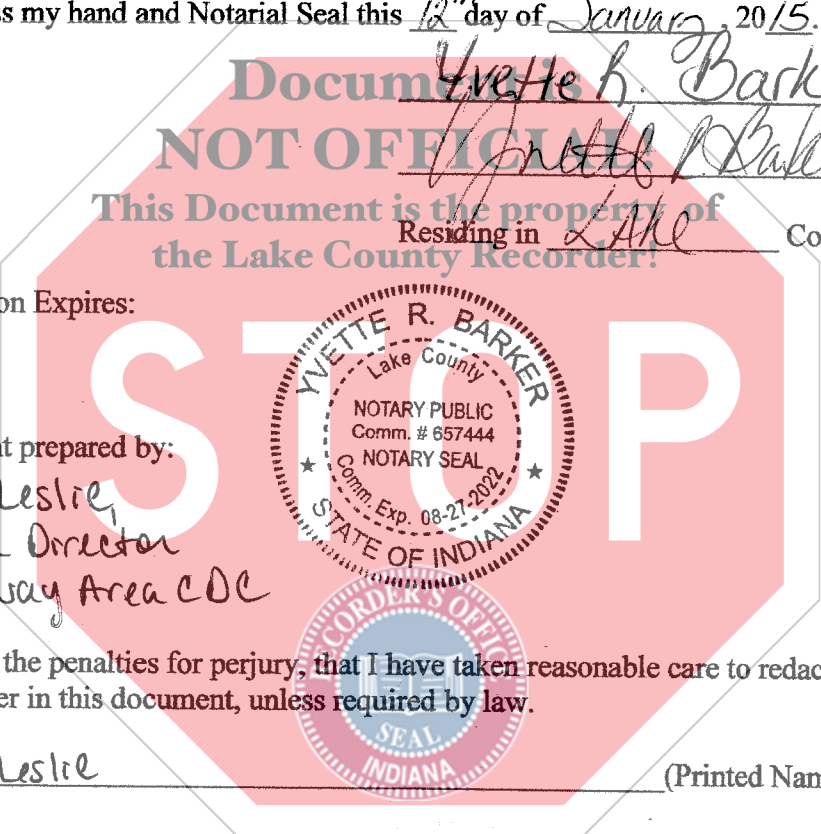
Yvette R. Barker  
[Signature] Notary Public  
Residing in LAKE County, IN

My Commission Expires:

This instrument prepared by:  
Vernita Leslie  
Executive Director  
Broadway Area CDC

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.

Vernita Leslie (Printed Name of Declarant)



**EXHIBIT A**

**Legal Description of the Real Estate & Survey**



**LEGAL DESCRIPTION:**

**LOTS 1 THROUGH 30 (INCLUSIVE) AND ALSO THE 20-FOOT WIDE ALLEY BEING VACATED PER DOCUMENT 2013074816, ALL IN BLOCK 13 IN GARY LAND COMPANY'S FIRST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 15, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.**





THESE PLATS PREPARED BY L.S. & F.M. BURNHAM ENGINEERS, INC. AND ANY INSTRUMENTS  
 THEREON, THIS PLAT BEING A REPLAT OF THE VETERAN'S VILLAGE REPLAT, APPROVED BY THE CITY OF WASH-  
 BURNHAM, ILLINOIS.  
 APPROVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON, ILLINOIS  
*Robert J. Lamb*  
*James H. Lamb*  
*Carl O. Lamb*

# FINAL PLAT OF SUBDIVISION OF VETERAN'S VILLAGE REPLAT

PART OF THE VETERAN'S VILLAGE REPLAT, APPROVED BY THE CITY OF WASH-  
 BURNHAM, ILLINOIS, AND THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON,  
 ILLINOIS, IN 1934.  
 REPLAT ADDRESS: 834 CONNECTICUT STREET

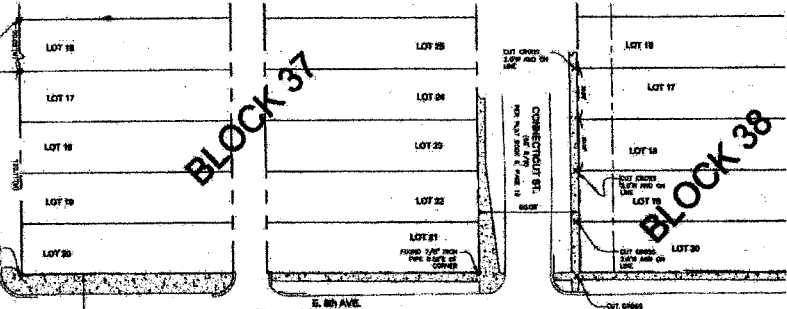
AREA TABLE		
LOT	SQ. FT.	ACRES
LOT 1	174,324	3.98

THIS PLAT WAS RECORDED BY THE CITY OF WASHBURN, ILLINOIS, ON **JAN 29 2014**  
 BY THE CITY CLERK, WASHBURN, ILLINOIS.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.



