



### Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 5<sup>th</sup> day of May, 2014, by Kerns Bros., Inc. ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Randolph, Indiana, which is located at 400 W. Oak Street in Union City 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 March 23, 1994, and recorded on August 7, 1996, as Deed Record 965165 (Book 277, Page 165), in the Office of the Recorder of Randolph County, Indiana. The Real Estate consists of 0.592 acres and is also identified by the county by parcel identification number 68-02-25-406-027.000-019. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B."**

WHEREAS: A No Further Action (NFA) Letter, a copy of which is attached hereto as **Exhibit "C,"** was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation to address corrective action activities and the redevelopment potential of a brownfield site resulting from a release of petroleum at the Site, Program site number BFD #4070514.

WHEREAS: The NFA Letter, as approved by the Department, provides that following corrective action, benzo(a)pyrene remained in soil and benzene remained in 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.

WHEREAS: Soil and groundwater on the Real Estate were sampled for some or all of the following: total petroleum hydrocarbons ("TPH") gasoline range organics ("GRO"), diesel range organics ("DRO") and extended range organics ("ERO"), carcinogenic polycyclic aromatic hydrocarbons ("cPAHs"), polycyclic aromatic hydrocarbons ("PAHs"), polychlorinated biphenyls ("PCBs"), benzene, toluene, ethyl-benzene and xylenes ("BTEX"), methyl tertiary butyl ether ("MTBE"), and lead. Investigations detected a level of benzo(a)pyrene in soil sidewall sample SW-3 above its residential soil exposure direct contact screening level ("RDCSL") and detected levels of benzene in groundwater sample MW-2 above its residential tap groundwater screening level ("Res-Tap GWSL") and its residential vapor exposure groundwater screening level ("Res VE GWSL") established by IDEM in the Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). Groundwater analytical results above residential screening levels are summarized on Tables 1 and 2, attached hereto as **Exhibit "D."** A site map, attached hereto as **Exhibit "E,"** depicts sample locations on the Real Estate at which contaminants of concern were detected above applicable RCG screening levels.

WHEREAS: Notwithstanding contaminant levels having been detected in Site soil and groundwater above applicable RCG screening levels, IDEM approved a conditional commercial/industrial closure of environmental conditions on the Site under the RCG because 1) the level of benzo(a)pyrene detected in soil on the Real Estate was below its industrial direct contact screening level; 2) benzene levels detected in groundwater on the Real Estate were below the industrial vapor exposure groundwater screening level; 3) groundwater contamination has been delineated and does not extend off the Real Estate; 4) there is no completed exposure pathway to contaminated groundwater because drinking water is municipally supplied and access to groundwater can be controlled through a land use restriction in this Covenant; and, 5) the current and planned continued use of the Real Estate is non-residential.

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, Kerns Bros., Inc. subjects the Real Estate to the following restrictions and provisions, which shall be binding on Kerns Bros., Inc. 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 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.

## 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, lessors, 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 RANDOLPH 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 Randolph 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:

Thomas W. Kerns  
Kerns Bros., Inc.  
400 West Oak Street  
Union City, IN 47390

To Department:

Indiana Brownfields Program  
100 N. Senate Avenue, Rm. 1275  
Indianapolis, Indiana 46204  
ATTN: Tracy Concannon

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.

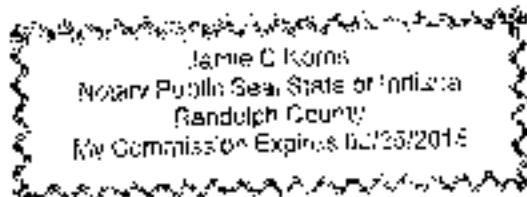
IN WITNESS WHEREOF, Kerns Bros., Inc., the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 5<sup>th</sup> day of May, 2014.

Thomas Kerns  
Kerns Bros., Inc.

STATE OF Indiana  
COUNTY OF Randolph ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Kerns, the representative of the Owner, Kerns Bros., Inc., who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 5<sup>th</sup> day of May, 2014.



Jamie C. Kerns  
JAMIE C. KERNS, Notary Public

Residing in INDIANA County, RANDOLPH

My Commission Expires: 03/25/2015

This instrument prepared by:

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.

