

FID 19306



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RECORDER

VANDERBURGH COUNTY

Z TULEY

2011R00012932

06/08/2011 02:41PM

RECORDING FEES: \$30.00

PAGES: 10

COPY

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 8th day of ~~April~~ ^{June}, 2011, by InterProp Fund I, LP ("Owner").

WHEREAS: Owner is the fee owner of a certain tract of real estate having an area of 18,679 square feet and consisting of .43 acres, which is located at 2100 S. Green River Road, Vanderburgh County, Indiana and depicted on the attached Exhibit "A" which is hereby incorporated and made a part hereof (the "Real Estate"). Said Real Estate is part of a larger parcel of real estate more particularly described in the attached Exhibit "B" ("Parent Tract"), which is hereby incorporated and made a part hereof. The Parent Tract was acquired by deed on May 30, 2003, and recorded on June 2, 2003, as Deed Record 2003R00024554, in the Office of the Recorder of Vanderburgh County, Indiana. The Parent Tract consists of approximately 1.2539 acres and has also been identified by the county as parcel number 82-09-01-004-013.001-026 (Tax ID 04-010-04-013-001).

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to underground storage tanks located on adjacent property. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 199312549, and the relevant facility identification number is 19306.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater 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 to protect human health. These COCs are benzene.

WHEREAS: Environmental investigation reports 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/).

NOW THEREFORE, InterProp Fund I, LP 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.

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 (i) interests in the Real Estate that are limited to use of the common parking and access facilities located thereon, which interests are incidental to the leasing or subleasing of any improvements situated upon the remainder of the Parent Tract, (ii) mortgages, (iii) liens, (iv) similar financing interests, and (v) 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 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 (i) interests in the Real Estate that are limited to use of the common parking and access facilities located thereon, which interests are incidental to the leasing or subleasing of any improvements situated upon the remainder of the Parent Tract, (ii) mortgages, (iii) liens, (iv) similar financing interests, and (v) other non-possessory encumbrances). Owner must provide the Department 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 Vanderburgh 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, RISC 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:

InterProp Fund I, LP

2100 S. Green River Road, suite 200

Evansville, IN 47715

To Department:

IDEM, Office of Land Quality

100 N. Senate Avenue

IGCN 1101

Indianapolis, IN 46204-2251

Attn: Section Chief, Leaking Underground Storage Tank Program

An Owner 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, InterProp Fund I, LP, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 8th day of ~~April~~, 2011.

June

InterProp Fund I, LP

By: InterProp Associates, Inc.

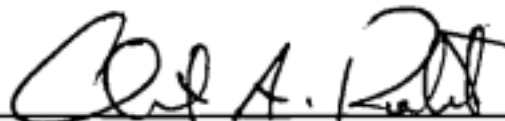
Paul K. Neville, President

InterProp Fund 1, LP
Owner

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Paul K. Neville, known to me to be the President of InterProp Associates, Inc., the general partner of InterProp Fund 1, LP, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

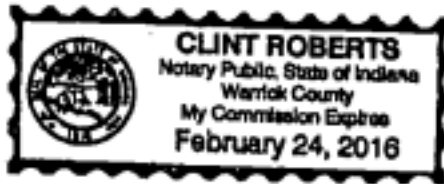
Witness my hand and Notarial Seal this 8 day of ~~April~~^{June}, 2011.



Clint A. Roberts, Notary Public

Residing in Warrick County, Indiana

My Commission Expires:



This instrument prepared by:
Mark E. Phillips
Environmental Management Consultants

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.

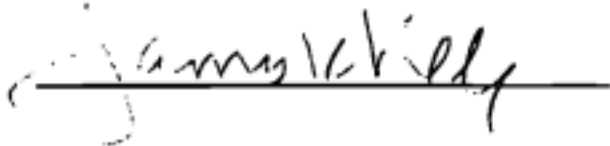


EXHIBIT A

ILLUSTRATION OF REAL ESTATE

Please see attached.

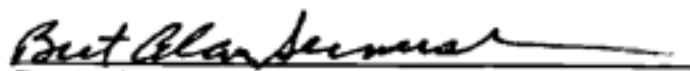
Boundary Description for Environmental Restrictive Covenant

Part of the Northwest Quarter of the Northwest Quarter of Section 1, Township 7 South, Range 10 West in Vanderburgh County, Indiana, being more particularly described as follows:

Commencing at the Northwest Corner of said Quarter, Quarter Section; thence along the west line thereof, South 00 degrees 15 minutes 04 seconds West 40.00 feet; thence parallel with the north line of said quarter quarter section, South 89 degrees 18 minutes 08 seconds East 84.60 feet to a corner of a tract of ground conveyed to the Board of Commissioners of Vanderburgh County Indiana, recorded in Deed Drawer 6, Card 8163 in the office of the Recorder of Vanderburgh County, Indiana, said point being the point of beginning; thence continuing parallel with the north line of said quarter quarter section and along the south line of Pollack Avenue, South 89 degrees 18 minutes 08 seconds East 80.36 feet; thence South 01 degrees 21 minutes 29 seconds West 161.75 feet; thence North 88 degrees 37 minutes 30 seconds West 119.85 feet to a point on the east line of said tract of ground conveyed to the Board of Commissioners of Vanderburgh County, Indiana; thence along said east line, North 00 degrees 15 minutes 04 seconds East 119.41 feet to a corner of said Board of Commissioners of Vanderburgh County Indiana tract; thence continuing along a line of said Board of Commissioners of Vanderburgh County Indiana tract, North 46 degrees 38 minutes 05 seconds East 58.84 feet to the Point of Beginning containing 18,679 square feet (0.43 acres).