**LEGAL DESCRIPTION**  
 LOTS 1 THROUGH 30 INCLUSIVE AND ALSO THE 20-FOOT WIDE ALLEY BEING  
 VACATED FOR GOVERNMENT PURPOSES, ALL IN BLOCK 13 IN BURNHAM LAND  
 COMPANY'S FIRST ADDITIONAL ADDITION TO THE PLAT NUMBER RECORDED IN  
 PLAT BOOK 8, PAGE 16, IN THE OFFICE OF THE RECORDER OF LAND COUNTY,  
 WASHINGTON, ILLINOIS.



**COMMENTS:**  
 1. THE LOTS SHOWN ON THIS PLAT ARE THE SAME AS SHOWN ON THE  
 ORIGINAL PLAT OF THE VETERAN'S VILLAGE REPLAT, APPROVED BY THE CITY OF WASH-  
 BURNHAM, ILLINOIS, AND THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON,  
 ILLINOIS, IN 1934.  
 2. THE BURNHAM LAND COMPANY'S FIRST ADDITIONAL ADDITION TO THE PLAT NUMBER  
 RECORDED IN PLAT BOOK 8, PAGE 16, IN THE OFFICE OF THE RECORDER OF LAND COUNTY,  
 WASHINGTON, ILLINOIS, IS HEREBY RE-RELEASED.  
 3. THE BURNHAM LAND COMPANY'S FIRST ADDITIONAL ADDITION TO THE PLAT NUMBER  
 RECORDED IN PLAT BOOK 8, PAGE 16, IN THE OFFICE OF THE RECORDER OF LAND COUNTY,  
 WASHINGTON, ILLINOIS, IS HEREBY RE-RELEASED.  
 4. THE BURNHAM LAND COMPANY'S FIRST ADDITIONAL ADDITION TO THE PLAT NUMBER  
 RECORDED IN PLAT BOOK 8, PAGE 16, IN THE OFFICE OF THE RECORDER OF LAND COUNTY,  
 WASHINGTON, ILLINOIS, IS HEREBY RE-RELEASED.  
 5. THE BURNHAM LAND COMPANY'S FIRST ADDITIONAL ADDITION TO THE PLAT NUMBER  
 RECORDED IN PLAT BOOK 8, PAGE 16, IN THE OFFICE OF THE RECORDER OF LAND COUNTY,  
 WASHINGTON, ILLINOIS, IS HEREBY RE-RELEASED.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

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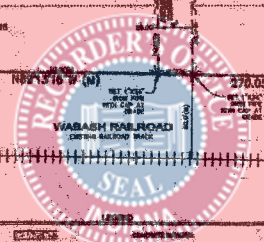
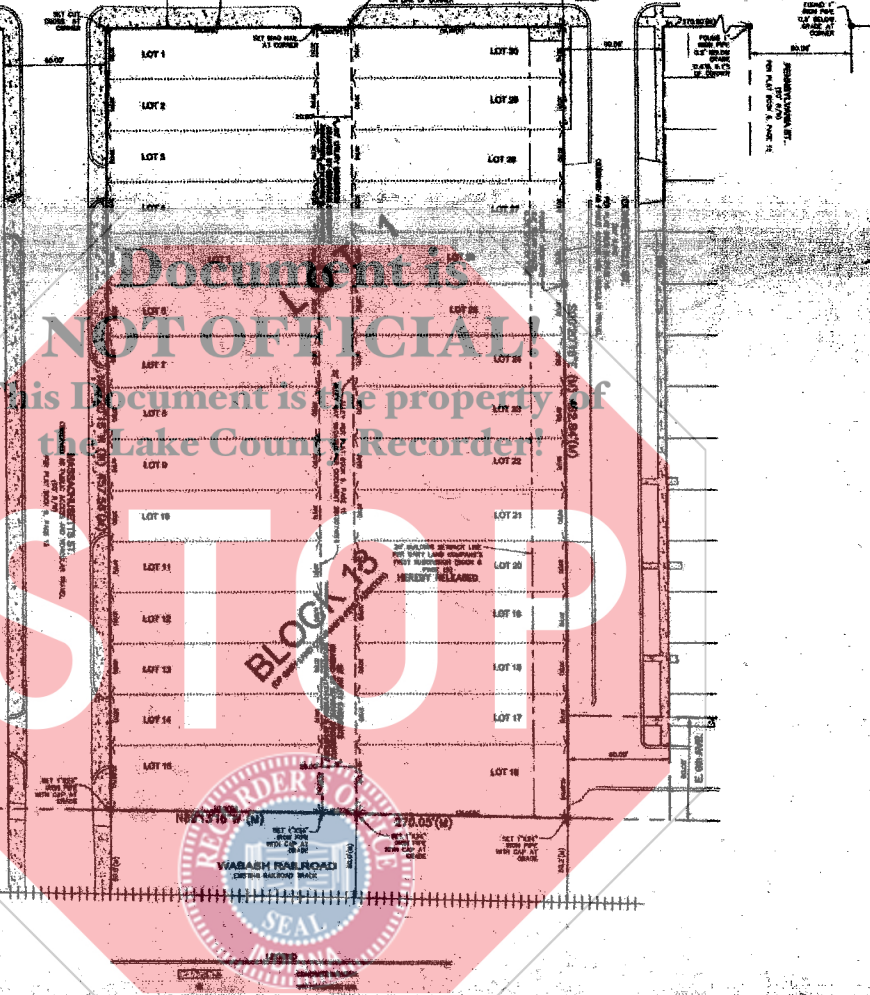
WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

