

**RESOLUTION NUMBER 2017-43**  
**CITY OF FRANKLIN, INDIANA REDEVELOPMENT COMMISSION**

**AUTHORIZING AN OFFER TO PURCHASE REAL PROPERTY AND  
OFFER RELOCATION INCENTIVES, SUBJECT TO CONDITIONS**

**WHEREAS**, the City of Franklin Redevelopment Commission (the “RDC”), as the governing body for the City of Franklin Redevelopment Department (the “Department”), pursuant to Indiana Code 36-7-14, as amended (the “Act”), desires to foster economic development and redevelopment within the City, and has determined that a vital component of the long-term viability of the historic downtown is the preservation and appropriate redevelopment of the area commonly known as the Young’s Creek Greenway, an area running along both sides of Young’s Creek through downtown Franklin, Indiana. The preservation and appropriate redevelopment of this area, for purposes of this resolution, is the “Project”.

**WHEREAS**, Bastin Logan Water Services, Inc. (the “Owner”) has proposed the sale of its real property (the “Property”) at 237 West Monroe Street, Franklin, Indiana, comprised of approximately 6.10 acres, identified by parcel identification number 41-08-14-034-120.003-009, to the Commission for inclusion in the Project. The Property is described in the attached ‘Environmental Restrictive Covenant’ as Exhibit “A”.

**WHEREAS**, the RDC has determined that the completion of the Project, an area which includes the Property, is in the best interests of the citizens of the City, and, therefore, the RDC, subject to compliance with all applicable statutory requirements, desires to take certain steps in order to acquire the Property from the Owner and to offer incentives to the Owner to relocate within the City of Franklin, Indiana.

**NOW, THEREFORE, BE IT RESOLVED** by the City of Franklin Redevelopment Commission, that:

- 1) Offer to Purchase Real Property / Offer of Incentives to Relocate within Franklin. Pursuant to Indiana Code Sec. 36-7-14-19, the RDC authorizes an offer to the Owner to purchase fee simple title to the Property for the total price, plus costs, of Two Hundred Thirty Two Thousand Five Hundred Dollars (\$232,500) (which is the average of the two appraisals obtained by the RDC for the Property), and authorizes a further offer not to exceed One Hundred Fifty Thousand Dollars (\$150,000) as an incentive to the Owner to relocate the business it currently operates on the Property to another suitable location within the City of Franklin, all subject to the successful negotiation of the terms of the real property purchase and relocation incentive, such as required Owner capital contribution, Owner’s projected employee headcount and compensation, and related matters yet to be determined.
- 2) Miscellaneous. Notices required by statute are authorized to be made, and the RDC’s President is authorized to execute those documents and take those steps which are necessary to give effect to this resolution. Subject to compliance with applicable statutory provisions, including legal notice being made, the RDC will hold a hearing to approve the appropriation of monies sufficient to effectuate the real property purchase and the offer of relocation incentives.

- 3) Effective Date. This resolution shall be in full force and effect from and after its adoption.

DULY ADOPTED on this 21<sup>st</sup> day of November, 2017 by the Redevelopment Commission of the City of Franklin, Johnson County, Indiana.

\_\_\_\_\_  
Robert Heuchan, President

\_\_\_\_\_  
Richard Wertz, Vice President

\_\_\_\_\_  
Brian J. Deppe, Secretary

\_\_\_\_\_  
Keith Fox, Member

\_\_\_\_\_  
Paul Beuning, Member

Attest:

\_\_\_\_\_  
Jayne W. Rhoades,  
Clerk-Treasurer of the City of Franklin, Indiana

## EXHIBIT A

### Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 29<sup>th</sup> day of JUNE, 2016, by Bastin Logan Water Services, Inc. ("Owner"), PO Box 55, Franklin, Indiana 46131.

WHEREAS: Owner is the fee owner of certain real estate in the County of Johnson, Indiana, which is located at 237 West Monroe Street, Franklin, Indiana 46131 and more particularly described in the attached Exhibit A ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate consists of approximately 6.10 acres and has also been identified by the county as part of parcel identification number 41-08-14-034-120.003-009. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit B.

WHEREAS: Duke Energy of Indiana, Inc. entered into Indiana's Voluntary Remediation Program ("VRP") to address releases of hazardous substances and/or petroleum ("contaminants of concern") relating to the Real Estate. The Indiana Department of Environmental Management ("IDEM" or the "Department") assigned the project number 6031102. A remediation work plan was prepared in accordance with IC 13-25-5-8.5, which was approved by the Department on \_\_\_\_\_.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater and soil of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented and maintained to protect human health and the environment. The area where COCs remain in soil are termed the "Limit of Deed Restriction for Soil" and depicted on Exhibit B. The known COCs remaining are listed in Exhibit C, which is attached hereto and incorporated herein.

