



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND  
ENERGY

Remediation and Redevelopment Division

**DECLARATION OF RESTRICTIVE COVENANT PART 201**

This document provides instruction for the attached model Declaration of Restrictive Covenant which may be used to place land or resource use restrictions pursuant to Section 20121 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This document and the model Declaration of Restrictive Covenant are provided to the public as preliminary guidance as to the content, format, and terms of the Declaration of Restrictive Covenant and are subject to periodic revision. They are not intended, nor can they be relied upon, to create any substantive or procedural rights by any other party.

Pursuant to Section 20114c(3) of the NREPA, a notice of the land use or resource use restrictions shall be provided to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and the zoning authority for the local unit of government in which the facility is located within thirty (30) days after recording with the appropriate Register of Deeds. Upon recording, a copy of the Declaration of Restrictive Covenant shall be provided to EGLE together with a notice that includes the street address or parcel number for the property or properties subject to the Declaration of Restrictive Covenant. The recording requirements for instruments filed with Michigan County Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), Act 103 is available at: [www.legislature.mi.gov](http://www.legislature.mi.gov)

Please contact Erica Bays, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at [BaysE@michigan.gov](mailto:BaysE@michigan.gov) or 269-350-0080 for any questions relating to this document or the attached model document; or you may send an email to [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov) for assistance.

The lettered instructions below explain what information should be inserted into the corresponding blanks identified by letter in the model Declaration of Restrictive Covenant. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as ***[regular bold font within bold brackets]***. Remove all bolded font and drafting notes. The first page should have a margin of unprinted space that is at least 2-1/2 inches at the top of the first page and at least 1/2 inch on all remaining sides of each page.

- A. *Insert as appropriate based on the land use proposed for the Restrictive Covenant and the cleanup criteria that have been satisfied for the remedial action:***
- Restricted Residential

- Restricted Nonresidential
- Restricted Site-Specific (i.e., recreational)

**B. EGLE Reference No: RC-RRD-201-[year]-[number]. *This Reference Number ensures the protectiveness, enforcement, and tracking of institutional controls. All institutional control Reference Numbers assigned shall be predominantly displayed on the first page. The EGLE Reference Number can be obtained by emailing [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov). If you have received a Reference Number over a year prior to finalizing the Restrictive Covenant, please send an email to [EGLE-RRD@Michigan.gov](mailto:EGLE-RRD@Michigan.gov) above to request a new Reference Number.***

**C. *If not all of the Property is to be subject to all of the land or resource use restrictions provided in the restrictive covenant, insert the following:***

The “Limits of Land or Resource Use Restrictions,” attached as Exhibit 2, provides [***choose one of the following: a legal description and a scaled drawing; a survey; or a description or drawing approved by EGLE***] of those portions of the Property that are subject to land use or resource use restrictions specified in this Restrictive Covenant.

**D. *Select one of the following options as appropriate:***

***OPTION 1: Insert a brief narrative description of response activities and environmental contamination at the Property. All environmental contamination at the Property shall be described herein even if the response activities addressed only a portion of the contamination or Property. Insert specific language with respect to what the response activities addressed at the Property, (i.e., all environmental contamination at the Property, environmental contamination within a portion of the Property, a specific release or hazardous substance at the Property or portion of Property, or the media addressed). This narrative shall also describe any conditions at the Property that were not addressed by the response activities, or the restrictions contain within this restrictive covenant that would require additional response activities or actions to comply with the due care requirements of Section 20107a of the NREPA in order for the Property to be used in a manner that assures the protection of persons who may be present at the Property:***

***Example: Hazardous substances including but not limited to benzene, toluene, naphthalene, acenaphthylene, benzo(a)pyrene, mercury, and cyanide have been released and/or disposed on the Property from historical manufactured gas operations. Prior to the recording of this Restrictive Covenant, response activities have been undertaken to remove hazardous substances through source area removal. However, some hazardous substances remain present on the Property that require controls in the form of groundwater use restrictions and soil management restrictions to prevent unacceptable exposure. An exposure barrier***