WITNESSED BY ME AND MY NOTARY PUBLIC, THIS **29** DAY OF **January**, 2014.

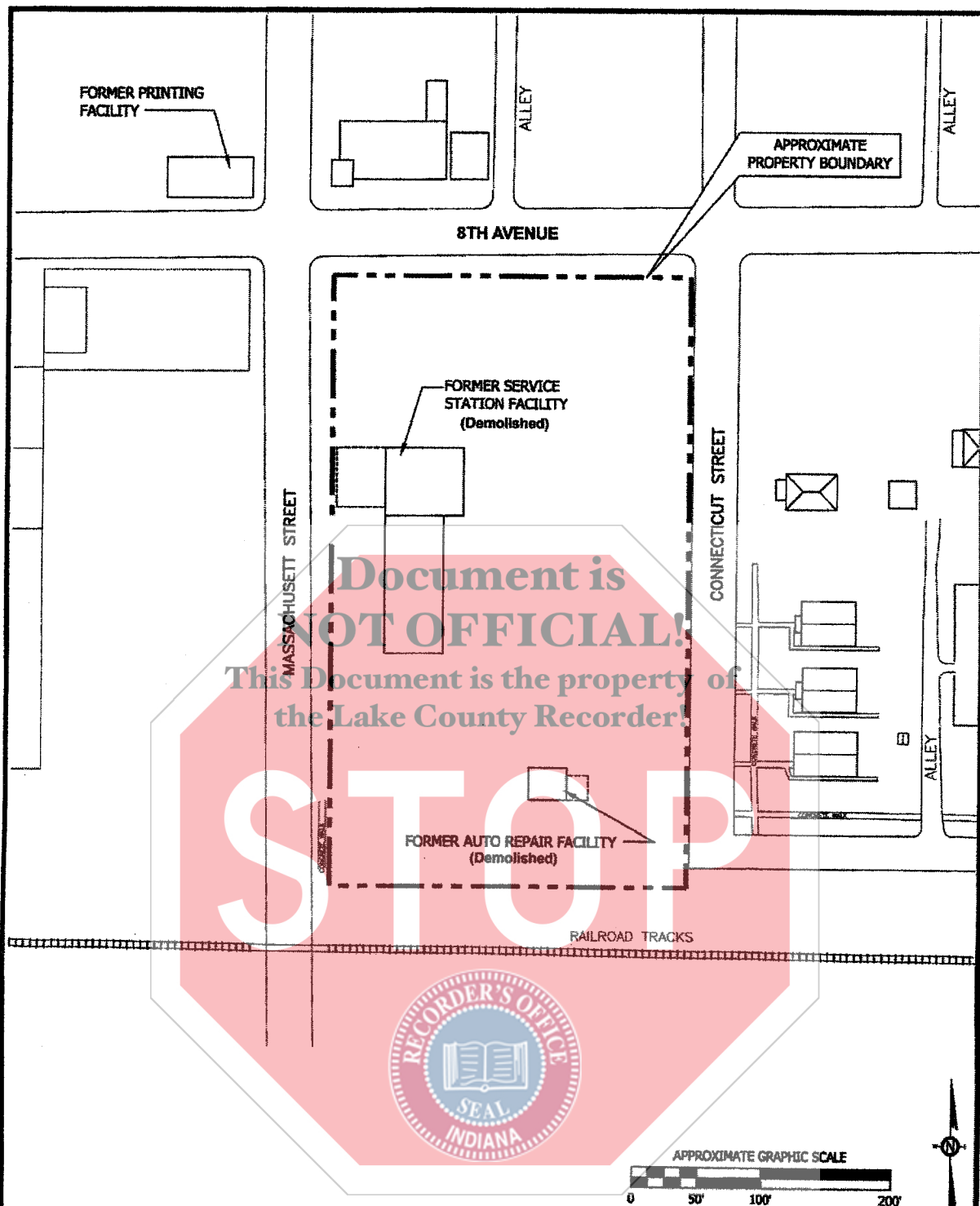


FINAL PLAT OF SUBDIVISION OF VETERAN'S VILLAGE REPLAT

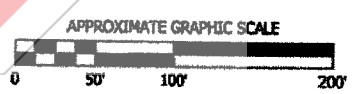
**EXHIBIT B**

**Map of the Real Estate**





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PREPARED FOR: <b>BROADWAY AREA          COMMUNITY          DEVELOPMENT CORP.          GARY, INDIANA</b>	<b>SITE MAP</b>  NORTHWEST INDIANA HOME FOR HEROES 839 MASSACHUSETTS ST., GARY, IN	<b>WEAVER          BOOS          CONSULTANTS</b>  CHICAGO, ILLINOIS (312) 822-1030 www.weaverboos.com	BASED ON A MAP BY: Weaver Boos Consultants DATE: FILE: CAD: <b>FIGURE 1</b>
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**EXHIBIT C**

**Copy of Comfort Letter**





## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Michael R. Pence  
Governor

Thomas W. Easterly  
Commissioner

August 8, 2014

Vernita Leslie  
NWI Veterans Village, LP  
2131 Jackson Street, Suite C  
Gary, Indiana 46407

Re: **Comfort Letter**  
Grace Unity Church  
839 Massachusetts Street  
(834 Connecticut Street)  
Gary, Lake County  
Brownfield #4131108

Dear Ms. Leslie:

In response to the request by The Wetlands Company, LLC and TWG Development, LLC, on behalf of NWI Veterans Village, LP (Owner), to the Indiana Brownfields Program (Program) for assistance concerning the property located at 839 Massachusetts Street (834 Connecticut Street), Gary (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and petroleum products found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Owner must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

The 2.85-acre Site, identified by the county by parcel #45-08-03-356-018.000-004, is occupied by an approximate 6,200 square foot abandoned church located on the northeast corner with concrete and asphalt parking lots comprising the remaining portions of the Site. A small vegetated area is located east of the church and asphalt parking in the southern half of the Site is surrounded by a