WHEREAS: The remediation completion report and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently [www.in.gov/idem/](http://www.in.gov/idem/)).

NOW THEREFORE, Bastin Logan Water Services, Inc. subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

## I. RESTRICTIONS

### 1. Restrictions. The Owner:

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) 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, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall not use or allow the use of the Real Estate for any agricultural use.
- (d) Shall restore any soil below a depth of one (1) foot that is disturbed in the "Limit of Deed Restriction for Soil" (as defined herein) as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. Soil from the surface of the Limit of Deed Restriction for Soil to a depth of one (1) foot was excavated and replaced with clean soil. Because clean soil does not present a threat to human health or the environment, this Covenant does not affect Owner's right to excavate or otherwise disturb any soil below the surface down to a depth of one (1) foot. For all other soil within the Limit of Deed Restriction, the determination regarding threats to human health or the environment shall be made using the Department's current risk based guidance. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area within the Limit of Deed Restriction, and any other area within the Limit of Deed Restriction affected by the excavation, 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.
- (e) Shall prohibit any activity at the Real Estate that may interfere with the groundwater monitoring or well network.

## 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 and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "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 or right to occupancy in all or any part of the Real Estate by any person shall affect 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 monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples 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 \_\_\_\_\_ 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 and Duke Energy Indiana, Inc. of the Conveyance of Property. Owner agrees to provide notice to the Department and Duke Energy Indiana, Inc. 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 and Duke Energy Indiana, Inc. with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, 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 IDEM 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, IDEM 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 the contaminants of concern 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 Johnson 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 of its obligation to comply 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, guidance, 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:

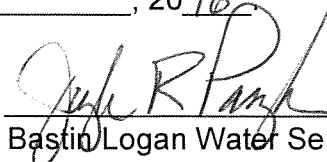
To Owner:  Bastin Logan Water Services, Inc. PO Box 55 Franklin, IN 46131-0055	
To Department:  IDEM, Office of Land Quality 100 N. Senate Avenue IGCN 1101 Indianapolis, IN 46204-2251 Attn: Section Chief, Voluntary Remediation Program	With a copy to Duke Energy Indiana, Inc.:  Scott Alexander, Esq. Taft Stettinius & Hollister LLP One Indiana Square, Suite 3500 Indianapolis, Indiana 46204-2023

Owner or Duke Energy Indiana, Inc. may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

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.

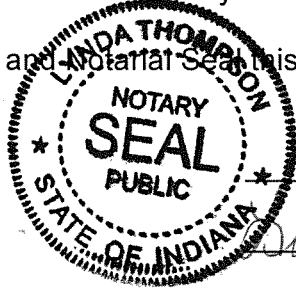
IN WITNESS WHEREOF, Bastin Logan Water Services, Inc. the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 29th day of JUNE, 2016.

  
Bastin Logan Water Services, Inc.

STATE OF INDIANA )  
 ) SS:  
COUNTY OF JOHNSON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Joseph R. Paszek the PRESIDENT of the Owner, Bastin Rappin Waters LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 29<sup>th</sup> day of June, 2016.



Lynda Thompson

Lynda Thompson Notary Public

Residing in Johnson County, Indiana

My Commission Expires: July 25<sup>th</sup>, 2023

This instrument prepared by: R. William Gardner, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: R. William Gardner, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.



**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE**

"EXHIBIT A"

Parcel 2:

A part of the southeast quarter of the southwest quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, in the City of Franklin, Indiana, described as follows:

Beginning at a point on the west line of Lot Number 57 in the Original Plat of the City of Franklin, that is 39 feet south of the northwest corner of said lot; thence south with the west line of said Lot 57, 105.00 feet to the north line of Monroe Street if extended west; thence west with the north line of said Monroe Street if extended west 176.88 feet; thence north 106.40 feet to a steel stake; thence east 181.20 feet to the place of beginning, containing 0.421 acres, more or less, subject to all legal rights-of-way.

