

LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

The site consists of the area more particularly described in the document attached as **Exhibit A** and depicted in the drawing attached as **Exhibit B** (hereinafter referred to as "the Site"). The Site is located at 38°25'42" Latitude 81°50'48" Longitude and is situated southeast of the intersection of Main Avenue and Lock Street in Nitro, Kanawha County, West Virginia. The Site consists of approximately 4.82 acres, more or less, particularly described in the following deeds of record: Deed Book No. 1736, Page 690; Deed Book No. 1445, Page 409; Deed Book No. 2615, Page 276; Deed Book No. 2616, Page 987; Deed Book No. 2614, Page 834; and Deed Book No. 2613, Page 780, all recorded in the office of the Clerk of the County Commission of Kanawha County, West Virginia.

Activities on and uses of the above described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- a) Excavation, drilling or penetration unless such excavation, drilling or penetration is conducted by a contractor who is qualified and knowledgeable about releases and exposures to contaminants known to exist at the site. The contractor will be required to perform the work in accordance with a site specific Health and Safety Plan developed by a Licensed Remediation Specialist or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner which assures that an equivalent amount of engineering control of the site is achieved at the conclusion of the work. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to conduct such work.
- b) Extraction of groundwater for any use except groundwater monitoring.
- c) Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to use of the property to house a school, day care center, nursing home, or other residential style facility.
- d) Construction of any enclosed structure, subsurface foundations such as basements or other subsurface structure for human occupancy.
- e) The emplacement of recreational structures or facilities, including but not limited to picnic tables, playground equipment, and like structures and facilities. This prohibition does not limit or prohibit the construction of a boat ramp and

Recorded In DEED BK 2765 Pg 390, 04/13/2010 01:50:44 PM Deed Tax 0.00, Recording Fee 17.00, TOTAL 17.00
Vera J. McCormick, County Clerk, Kanawha County, WV

associated paved parking area so long as said boat ramp and parking area comply with the requirements of sections a), c) and d) above.

The current owners of record of the property, and their contact information, are:

City of Nitro
2009 20th Street
Nitro, WV 25143

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following is the holder of this covenant:

City of Nitro
2009 20th Street
Nitro, WV 25143

The facts regarding remediation response project at this property – VRP #04257 – are:

Contaminants of concern (COCs) were detected in several media at the Site (see attached Tables 1 and 2 for specific COCs in soil and groundwater, respectively). The COCs detected in the near shore soils along the east bank of the Kanawha River were polynuclear aromatic hydrocarbons (“PAHs”). The COCs detected in the on-site soils were volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), polychlorinated biphenyls (“PCBs”), and arsenic). The COCs detected in the on-site groundwater were VOCs, SVOCs and methoxychlor. Exposure pathways identified for these COCs include direct contact (PAHs in near shore soils, PCBs in on-site soil, and arsenic in on-site soil) and vapor inhalation (VOCs and SVOCs in on-site soil, and VOCs, SVOCs and methoxychlor in on-site groundwater). These exposure pathways were addressed by implementing a remedy consisting of removal of landfill materials from off-site properties and covering the site with an engineered cap. The engineered cap remedy serves to prevent direct contact with landfill materials, reduce vapor migration from the landfill to outdoor air, prevent migration of landfill materials to the surface, prevent surface runoff of contaminants to the Kanawha River, and minimize surface water infiltration into landfill materials. Based upon the planned site use as a public access boat launch, non-residential exposure assumptions were used to confirm acceptable exposure scenarios for the two potential receptors following remedy implementation: boat launch users and on-site utility workers.

The owner shall conduct an inspection of the property to monitor compliance with this Land Use Covenant at least one time per year and shall submit two (2) signed copies of the inspection monitoring report to the West Virginia Department of Environmental Protection, Division of

Co-Applicants: City of Nitro and FMC Corporation
VRA Project # 04257

Land Restoration, headquarters in Charleston, within thirty (30) days of the inspection. The inspection required by this paragraph shall occur during the third quarter of the calendar year.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection and the holders of this covenant within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

This covenant relieves the applicants and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant is recorded.