fence. The northeastern portion of the Site was developed in the early 1900s as a church and between 1911 and 1944; multiple residences were also added to the northern portion of the Site. Between 1915 and 1944, a storage building was constructed on the southeastern portion of the Site which may have been associated with the railroad operations





south of the Site. Between 1945 and 1951, an auto repair facility was constructed on the southeast portion of the Site; and it was subsequently removed in 1975. In addition, a service station was located on the western portion of the Site between the 1950s to the late 1960s or early 1970s. The service station building was demolished in the 1990s.

East 8<sup>th</sup> Avenue is located north of the Site followed by vacant land, a vacant residence, and a church. Connecticut Street followed by residential houses and vacant land are located to the east. Railroad tracks are located to the south, followed by vacant land. Massachusetts Street followed by the City of Gary government offices is located to the west. The Owner purchased the Site from the City of Gary on December 18, 2013. The Owner's plans for the Site include demolition of the existing structure and construction of a 44-unit housing complex for veterans. Preliminary plans include an exercise room, a computer room, a restaurant, walking trails on the eastern portion of the Site, and a community garden.

As part of the request for assistance in determining the existing environmental impacts and potential liability at the Site, Program staff reviewed a *Phase I Environmental Site Assessment* dated October 18, 2013 (Phase I ESA) originally prepared by Weaver Boos Consultants (Weaver Boos) for NWI Homes for Heroes, LP, NWI Homes for Heroes GP, LLC, Great Lakes Capital Fund for Housing Limited Partnership XXVIII, and The Broadway Area Community Development Corporation. Prior to Site acquisition, on November 4, 2013, NWI Homes for Heroes, LP changed its name with the State of Indiana to NWI Veterans Village, LP.