JAMIE C. KERNS (Printed Name of Declarant)

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**EXHIBIT A**

**Copy of Corporate Deed for the Real Estate**

965465

CORPORATE DEED

Book 279 Page 165

THIS INSTRUMENT WITNESSETH, that the Union City Body Company, Inc. ("Grantor"), a corporation organized and existing under the laws of the State of Indiana, now a Debtor-in-Possession, CONVEYS, pursuant to the authority of the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, in the Grantor's Chapter 11 bankruptcy proceeding pending as Case No. 93-8316-RLB-11 and pursuant to the Memorandum of Decision dated March 23, 1994, subject to all easements, restrictions, assessments, and real property tax obligations to Kerne Bros., Inc. for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Randolph County, Indiana:

See Legal Description Attached As Exhibit "A"

The undersigned person executing this Deed on behalf of Grantor represents and certifies that he is the duly elected officer of Grantor and has been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this Deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done. There is no Indiana gross income tax due as a result of this transaction.

Parcel Map 113-126-02  
Parcel Map 113-126-03

Witness my hand and seal this 1st day of August 1995  
at Indianapolis, Indiana  
Shirley A. Wright  
Assistant Secretary

RECEIVED FOR RECORD  
AT 10:10 A.M. RECORDED IN  
BOOK 279, PAGE 165

AUG 6 7 1995

3/28/94 10:00:00

Lois Wolfe, Recorder Randolph Co.

RJE



EXHIBIT "A"

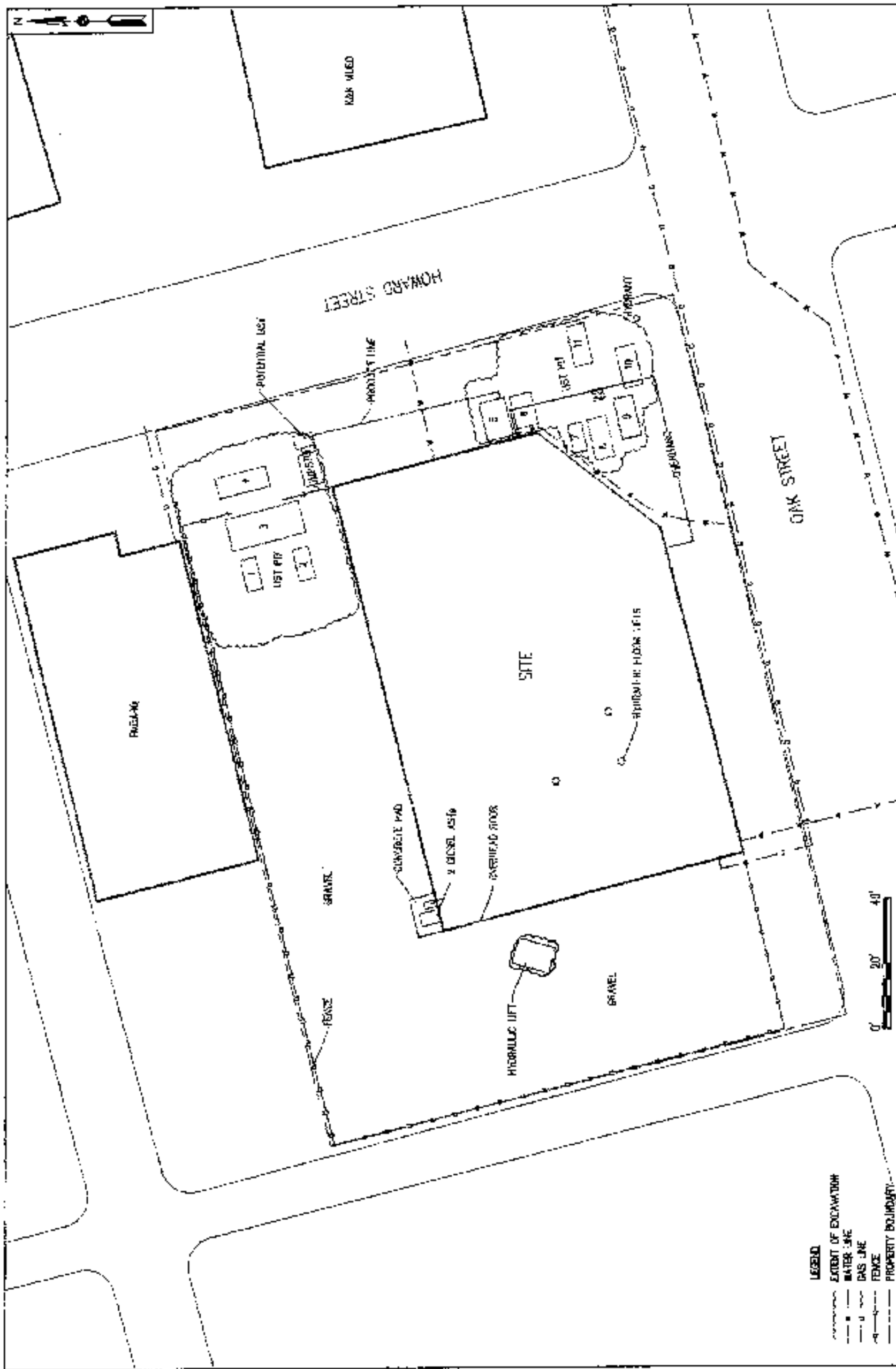
Being Lots Numbered 200, 201, and 204 in the Original Plat of the City of Union City, Randolph County, Indiana, and being more particularly described as follows:

Beginning at the southeast corner of Lot Number 204 in the Original Plat of the City of Union City, Indiana, said southeast corner being the intersection of the west line of platted 80.00 foot wide Howard Street with the north line of platted 80.00 foot wide Oak Street, and running thence, from said beginning point west, along the north line of said Oak Street, 185.19 feet to a cross found at the southwest corner of said Lot Number 204; thence North 00° 09' 34" West along the east line of a 30.00 foot wide alley, 139.17 feet to the northwest corner of Lot Number 200 in said Original Plat, witness the center of a chain link fence post 0.43 feet east of the true corner; thence North 89° 59' 43" East along the north line of said Lot Number 200, 185.01 feet to an iron rod found at the northeast corner of said Lot Number 200; thence South 00° 14' 00" East along the west line of Howard Street, 139.24 feet to the place of beginning, containing an area of 0.592 acre.

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**EXHIBIT B**

**Map of the Real Estate**



<p><b>QUALITY ENVIRONMENTAL PROFESSIONALS, INC.</b> 1611 South Portland Road Indianapolis, Indiana 46219</p>	<p><b>FIGURE 1</b> SITE MAP</p>	<p><b>KERNS BROTHERS</b> 400 WEST OAK STREET UNION CITY, INDIANA</p>	<p>PROJECT NO. 07-01-041</p>	<p>DATE 5/22/12</p>
<p>SCALE 1"=40'</p>	<p>CHECKED BY CWH</p>	<p>DRAWN BY CWH</p>	<p>SHEET 1</p>	<p>USR</p>

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**EXHIBIT C**

**Copy of No Further Action Letter**

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**EXHIBIT D**

**TABLE 1**  
**Kerns Bros., Union City**  
**Groundwater Results Above Applicable Screening Levels**

**TABLE 2**  
**Kerns Bros., Union City**  
**Soil Results Above Applicable Screening Levels**

**TABLE 1**  
**Kerns Bros., Union City**  
**Groundwater Result Above Applicable Screening Levels**

Sample Location	Date Collected	Contaminant Detected & Results (parts per billion)
		Benzene
MW-2	3/7/2011	<i>108</i>
Residential Tap Groundwater Screening Level		5
Residential Vapor Exposure Groundwater Screening Level		24
Commercial/Industrial Vapor Exposure Groundwater Screening Level		120

Notes: *Italics* = above Residential Tap Groundwater Screening Level  
**Bold** = above Residential Vapor Exposure Groundwater Screening Level

**TABLE 2**  
**Kerns Bros., Union City**  
**Soil Result Above Applicable Screening Levels**

Sample Location	Sample Depth (feet bgs)	Date Collected	Contaminant Detected & Results (parts per billion)
			Benzo(a)pyrene
SW-3	1.5	1/18/2012	<i>0.526</i>
Residential Soil Exposure Direct Contact Screening Level			0.21
Commercial/Industrial Soil Exposure Direct Contact Screening Level			2.1

Note: *Italics* = above Residential Soil Exposure Direct Contact Screening Level

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## **EXHIBIT E**

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