This covenant may be amended or terminated by consent only by written instrument executed in accordance with W. Va. Code § 22-22B-10. Within 5 days of executing an amendment or termination of this Land Use Covenant, the owner or other person designated in the instrument embodying the amendment or termination shall record such amendment or termination with the Clerk of the County Commission, and within 5 days thereafter, shall provide a true copy of the recorded amendment or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained in the files of the Department of Environmental Protection, Division of Land Restoration, entitled

FMC CORPORATION
NITRO SANITATION LANDFILL
NITRO, KANAWHA COUNTY, WEST VIRGINIA
WVDEP VRP #04257

and located at 601 57th Street SE, Charleston, West Virginia 25304.

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control. If any term or provision of this covenant is held invalid or unenforceable to any extent, the remaining terms and provision of this covenant shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

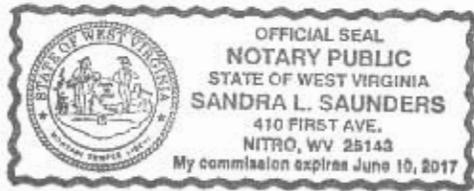
SIGNED:

[Signature]
Mayor, City of Nitro

[Signature] Ken Ellison, Director
Secretary, Department of Environmental Protection

I, Sandra L. Saunders, a Notary Public in and for the County of Kanawha State of West Virginia, do hereby certify that Rusty Casto whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

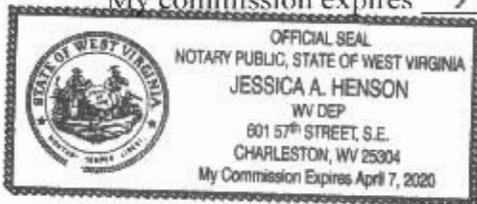
Given under my hand this the 8 day of April, 2009. 2010
My commission expires June 10, 2017.



[Signature] Sandra L. Saunders
Notary Public

I, Jessica Henson, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Ken Ellison, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 12th day of April, 2010.
My commission expires April 7, 2020.



[Signature] Jessica A. Henson
Notary Public

The Clerk will return the recorded document to:
Mr. Ken Ellison, Director
WVDEP, DLR
601 57th Street
Charleston, WV 25304

Table 1
Soil - Contaminants of Concern
FMC – Nitro Sanitation Landfill
Nitro, West Virginia

Volatile Organic Compounds
2- Butanone
Acetone
Benzene
Chlorobenzene
Chloroethane
cis-1,2-Dichloroethene
Ethylbenzene
Isopropylbenzene
Methyl acetate
Methylcyclohexane
Methylene Chloride
Tetrachloroethene
Toluene
Trichloroethene
Vinyl Chloride
Xylenes (Total)
Semivolatile Organic Compounds
1,2,4-Trichlorobenzene
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
2-Chlorophenol
2,4-Dimethylphenol
Polynuclear Aromatic Hydrocarbons
Benzo(a)anthracene
Benzo(a)pyrene
Benzo(b)fluoranthene
Indeno(1,2,3-cd)pyrene
PCBs
Aroclor 1248
Metals
Arsenic

Table 2
Groundwater - Contaminants of Concern
FMC – Nitro Sanitation Landfill
Nitro, West Virginia

Volatile Organic Compounds
Chlorobenzene
Methylene Chloride
Semivolatile Organic Compounds
1,3-Dichlorobenzene
Naphthalene
Pesticides
Methoxychlor

EXHIBIT A**4.82 ACRE TRACT (FORMER NITRO LANDFILL)**

Being six tracts of land situated along the Kanawha River, located in Nitro Corporation District, Kanawha County, West Virginia, being more particularly described as follows:

Beginning at a notch found in a sidewalk on the Westerly line of Main Avenue, common corner to the City of Nitro (DB: 1445 pg: 409) and Wilmer J. Hale (DB: 2662 pg: 496);

Thence leaving Main Avenue and with the common line of said City of Nitro and Wilmer for the following two courses and distances:

S82°07'43"W 196.41' to a point located S02°36'31"E 0.04' from a ½" iron pipe found disturbed and located N82°26'59"E 0.10' from a ½" rebar and cap found;