***consisting of a six (6) inch gravel cover was placed over two (2) impacted areas to prevent direct contact with benzo(a)pyrene identified on Exhibit 2 and referred to as “Boundary Area 1” and “Boundary Area 2”. In addition, arsenic concentrations remain present at the Property that exceeds the direct contact exposure pathway. Response activities did not address arsenic contamination and requires additional response activities or actions to comply with the due care requirements of Section 20107a of the NREPA in order for the Property to be used in a manner that assures the protection of persons who may be present at the Property.***

***[Insert the following language if residual (or mobile) nonaqueous-phase liquid is being left in place at the Property]***

***Residual (or mobile) Light Nonaqueous-Phase Liquid (LNAPL), including [describe the type and makeup of the LNAPL present at the Property] were properly characterized and assessed, and will remain in place at the Property. The LNAPL exists below the ground surface at a depth of [insert approximate depth] and is located within the restricted area described in Exhibit 2 (Limits of Land or Resource Use Restrictions). The location of the horizontal and vertical extent of the LNAPL is described in Exhibit 4 [renumber if necessary]. The restrictions provided for in this Restrictive Covenant serve to prevent unacceptable exposure to hazardous substances as a result of the conditions created by the presence of the LNAPL soil and/or groundwater contaminant concentrations that exceed the unrestricted residential criteria under Section 20120a(1)(a) of the NREPA.***

***If response activities rely solely on compliance with Section 20120a(18) (the Michigan Occupational Safety and Health Administration (MIOSHA) provision) for the volatilization to indoor air pathway and therefore do not require any vapor mitigation system, insert the following paragraph:***

At the time the Restrictive Covenant was recorded, the active manufacturing facility has been demonstrated to be in compliance with Section 20120a(18) of Part 201, commonly referred to as the Michigan Occupational Safety and Health Administration (MIOSHA) provision. This demonstration included meeting the specified manufacturing classifications provided by the North American Industry Classification System (NAICS), relying on the Department of Licensing and Regulatory Affairs' (LARAs') MIOSHA exposure levels to demonstrate compliance with the indoor air inhalation criteria, including the hazardous substance in the hazard communication program under MIOSHA, and providing certain documentation from a Certified Industrial Hygienist (CIH) that the facility is in compliance with MIOSHA. The following hazardous substances are present in the soil and/or groundwater at the Property at concentrations that have the potential to volatilize into indoor air above levels that are considered protective of human health, safety, and welfare.

***[Insert list of hazardous substances]***

**[Insert the following language if a vapor mitigation system has been installed on the Property]**

**Example: A vapor mitigation system (VMS) has been installed by [insert the entity responsible for the release or insert the name of the engineering firm who installed the VMS on behalf of a non-liable entity] within the Property building (identified in Exhibit 5) to mitigate unacceptable risk from exposure to hazardous substances via the Volatilization to Indoor Air Pathway. Specific activity and use limitations and operation and maintenance of the VMS is provided in this Restrictive Covenant.**

**OPTION 2: Identify a publicly accessible information repository where information of response activities and environmental contamination at the property may be obtained, such as a public library. Please include any references to any Response Activity Plan or other report that was the basis of this Restrictive Covenant.**

**Example: Documents describing the response activities and environmental contamination at the Property are on file at [insert name and address of repository]. The response activities that [insert as appropriate: are being or were] implemented to address environmental contamination are fully described in the Response Activity Plan titled [insert the title of plan] dated [insert date] and prepared by [insert the name of the entity that prepared the plan].**

**E. Enter the name of the owner of the property or the name of the person requesting the owner to place the restrictive covenant on the property.**

**F. Insert as appropriate:**

- as the Owner of the Property
- with the express written permission of the Owner of the Property
- as the authorized person representing the condominium common elements and similar commonly owned property