Subject to all easements and right-of-ways of record.

Witness my hand and seal this 20th day of April, 2011.


Bret Alan Sermersheim, PLS
Indiana Registration Number LS20200009
Morley and Associates, Inc.
4800 Rosebud Lane
Newburgh, IN 47630
812-464-9585



Name	Feature Type	Max. PDOP	Eastng (X)	Northing(Y)	Elevation	V. Precision	S. Deviation	Correction Method	Collection Date	Collection Time	Data File Name	Total Positions	Fix. Positions	RMS	Min. Satellites
100	1/4" REBAR	1.477	2834631.570	983531.086			0.021	RTK Fixed	4/7/2011	1:59:55 PM	5446GNEVELLE.dc	180	0	0.002m	8
101	RR SPIKE	1.168	2835058.617	983514.922			0.035	RTK Fixed	4/7/2011	2:15:39 PM	5446GNEVELLE.dc	180	0	0.005m	8
102	RR SPIKE W/ PUNCH	1.370	2834625.750	982215.204			0.030	RTK Fixed	4/7/2011	2:38:26 PM	5446GNEVELLE.dc	180	0	0.005m	7
214	HARN	1.553	2829260.843	983592.225	377.64	0.045	0.026	RTK Fixed	4/19/2011	10:13:34 AM	5446GNEVELLE-2.dc	181	0	0.003m	8
8326	PUBLISHED HARN		2829260.94	983592.22	377.65										
30023	COTTON GIN SPIKE	1.405	2834688.157	983480.649	375.98	0.060	0.025	RTK Fixed	4/7/2011	2:04:14 PM	5446GNEVELLE.dc	28	0	0.003m	8
30000	BORE	1.199	2834747.507	983434.249	375.53	0.043	0.030	RTK Fixed	4/7/2011	1:46:01 PM	5446GNEVELLE.dc	28	0	0.008m	9
30001	BORE	2.268	2834702.065	983441.821	375.73	0.041	0.029	RTK Fixed	4/7/2011	1:46:48 PM	5446GNEVELLE.dc	6	0	0.006m	8
30024	BORE	1.306	2834739.327	983477.228	375.81	0.042	0.028	RTK Fixed	4/7/2011	2:39:21 PM	5446GNEVELLE.dc	6	0	0.006m	8

Site/Facility Name: City of Evansville Property, Intersection of Green River road and Pollock Avenue
 Site/Facility Regulatory ID- LUST #199312549, FID #19306
 OLG Regulatory Program for which data was collected: Leaking Underground Storage Tank (LUST)
 Purpose of Collection- Establishment of the boundary for the area of the proposed Environmental Restrictive Covenant (ERC)