S06°30'09"W 82.26' to a ½" iron pipe found in the Northerly line of Smith Street;

Thence leaving said Hale and with the northerly line of Smith Street for the following three courses and distances:

S81°53'43"W 102.18' to a ½" rebar found, common corner to the City of Nitro (DB: 1445 pg: 409 and DB: 2616 pg: 987);

S81°20'20"W 73.98' to a 1-1/4" iron pipe found, corner to City of Nitro (DB: 2615 pg: 276);

N70°21'44"W 28.50' to a 1-1/4" iron pipe found, common corner to City of Nitro (DB: 2615 pg: 276) and Forest K. & Hazel Diehl (DB: 1545 pg: 89);

Thence leaving said Smith Street and with the common line of aforementioned City of Nitro and Diehl N02°35'41"W 139.98' to a 1" iron pipe found, said point marking the common corner to City of Nitro (DB: 2615 pg: 276 and DB: 1445 pg: 409) and said Diehl;

Thence with the common line of City of Nitro (DB: 1445 pg: 409) and said Diehl for the following two courses and distances:

N02°02'26"W 79.98' to a ½" iron pipe found;

N70°12'58"W 74.69' to a 5/8" rebar and cap found at the Northwest terminus of minor avenue, common corner to Jay C. Cochran (DB: 2455 pg: 522) and City of Nitro (DB: 1445 pg: 409 and DB: 2614 pg: 834);

thence with the common line of City of Nitro (DB: 2614 pg: 834) and said Cochran

N84°34'34"W 93.37' to a 5/8" rebar and cap found, common corner to Jay C. Cochran (DB: 2455 pg: 522) and City of Nitro (DB: 1445 pg: 409 and DB: 2614 pg: 834) and John Caldwell (DB: 1491 pg: 259);

thence with the common line of said Caldwell and City of Nitro (DB: 1445 pg: 409) for the following two courses and distances:

N81°24'43"W 99.96' to a 5/8" rebar and cap set;

S02°14'40"E 115.78' to a ½" rebar and cap found, common corner to said City of Nitro, Caldwell, and Herman F. Bartlett (DB:1741 pg: 691);

Thence with the common line of City of Nitro (DB: 1445 pg: 409 and DB: 1736 pg: 690) and said Bartlett S87°43'43"W, passing a 5/8" rebar found at 83.60', in all 117.56' more or less to a point at the low water mark of Kanawha River;

Thence leaving said Bartlet and with the low water mark of the Kanawha River for the following four general courses and distances:

N07°38'42"W 67.78' to a point;

n00°36'42"e 88.08' to a point;

N13°44'28"W 29.27' to a point;

N10°03'16"E 108.05' to a point, common corner to City of Nitro (DB: 1736 pg: 690 and DB: 1445 pg: 409) and Indian Head II, LLC (DB: 2526 pg: 575);

Thence leaving said Kanawha River and with the common line of said City of Nitro (DB: 1736 pg: 690) and Indian Head II, LLC N84°48'14"E 70.62' to a ½" iron pipe found on the westerly terminus of Broadway Avenue, common corner to City of Nitro (DB: 1445 pg: 409 and DB: 1736 pg: 690);

Thence leaving Indian Head II, LLC N84°52'00"E and with the following in part: the terminus of Broadway Avenue, Riverview Townhouses, a 10' wide alley, Joseph DeWeese (DB:1515 pg: 109), the terminus of Minor Avenue, Appalachian Power Co. (DB: 793 pg: 447) in all 322.67' to a 5/8" rebar and cap set, common corner to City of Nitro (DB: 1445 pg: 451) and Appalachian Power Co. (DB: 793 pg: 447 and DB: 1495 pg: 451);

Thence with the common line of City of Nitro (DB: 1445 pg: 409) and Appalachian Power Co. (DB: 1495 pg: 451) S25°02'27"E 98.22' to a 5/8" rebar and cap set at the former location of a ½" rebar and cap found;