The Phase I was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-05, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule. The Phase I states in Section 2.4, *Reliance*, that NWI Homes for Heroes, LP, NEWI Homes for Heroes GP, LLC, Great Lakes Capital Fund for Housing Limited Partnership XXVIII, and The Broadway Area Community Development Corporation and its affiliates, parents and subsidiaries may rely on this report. As a party seeking to qualify as a BFPP, Vernita Leslie, Executive Director for The Broadway Area Community Development Corporation and also an agent and representative of the Owner (NWI Veterans Village, LP), completed a *User Questionnaire* dated August 29, 2013.<sup>1</sup> The Owner acquired the Site on December 18, 2013.

The Phase I identified two recognized environmental conditions (RECs):

- The former presence of a historic auto repair facility and service station on both the southeastern and western portions of the Site.

<sup>1</sup> The Program has concluded that the Owner (NWI Veterans Village, LP) satisfied the AAI rule because of the fact that an AAI-compliant Phase I was obtained by an authorized agent for and representative of the Owner prior to purchase, and the Owner was aware of, reviewed and relied on the Phase I report prior to acquiring the Site. However, should a court later determine that the Owner did not satisfy all appropriate inquiry (and therefore did not satisfy the BFPP defense), the basis in statute for this letter would be void, invalidating the agency's exercise of enforcement discretion.

- A prior Phase II was conducted at the Site which identified the presence of polyaromatic hydrocarbons (PAHs), lead, and arsenic in soil above applicable remediation objectives.

### **Environmental Conditions at the Site**

As part of the request for assistance in determining any existing environmental impacts and potential liability at the Site, Program staff also reviewed the following documents/reports prepared by Weaver Boos:

- *Phase I Environmental Site Assessment*, dated June 13, 2012 (Phase I ESA – June 2012)
- *Phase II Environmental Site Assessment*, dated January 9, 2013 (Phase II ESA - January 2013)
- *Site Investigation/Remedial Work Plan*, dated December 12, 2013

For the purposes of this letter, soil and groundwater analytical results from on-Site investigations were compared to screening levels in the Remediation Closure Guide (March 22, 2012 and applicable revisions) (RCG) as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial soil direct contact screening levels (RDCSLs and IDCSLs); soil samples collected between 0 and 18 feet bgs were compared to the excavation worker screening level (EX DCSL); soil samples collected below 10 feet bgs and above groundwater were compared to residential soil migration to groundwater screening levels (Res MTGSLs) and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because direct contact exposure at that depth is unlikely. Groundwater samples were compared to RCG residential groundwater tap screening levels (Res Tap GWSLs) only as the contaminants detected in groundwater do not have a groundwater vapor migration to indoor air screening level.

#### *Phase I ESA – June 2012*

The Phase I, conducted by Weaver Boos, identified one REC:

- The potential presence of subsurface contamination associated with a historic auto repair facility on the southeast portion of the Site and a former service station on the western portion of the Site.

#### *Phase II ESA – January 2013*

In December 2012, six soil borings (SP-1 through SP-6) were advanced across the Site to a maximum depth of 20 feet bgs to assess the REC identified in the June 2012 Phase I ESA and to evaluate the potential for subsurface contamination to be migrating from a former printing facility located off-Site and northwest of the Site. In addition, one temporary groundwater monitoring well (TW-1) was installed on-Site at boring SP-5. Black, brown, and gray gravel,

sand, and coal refuse and brick fill material was encountered from the ground surface to approximately four to ten feet bgs. Groundwater was encountered approximately 11 to 11.5 feet bgs. Soil samples and one groundwater sample were collected for laboratory analysis of one or more of the following: benzene, toluene, ethylbenzene, and xylene (BTEX), methyl tert-butyl ether (MTBE), volatile organic compounds (VOCs), polynuclear aromatic compounds (PNAs), semi volatile organic compounds (SVOCs), and Resource Conservation and Recovery Act (RCRA) metals. Refer to Table 1, below, for a summary of soil analytical results above applicable RCG direct contact screening levels.