ALSO:

Beginning at a point in the centerline of Young's Creek in the City of Franklin, Indiana, where said centerline intersects the south line of the southwest quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian; thence northwesterly with the centerline of said Young's Creek 430.00 feet to the centerline of the New York Central Railroad where said Railroad crosses said Young's Creek on a bridge; thence Northeasterly with the center line of said railroad track 231.78 feet to a steel stake driven in the centerline of said track; thence continuing northeasterly with the centerline of said track 61.50 feet to a steel stake driven in the centerline of said railroad track, being the Southwest corner of a tract of land owned by the Indiana Gas and Water Company; thence northeasterly on and along the south line of the Indiana Gas and Water Company tract 251.30 feet to a steel stake; thence Northeasterly with the South line of said Indiana Gas and Water Company tract 76.75 feet to a stake; thence south 109.54 feet to a steel stake located on the north line of Monroe Street in said City, if Monroe Street was extended West to last said stake; thence East 177.10 feet with the North line of Monroe Street if extended West to a steel stake; thence south 50.00 feet to a steel stake; thence East 221.50 feet to a steel stake that is 189.50 feet West of the centerline of Jackson Street in said City; thence South 72 feet 11 inches to a steel stake; thence west 59.32 feet to a steel stake; thence Southerly 259.20 feet to a steel stake that is 244.69 feet West of the centerline of Jackson Street in said City; thence South 335.75 feet to the North bank of Young's Creek; thence Northwesterly with the North bank of said Young's Creek 476.00 feet to the South line of said Southwest quarter of said Section 14; thence West with the South line of said quarter section 115 feet more or less, to the place of beginning of this tract, containing 8.47 acres, more or less.

EXCEPT, the following described real estate:

Part of the Southwest quarter of Section 14, and part of the Northwest quarter of Section 23, all in Township 12 North, Range 4 East of the Second Principal Meridian described as follows:

Beginning at a point that is 189.50 feet West of the centerline of South Jackson Street in the City of Franklin, Indiana and 20.00 feet South of an extension of the centerline of West Monroe Street in the said city; thence South 72.92 feet; thence West 59.32 feet; thence South 259.20 feet to a point that is 244.69 feet West of the centerline of South Jackson Street; thence South 335.75 feet to the North bank of Young's Creek; thence Northwesterly on and along the said North bank 110.60 feet; thence North 600.05 feet to a point that is 20.00 feet South of an

extension of the centerline of West Monroe Street; thence East 135.95 feet to the Place of Beginning containing 1.17 acres, more or less, subject to all legal rights-of-way and easements.

ALSO, EXCEPT the following described real estate:

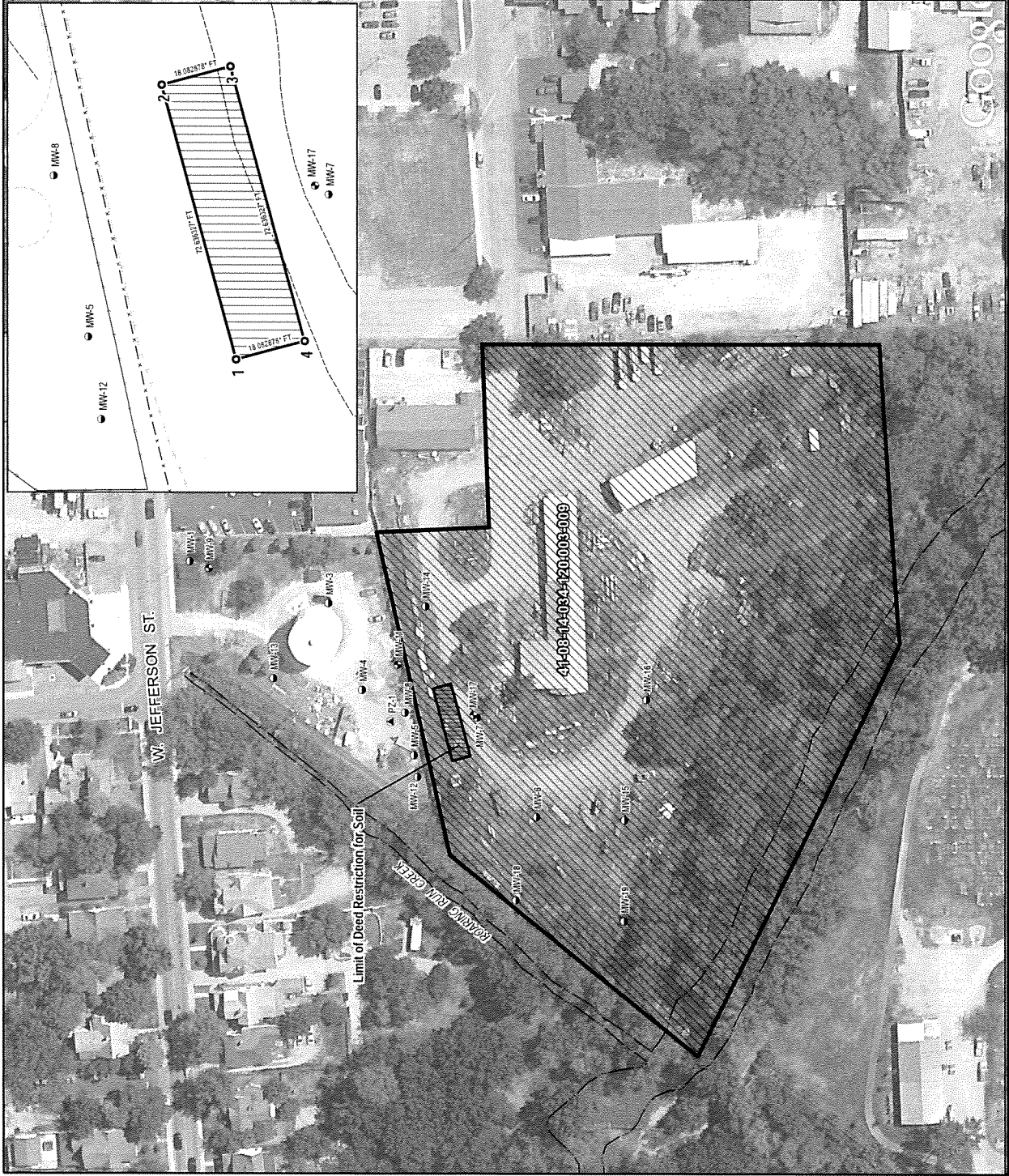
Part of the Southwest quarter of Section 14, and part of the Northwest quarter of Section 23, all in Township 12 North, Range 4 East of the Second Principal Meridian described as follows:

Beginning at a point that is 325.45 feet West of the centerline of South Jackson Street in the City of Franklin, Indiana and 20.00 feet South of an extension of the centerline of West Monroe Street in the said City, said point being the Northwest corner of a 1.17 acre tract deeded to Mark E. and Carol S. Graham and recorded in Deed Record 196, Page 430, in the Office of the Recorder of Johnson County, Indiana; thence South on and along the West line of the said Tract 600.05 feet; thence Northwesterly 89.00 feet to a point on the North bank of Youngs Creek; thence North parallel to the said west line 588.72 feet; thence East 88.08 feet to the Point of Beginning, containing 1.20 acres, more or less, subject to all legal rights-of-way and easements.

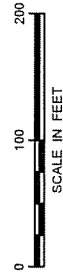
---

**EXHIBIT B**

**MAP SHOWING LEGAL BOUNDARIES  
AND  
LIMIT OF DEED RESTRICTION FOR SOIL**



- LEGEND**
- ▲ Piezometer
  - Monitoring Well (shallow)
  - Monitoring Well (deep)
  - ▨ Groundwater Use Restriction
  - ▩ Limit of Deed Restriction for Soil
  - 41-08-14-034-111 000-009 Parcel Identification
  - Historic Structure
  - Historic Railroad
  - - - Privacy Fence
  - Chain-Link Fence



PROJECTION NAD 1983 STATEPLANE INDIANA EAST FIPS 1301 FEET  
SOURCE

DUKE ENERGY OF INDIANA, INC. FORMER MGP SITE, FRANKLIN, INDIANA <b>ENVIRONMENTAL RESTRICTIVE COVENANT</b>	
<b>Map Showing Legal Boundaries</b>	
	EXHIBIT <b>B</b>

**EXHIBIT C**  
**CONTAMINANTS OF CONCERN**

Contaminants of Concern
<i>BTEX (mg/Kg)</i>
BENZENE
ETHYLBENZENE
TOLUENE
XYLENES
<i>PAHs (mg/Kg)</i>
2-METHYLNAPHTHALENE
ACENAPHTHENE
ACENAPHTHYLENE
ANTHRACENE
BENZO(A)ANTHRACENE
BENZO(A)PYRENE
BENZO(B)FLUORANTHENE
BENZO(G,H,I)PERYLENE <sup>(1)</sup>
BENZO(K)FLUORANTHENE
CHRYSENE
DIBENZO(A,H)ANTHRACENE
FLUORANTHENE
FLUORENE
INDENO(1,2,3-CD)PYRENE
NAPHTHALENE
PHENANTHRENE
PYRENE
<i>Inorganics (mg/Kg)</i>
ANTIMONY
ARSENIC
CADMIUM
CHROMIUM
COPPER
LEAD
MERCURY
NICKEL
SELENIUM
SILVER
FREE CYANIDE

Notes:

<sup>(1)</sup> IDEM RISC Technical Guide - Appendix 1 (January 1, 2004 Update); compound not in most current IDEM Table.

All other compounds - IDEM RISC Technical Guide - Appendix 1 (May 1, 2009 Update)

IDEM RISC - Indiana Department of Environmental Management Risk Integrated System of Closure