Thence continuing with the common line of the City of Nitro (DB: 1445 pg: 409 and DB: 2613 pg: 870) , and in part with Appalachian Power co. (DB: 1495 pg: 451) and Regenia A. Burgess (DB: 2614 pg: 838) N84°51'30"E 105.29' to a 5/8" rebar and cap set, common corner to aforementioned Burgess and City of Nitro (DB: 2613 pg: 870);

Thence with the common line of said Burgess and the City of Nitro (DB: 2613 pg: 870) for the following four courses and distances:

S00°26'05"E 41.00' to a 5/8" rebar and cap found;

S14°16'57"E 11.12' to a 5/8" rebar and cap found;

S81°48'31"E 67.13' to a 5/8" rebar and cap found;

S69°31'30"E 56.31' to a 5/8" rebar and cap found, common corner to City of Nitro (DB: 2613 pg: 870 and DB: 1445 pg: 409), and aforementioned Burgess;

Thence with the common line of the City of Nitro (DB: 1445 pg: 409) and said Burgess N85°11'44"E 67.47' to a ½" iron pipe found on the westerly line of main avenue;

Thence leaving said Burgess and with the westerly line of Main Avenue S16°33'20"E 202.68' to the place of beginning, containing 4.82 acres, more or less, as shown on a plat prepared by Terradon Corporation, dated June 19, 2009.

Being all of the same real estate conveyed unto the City of Nitro by the following conveyances:

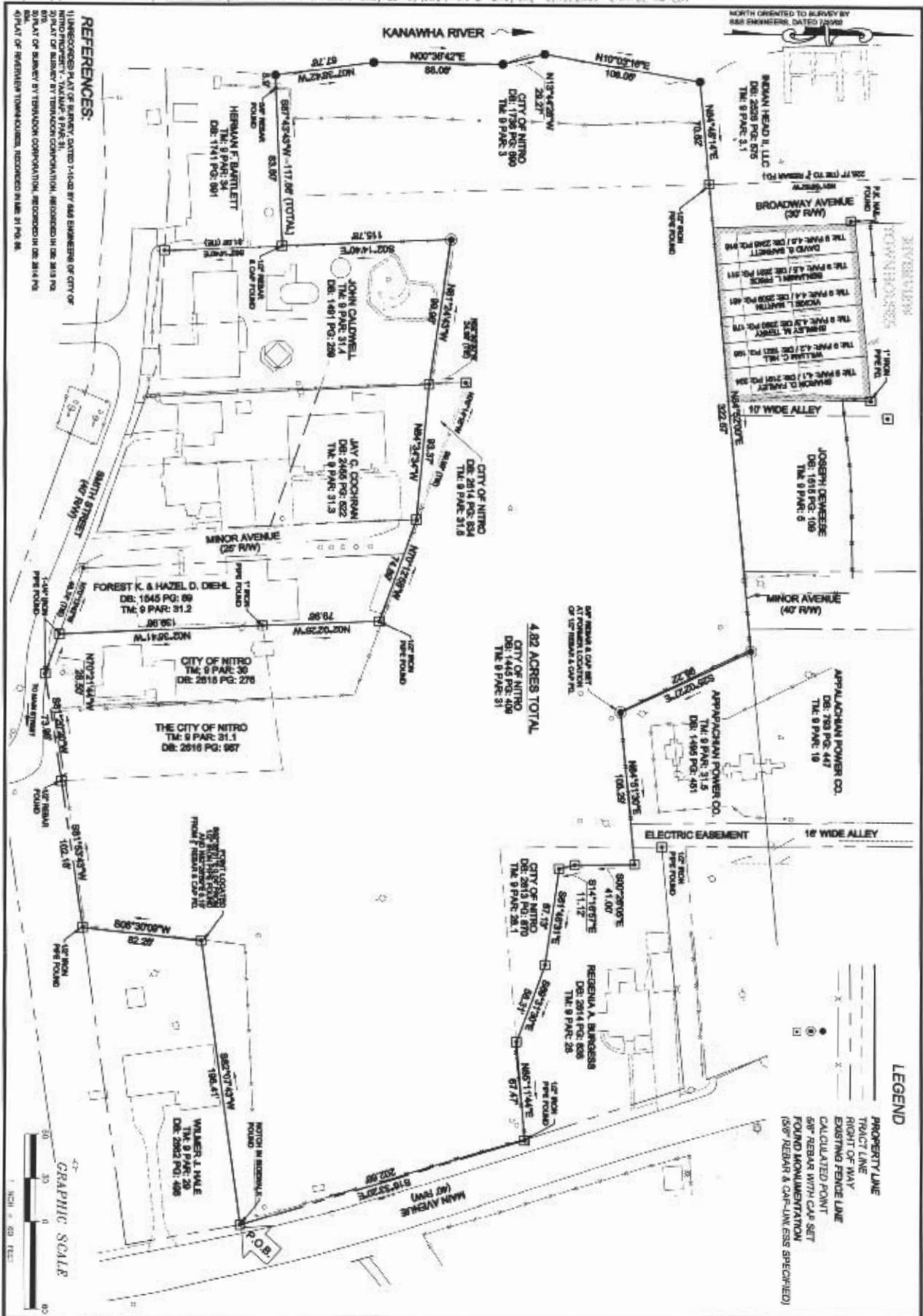
- 1) Deed dated August 24th, 1965 from Lucy & G.S. Smith to City of Nitro, recorded in Deed Book: 1445 page: 409.
- 2) Deed dated September 24th, 2004 from Regenia A. Burgess unto the City of Nitro, recorded in Deed Book: 2613 page: 870.
- 3) Deed dated October 12th 2004, from Jay C. & Laura W. Cochran unto the City of Nitro, recorded in DB: 2614 page: 834.
- 4) Deed dated October 15th 2004, from Karl Slater unto the City of Nitro unto the City of Nitro, recorded in Deed Book: 2615 page: 276.
- 5) Deed dated November 12th, 2004 from Joan Jeannette Taylor Loring unto the City of Nitro, recorded in Deed Book: 2616 page: 987.