**TABLE 1**  
**Soil Concentrations Exceeding Applicable RCG Screening Levels**

Sample			Contaminant Detected & Sample Results (in parts per million (ppm))					
Date	Location	Depth (feet)	Benzo(a)- anthracene	Benzo(a)pyrene	Benzo(b)- fluoranthene	Dibenzo(a,h)- anthracene	Indeno(1,2,3-cd)- pyrene	Arsenic
12/2012	SP-1	1-3	5.2	5	7.8	1.7	3.3	2.6
	SP-5	3-5	0.59	0.52	0.52	0.17	0.28	16
	SP-6	0-2	0.2	0.23	0.23	0.047	0.1	
10/2013	SP-7	1-3	20	27	22	8.2	15	NA
	SP-8	1-3	1.8	1.7	1.6	0.61	1	
	SP-9	1-3	0.71	0.59	0.78	<0.35	0.37	
	SP-10	1-3	1.8	1.7	1.6	0.71	1.1	
	SP-13	0-2	0.52	0.54	0.58	0.2	0.37	
	SP-14	3-5	0.23	0.23	0.21	0.085	0.15	7.8
	SP-15	3-5	3.1	2.9	2.6	0.94	1.7	<1.1
	SP-16	3-5	0.25	0.25	0.22	0.091	0.15	6.8
	SP-17	3-5	0.27	0.27	0.24	0.099	0.17	8.5
Residential Direct Contact Screening Level			2.1	0.21	2.1	0.21	2.1	8.5
Commercial/Industrial Direct Contact Screening Level			21	2.1	21	2.1	21	24
Excavation Worker Direct Contact Screening Level			1,300	130	1,300	130	1,300	640

Notes: NA – not analyzed  
*Italics* - above RCG Residential Direct Contact Screening Level  
**Bold** – above RCG Commercial/Industrial Direct Contact Screening Level



A groundwater sample was collected from SP-5 and submitted for laboratory analysis of VOCs, SVOCs, polychlorinated biphenyls (PCBs), and total/dissolved Resource Conservation and Recovery Act (RCRA) metals. The groundwater sample, which was collected with a bailer (TW-1/SP-5) and not via low-flow sampling as recommended by IDEM, was likely turbid because bailing lacks the safeguards provided by a monitoring well screen and surrounding sand filter pack. Turbid groundwater samples increase the potential for false positive and elevated laboratory results, particularly with regard to polycyclic aromatic hydrocarbons (PAHs) and other organic constituents with high KOC (a measure of a chemical's tendency to adsorb to soil particles) and metals, due to the clay-sized particles being suspended in the water sample. Therefore, it is possible the groundwater analytical results above applicable RCG Res TAP GWSLs presented below in Table 2 are biased high.

**TABLE 2**  
**December 2012 Groundwater Concentrations Exceeding**  
**Applicable IDEM RCG Screening Levels**

Sample Location	Contaminant Detected & Sample Results (in parts per billion (ppb))								
	Benzo(a)-anthracene	Benzo(a)pyrene	Benzo(b)-fluoranthene	Benzo(k)-fluoranthene	Bis(2-ethylhexyl)-phthalate	Chrysene	Dibenzo(a,h)-anthracene	Dibenzofuran	Pyrene
TW-1/SP-5	80	92	72	86	8.4	79	31	6.4	140
Res TAP GWSL	0.29	0.2	0.29	2.9	6	29	0.029	5.8	87

Note: *Italic* – above RCG Residential Tap Groundwater Screening Levels

*Site Investigation/Remedial Work Plan – December 2013*

In October 2013, thirteen borings (SP-7 through SP-19) were advanced on-Site to a maximum depth of 16 feet bgs to further assess the extent of contamination identified during the December 2012 investigation and to evaluate Site conditions in the proposed garden area. Twenty five soil samples were collected from the borings and were analyzed for one or more of the following: VOCs, SVOCs, PNAs, PCBs, total RCRA metals, arsenic, and lead. Refer to Table 1, above, for a summary of soil analytical results above applicable RCG direct contact screening levels.

Closure has not been achieved for environmental conditions on the Site. The contamination identified at the Site is believed to be associated with the urban fill that extends approximately 3.5 to 10 feet below ground surface (bgs). The underlying sandy soils did not exhibit contaminant concentrations exceeding their respective RCG RDCSLs. Therefore,

Weaver Boos concluded the extent of contamination at the Site within the fill material is more likely a characteristic of the urban fill material rather than associated with the historic service station or auto repair operations. In order to safely redevelop the Site, Weaver Boos has proposed a combination of excavation and removal of contaminated soil coupled with the installation of integrated engineered barriers to prevent direct contact with contaminated soil. The proposed engineered barriers include concrete slabs, asphalt pavement, or a composite soil cap consisting of one foot of clean soil overlying a geotextile fabric.

