



Michigan Department of Environmental Quality  
Remediation and Redevelopment Division

Form EQP3854 is to be used for the Declaration of Restrictive Covenant. Please reference Operational Memorandum No. 6 to guide you in completing the form for the Final Assessment Report or the Closure Report. The instructions and forms can be found at: [www.michigan.gov/deqrrd](http://www.michigan.gov/deqrrd). Scroll down and click on Operational Memoranda, Cleanup Requirements, Forms, and Guidance. Proceed to click on Operational Memorandum No. 6.

Restrictive Covenant-Final Assessment Report EQP3854A (Rev 12/2007)

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## DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference No. RC-RRD-213-\_\_\_\_\_

This Declaration of Restrictive Covenant (Restrictive Covenant) was recorded with the \_\_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located in \_\_\_\_\_ and legally described in the attached Exhibit 1 (Property).

The Property is associated with \_\_\_\_\_ for which a Final Assessment Report (FAR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the FAR dated \_\_\_\_\_ and submitted to the Michigan Department of Environmental Quality (MDEQ) by the owner or operator as defined by Section 21303(a) or (b) of the NREPA. A copy of the FAR is available from the MDEQ Remediation and Redevelopment Division (RRD) District Office.

Part 213 of NREPA requires the recording of this Restrictive Covenant with the \_\_\_\_\_ County Register of Deeds based upon the corrective action activities for the site to: (1) restrict unacceptable exposures to regulated substances located on the Property; (2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA, and (3) assure the exposure control measures relied upon in the FAR are effective; \_\_\_\_\_. The restrictions contained in this Restrictive Covenant are based upon information available at the time the FAR was implemented by \_\_\_\_\_. Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the FAR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the FAR; or use of the Property in a manner inconsistent with the restrictions described below may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

\_\_\_\_\_

### Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

“MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

“Owner” means at any given time the then-current title holder of all or any portion of the Property.

“RBCA” means the American Society for Testing and Materials (ASTM) document entitled, “Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites,” Designation E 1739-95.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACS R 299.5101 *et seq.*, shall have the same meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Restrictive Covenant is filed.

### Summary of Corrective Actions

\_\_\_\_\_

THEREFORE,

#### 1. Declaration of Land and Resource Use Restrictions

In accordance with the FAR, \_\_\_\_\_, \_\_\_\_\_, covenants that the Property is subject to the following restrictions:

a. Prohibited Land Uses. The Owner shall prohibit all uses of the property that are not compatible with the \_\_\_\_\_ land use \_\_\_\_\_ relied on by the FAR and allowed under Section 21304a(2) of the NREPA, and generally described in the “Description of Allowable Uses,” attached as Exhibit 3. \_\_\_\_\_ Cleanup criteria for land use-based corrective actions are located in the Government Documents Section of the Library of Michigan.

b. Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances. The Owner shall prohibit activities \_\_\_\_\_ that may result in exposures above levels established in the FAR. These prohibited activities include:

\_\_\_\_\_

c. Prohibited Activities to Ensure Effectiveness and Integrity of the Corrective Action. The Owner shall prohibit activities on the Property that may interfere with any element of the FAR, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the FAR.

\_\_\_\_\_

d. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located on the Property in accordance with the applicable requirements of Sections 21304b and 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the FAR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the FAR.
3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the FAR and this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.
4. Audits Pursuant to Section 21315 of the NREPA. This Restrictive Covenant is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Restrictive Covenant is not protective of the public health, safety, and welfare, and the environment.
5. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the MDEQ or its successor determines that regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment, and may only be modified or rescinded with the written approval of the MDEQ.
6. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, and \_\_\_\_\_ may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.
7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.
8. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Restrictive Covenant, which shall continue unimpaired and in full force and effect.
9. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner \_\_\_\_\_, and certifies that he or she is duly authorized to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, \_\_\_\_\_ has caused this Restrictive Covenant, \_\_\_\_\_, to be executed on this \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Drafted by: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

**CONSENT OF OWNER**

I, \_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Restrictive Covenant and authorize \_\_\_\_\_ to file this Restrictive Covenant with the \_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

County of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Acting in the County of \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT 2**

**SURVEY OF THE PROPERTY**

**OR**

**SURVEY OF THE PROPERTY AND LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**

**EXHIBIT 3**

**DESCRIPTION OF ALLOWABLE USES**

**EXHIBIT 4**

**CONSENT OF EASEMENT HOLDERS**

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_

My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_