Co-Applicants: City of Nitro and FMC Corporation
VRA Project # 04257

Being a portion of the same real estate conveyed by a Deed dated June 30th, 1974, from the West Virginia Water Company unto the City of Nitro, recorded in Deed Book: 1736 page: 690.

This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on and the same is admitted to record.

Testa: *Don J. McComick* Clerk
Kanawha County Commission



REFERENCES:
 1) UNRECORDED PLAT OF SURVEY DATED 1-10-83 BY 648 ENGINEERS OF CITY OF NITRO INCORPORATED, T.M. & P.M. 31
 2) PLAT OF SURVEY BY TERRADON CORPORATION, INCORPORATED IN DE. 2013 PG. 2014 OF SURVEY BY TERRADON CORPORATION, INCORPORATED IN DE. 2014 PG. 2014 OF SURVEY BY TERRADON CORPORATION, INCORPORATED IN DE. 2014 PG. 2014 OF SURVEY BY TERRADON CORPORATION, INCORPORATED IN DE. 2014 PG. 2014

LEGEND
 PROPERTY LINE
 TRACT LINE
 RIGHT OF WAY
 EXISTING FENCE LINE
 CALCULATED FENCE LINE
 BEARING WITH CAP SET
 FOUND MONUMENTATION
 FOUND REBAR & CAP-LIN. (ESS. PRESRIED)

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2014 PG: 824
 TM: 8 PAR: 31.8

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2015 PG: 870
 TM: 8 PAR: 28.1

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2016 PG: 278
 TM: 8 PAR: 31.2

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2016 PG: 987
 TM: 8 PAR: 31.1

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2016 PG: 987
 TM: 8 PAR: 31.1

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2016 PG: 987
 TM: 8 PAR: 31.1

4.82 ACRES TOTAL
 CITY OF NITRO
 DB: 2016 PG: 987
 TM: 8 PAR: 31.1

PLAT OF SURVEY
 FOR: FMC CORPORATION
 NITRO CORPORATION DISTRICT
 KANAWHA COUNTY, WV

TERRADON
 Engineering - Surveying - Landscape Architecture
 P.O. Box 519
 Shenandoah, Virginia 22142
 (540) 703-8331 FAX (540) 703-3888
 www.terraddon.com

DATE	NO.	REVISION

01