### Liability Clarification

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

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

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

### Bona Fide Prospective Purchaser

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



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

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

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Owner acquired ownership of the Site on December 18, 2013 (after January 11, 2002 and June 30, 2009) and any disposal of hazardous substances or petroleum at the Site occurred prior to it acquiring the Site. See 42 U.S.C. § 9601(40)(A); § IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Owner has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Owner has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Owner meets the threshold requirements of CERCLA §§ 9601(40)(A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

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

status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Owner will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Owner must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

### Reasonable Steps

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the hazardous substances and petroleum found at the Site in order to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Implement and maintain the land use restrictions required by this letter.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance contamination or any information about new (or previously unidentified) contamination.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for the BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

### Institutional Controls

Since detected levels of benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and arsenic in soil and benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, bis(2-ethylhexyl)phthalate, chrysene, dibenzo(a,h)anthracene, dibenzofuran, and pyrene in groundwater on-Site are above applicable RCG residential screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restrictions in the enclosed ERC, which are summarized below:

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

- Install a one-foot "clean" soil (all constituents below IDEM RCG Residential Direct Contact levels) and vegetative barrier overlying a geotextile fabric in areas of the Site not covered by buildings, parking lots, or sidewalks and maintain its integrity. Existing buildings, parking lots, sidewalks, and areas newly capped with soil/vegetation, 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.
- Restore soil disturbed as a result of excavation and construction activities on the Site in such a manner that any remaining contaminant concentrations (as determined under the RCG) do not present a threat to human health or the environment. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws, and disposal of such soils must also be done in accordance with all applicable federal and state laws.

### Conclusion

IDEM encourages the residential redevelopment of the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the parcel comprising the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status.

This 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 or the benefit of the issuance of this letter. 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.



Former Grace Unity Church, Comfort Letter  
BFD #4131108  
August 8, 2014  
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If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. In addition, if any acts or omission by the Owner exacerbates the contamination at the Site, or if the Owner does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Owner would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability.

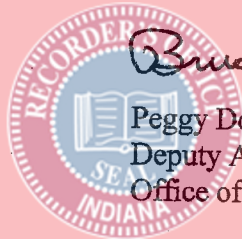
In order for IDEM to consider this letter effective, the enclosed ERC must be recorded on the deed for the Site in the Lake County Recorder's Office. Please return a certified copy of the filed document to the address listed below:

**NOT OFFICIAL!**  
This Document is the property of  
the Lake County Recorder!

Indiana Brownfields Program  
100 North Senate Avenue, Room 1275  
Indianapolis, Indiana 46204  
ATTN: John Morris

IDEM is pleased to assist NWI Veterans Village, LP with this residential redevelopment project. Should you have any questions or comments, please contact John Morris at 317/234-8099 or toll free from within Indiana at 800/451-6027, ext. 4-8099. He can also be reached via email at: [jomorris1@ifa.in.gov](mailto:jomorris1@ifa.in.gov).

Sincerely,



Peggy Dorsey  
Deputy Assistant Commissioner  
Office of Land Quality

Enclosure

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)  
Meredith Gramelpacher, Indiana Brownfields Program (*electronic copy*)  
John Morris, Indiana Brownfields Program (*electronic copy*)  
Becky Armbruster, The Wetlands Company, LLC (*electronic copy*)  
Joe Whitsett, TWG Development, LLC (*electronic copy*)