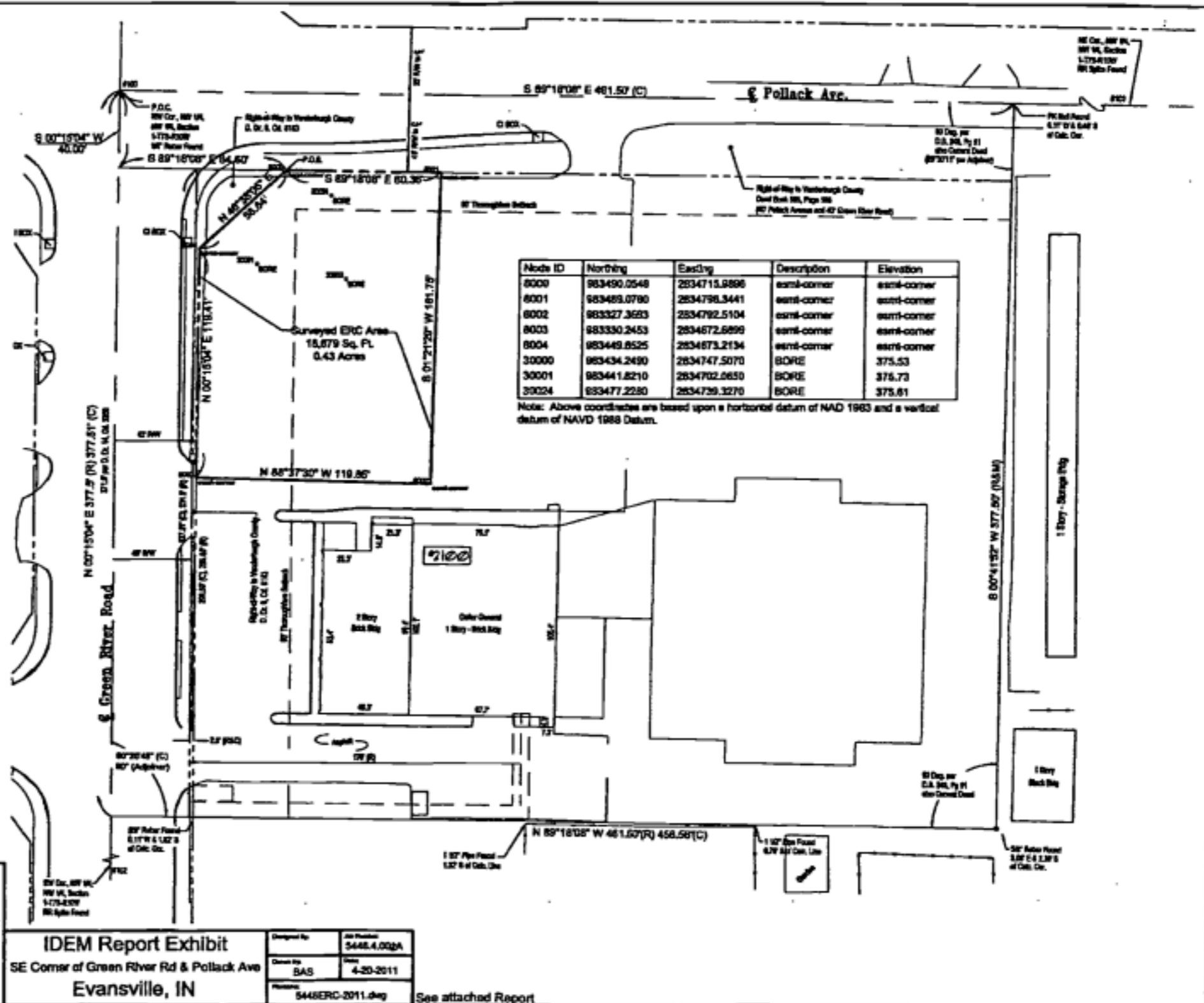
Collector: Eric Obermayer
Projection: Indiana State Plane Zone West 1302
Datum: NAD 83
Units: U.S. Survey Feet
Lat: 37°56'53.12877" N
Long: 87°29'34.64349" W
Ground Scale Factor: 1.0000304885
Geoid Model: G3
SEILER VRS Network
GPS Receiver/Model: Trimble 5800
Receiver Type: Survey Grade



Bret Alan Sermershek
 April 20, 2011



SCALE 1" = 50'



Node ID	Northing	Easting	Description	Elevation
8000	983490.0548	2834715.8896	east-corner	east-corner
8001	983489.0790	2834798.3441	east-corner	east-corner
8002	983327.3683	2834782.5104	east-corner	east-corner
8003	983330.2453	2834672.6899	east-corner	east-corner
8004	983448.8525	2834673.2134	east-corner	east-corner
30000	983434.2490	2834747.5070	BORR	375.53
30001	983441.8210	2834702.0650	BORR	375.73
30024	983477.2280	2834739.3270	BORR	375.61

Note: Above coordinates are based upon a horizontal datum of NAD 1983 and a vertical datum of NAVD 1988 Datum.



Bret Alan Sermersheim
April 29, 2011

Morley and Associates Inc.
Engineering
Surveying
Architecture
Construction Management

Evansville, IN (317) 494-6055
Henderson, KY (270) 830-0300
Jasper, IN (317) 634-8996

www.morleyandassociates.com

IDEM Report Exhibit
SE Corner of Green River Rd & Pollack Ave
Evansville, IN

Designed By	Jim Puckett
Drawn By	BAS
Checked By	4-20-2011
Project	5446ERC-2011.dwg

See attached Report

EXHIBIT B

LEGAL DESCRIPTION OF PARENT TRACT

Part of the Northwest Quarter of the Northwest Quarter of Section One (1), Township Seven (7) South, Range Ten (10) West, in Vanderburgh County, Indiana, and more particularly described as follows:

Beginning at the Northwest corner of Section One (1), Township Seven (7) South, Range Ten (10) West, and running along the north line of the Northwest Quarter of the Northwest Quarter of said Section One (1), South 89 degrees 33 minutes 05 seconds East, One Hundred Fifty-five and Forty-two Hundredths (155.42) feet; thence South 0 degrees 38 minutes 10 seconds West, Three Hundred Seventy-seven and Five-tenths (377.5) feet; thence running parallel to the north line of said quarter quarter section, North 89 degrees 33 minutes 05 seconds West, One Hundred Fifty-one and Twenty-four Hundredths (151.24) feet to a point on the west line of said quarter quarter section; thence along said west line due north, Three Hundred Seventy-seven and Fifty-two Hundredths (377.52) feet to the point of beginning.

Subject to the existing rights-of-way for Green River Road and Pollack Avenue.

Subject to all legal highways, easements, rights-of-way and restrictions of record.