**EXHIBIT D**

**TABLES**

**TABLE 1**

*Former Grace Unity Church, Gary, Lake County*

**2012 and 2013 Soil Concentrations Exceeding Applicable RCG Screening Levels**

**TABLE 2**

*Former Grace Unity Church, Gary, Lake County*

**December 2012 Groundwater Concentrations Exceeding  
Applicable IDEM RCG Screening Levels**





**TABLE 1**

*Former Grace Unity Church, Gary, Lake County*

**2012 and 2013 Soil Concentrations Exceeding Applicable RCG Screening Levels**

Sample			Contaminant Detected & Sample Results (in parts per million (ppm))					
Date	Location	Depth (feet)	Benzo(a)-anthracene	Benzo(a)pyrene	Benzo(b)-fluoranthene	Dibenzo(a,h)-anthracene	Indeno(1,2,3-cd)-pyrene	Arsenic
12/2012	SP-1	1-3	5.2	<b>5</b>	7.8	1.7	3.3	2.6
	SP-5	3-5	0.59	<i>0.52</i>	0.52	0.17	0.28	16
	SP-6	0-2	0.2	<i>0.23</i>	0.23	0.047	0.1	
10/2013	SP-7	1-3	<b>20</b>	<b>27</b>	<b>22</b>	<b>8.2</b>	<b>15</b>	NA
	SP-8	1-3	1.8	<i>1.7</i>	1.6	<i>0.61</i>	1	
	SP-9	1-3	<i>0.71</i>	<i>0.59</i>	<i>0.78</i>	<0.35	0.37	
	SP-10	1-3	1.8	<i>1.7</i>	1.6	<i>0.71</i>	1.1	
	SP-13	0-2	<i>0.52</i>	<i>0.54</i>	0.58	0.2	0.37	
	SP-14	3-5	0.23	<i>0.23</i>	0.21	0.085	0.15	7.8
	SP-15	3-5	<i>3.1</i>	<i>2.9</i>	2.6	<i>0.94</i>	1.7	<1.1
	SP-16	3-5	0.25	<i>0.25</i>	0.22	0.091	0.15	6.8
	SP-17	3-5	0.27	<i>0.27</i>	0.24	0.099	0.17	8.5
Residential Direct Contact Screening Level			2.1	0.21	2.1	0.21	2.1	8.5
Commercial/Industrial Direct Contact Screening Level			21	2.1	21	2.1	21	24
Excavation Worker Direct Contact Screening Level			1,300	130	1,300	130	1,300	640

Notes: NA – not analyzed  
*Italics* - above RCG Residential Direct Contact Screening Level  
**Bold** – above RCG Commercial/Industrial Direct Contact Screening Level



**TABLE 2**

*Former Grace Unity Church, Gary, Lake County*

**December 2012 Groundwater Concentrations Exceeding  
Applicable IDEM RCG Screening Levels**

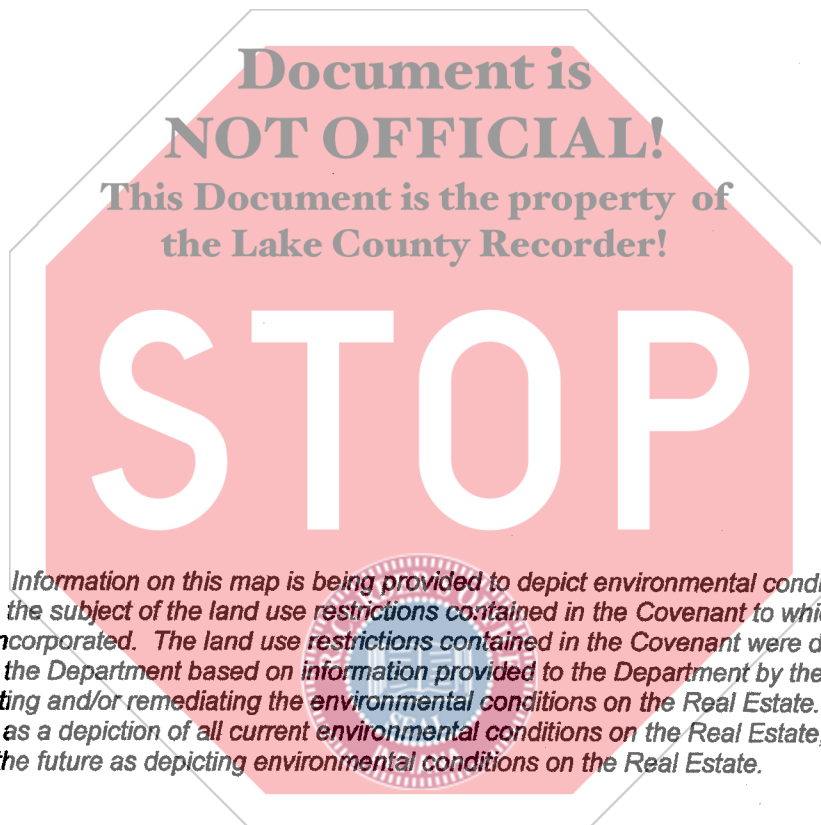
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	Benzo(a)-anthracene	Benzo(a)pyrene	Benzo(b)-fluoranthene	Benzo(k)-fluoranthene	Bis(2-ethylhexyl)-phthalate	Chrysene	Dibenzo(a,h)-anthracene	Dibenzofuran	Pyrene
TW-1/SP-5	80	92	72	86	8.4	79	31	6.4	140
Res TAP GWSL	0.29	0.2	0.29	2.9	6	29	0.029	5.8	87

Note: *Italic* – above RCG Residential Tap Groundwater Screening Levels



**EXHIBIT E**

**Site Map Depicting Sampling Locations at which  
COCs Were Detected Above Applicable 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.*