**G. Select one or more of the following options as appropriate to describe the restrictions on land use necessary to comply with the appropriate cleanup criteria that are consistent with the zoning of the property. The person preparing the restrictive covenant must examine the zoning code or ordinance that applies to the property to determine what land uses are allowed under the zoning category.**

**OPTION 1: If the property or portion of the property is subject to land use restrictions required to satisfy the nonresidential cleanup criteria, insert the following paragraph below:**

- a. **Land Use: The Owner shall prohibit all land uses that do not satisfy the nonresidential cleanup criteria. [insert as appropriate: on the Property or on portions of the Property as described in Exhibit 2]. The nonresidential**

criteria are applicable to industrial, commercial, office or retail nonresidential land use categories with potential exposure to adult workers during a business day and potential intermittent exposures of adults and children who are customers, patrons, or visitors to the establishments during a portion of the business day. If the nonresidential land use allows for routine exposures to children, the land use does not satisfy the nonresidential cleanup criteria. Residential land uses do not satisfy the nonresidential cleanup criteria. Residential land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments where people live and sleep for significant periods of time. **[If the local zoning ordinance allows for residential uses within the Property's current zoning, insert the following: The following uses allowed under the [insert name of local zoning authority and zoning code designation] zoning code designation are prohibited: [list prohibited uses.]** Cleanup criteria for land use based response activities are located in the Government Documents Section of the State of Michigan Library.

***OPTION 2: Site-specific cleanup criteria are based on alternative exposure assumptions unique to the Property (i.e., recreational). Land use restrictions must be in place to assure that activities or characteristics of the Property continue unchanged into the future such that unacceptable exposures will not occur. If the Property or a portion of the Property is subject to land use restrictions required to satisfy site-specific cleanup criteria, insert the following paragraph below:***

- a. **Land Use:** The Owner shall prohibit all uses of **[insert as appropriate: the Property or portions of the Property as described in Exhibit 2]** except for those uses that are consistent with assumptions used to develop site-specific criteria pursuant to Section 20120a(2) and 20120b of the NREPA as approved by EGLE.

**[Insert description of site-specific allowable uses]**

***OPTION 3: If hazardous substances left in-place at the Property, or portion of the Property, do not satisfy any applicable cleanup criteria and do not allow the Property, or portion of the Property, to be used for any purpose without the performance of additional response activities to prevent exposure to hazardous substances, insert a paragraph that describes those conditions similar to the paragraph below. If portions of the Property do satisfy applicable criteria, this paragraph can be used in combination with OPTION 1 or 2 with the inclusion of a reference to the applicable portions of the Property as defined in Exhibit 2:***

The response activities performed at **[insert as appropriate: the Property or portion of the Property as described in Exhibit 2]** do not satisfy applicable cleanup criteria for any general use. Additional response activities or actions to comply with Section 20107a of the NREPA are necessary to address **[insert language to describe the release, hazardous substances, or media that**

***must be addressed]*** to allow ***[insert as appropriate: the Property or portion of the Property as described in Exhibit 2]*** to be used for its intended purpose and to assure the protection of persons who may be present at the Property.

- H. Enter additional paragraphs, as appropriate, to describe the prohibited activities necessary to reliably restrict exposure to hazardous substances or to maintain the effectiveness and integrity of the response activity implemented on the Property or within the portions of the Property designated in Exhibit 2.***

**Example exposure restriction for use of groundwater:**

***The Owner shall prohibit the construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:***

***(i.) Wells and other devices constructed as part of a response activity for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of hazardous substances into the environment are permitted provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.***

***(ii.) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.***

**Example direct contact exposure barrier restriction:**

***The [insert thickness and material of barrier] [insert as appropriate if the integrity of the barrier relies on established elevation or there is an acceptable demarcation layer present] that has a base elevation of [insert reproducible benchmark] or overlying [insert description of demarcation layer/material] at the locations shown in Exhibit 2 serves to prevent exposures to contaminated soils at the Property. Note: if multiple cover types are relied on as an engineering control, the thickness and the base elevation of each cover type must be described in this paragraph and depicted in Exhibit 2. Exhibit 2 should also indicate the variation in base elevation(s). The Owner shall prohibit the excavation or other intrusive activity that could affect the integrity of the [insert material of barrier], except during short-term construction or repair projects or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the [insert material of barrier], that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of***

**protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.**

**Example volatilization to indoor air pathway restriction (including reliance on MIOSHA standard):**

- (i) The Owner shall prohibit the construction and/or use of any buildings or structures on the Property unless the Owner complies with one of the following:**
- (a) The building or structure is an establishment used and classified for manufacturing use consistent with Section 31 – 33 – Manufacturing, of the North American Industry Classification System, United States, 2012, and the Owner complies with all of the provisions of Section 20120a(18) of the NREPA.**
  - (b) The Owner performs an evaluation of the potential for hazardous substances to volatilize into indoor air that demonstrates the protection of persons who may be present within any building or structure and complies with Section 20107a of the NREPA.**
  - (c) The Owner installs appropriate engineering controls on any building or structure designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the building or structure at concentrations greater than applicable criteria.**

**Example language to protect the integrity of an active or passive vapor mitigation system (if installed at the Property as part of the response activities) in addition to the volatilization to indoor air pathway language above. It is recommended that the “Access” and “Conveyance of Property Interest” provisions be inserted in the Restrictive Covenant when relying on a vapor mitigation system):**

- (ii) The Owner shall prohibit any activity that would affect the integrity, effectiveness, and operation of the vapor mitigation system (VMS) at the location(s) in Exhibit 5 [renumber if necessary]. This includes, but is not limited to, removing, destroying, altering, or shutting down the VMS in any way that renders it inoperable, or incapable of functioning as intended. An Operation and Maintenance manual for the VMS is provided to the Owner attached as Exhibit 6 [renumber if necessary]. The Owner shall not perform any building modifications without evaluating the impact on the operation of the VMS. Building modifications include but are not limited to: modifications of the structure, or of the existing floors, slabs, or subsurface areas which are**

***likely to decrease the efficiency of the VMS or otherwise interfere with the operation of the VMS. Continued operation and maintenance of the VMS is necessary, unless the Owner performs an evaluation of the potential for hazardous substances to volatilize into indoor air and demonstrates that the VMS is no longer necessary. Any questions related to the VMS should be directed to [insert the entity responsible for the release or insert the name of the engineering firm who installed the VMS on behalf of a non-labile entity].***

**Example infiltration barrier restriction:**

***The [insert thickness and material of barrier] that has a base elevation of [insert reproducible benchmark] at the locations shown in Exhibit 2 serves to prevent infiltration of water through contaminated soil at the Property. The Owner shall prohibit any excavation or other intrusive activity that could affect the integrity of the [insert material of barrier], except during short-term construction or repair projects or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the [insert material of barrier], that could affect the integrity of the barrier, must include the use of engineering controls to prevent the infiltration of water into the contaminated soil underlying the barrier until the barrier is repaired or replaced. The barrier must be repaired or replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional sampling is conducted which demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.***

**Example monitoring well disturbance restriction:**

***The Owner shall prohibit any activity that would interfere with the function of or obstruct access to any monitoring wells and devices located on the Property. This includes, but is not limited to, removing, destroying, or altering any well or device in any way that renders it inoperable, or incapable of functioning as intended.***

**Example treatment system restriction:**

***The Owner shall prohibit any activity that could affect the integrity, effectiveness, and operation of the groundwater interception trench and treatment system depicted in Exhibit 2.***

**Example containment and treatment system restriction:**

***The Owner shall prohibit any excavation or other intrusive activity that could affect the integrity, effectiveness, and operation of the slurry wall and Light Non-Aqueous Phase Liquid (LNAPL) collection system as designated in Exhibit 2, and any activities that would interfere with access to the slurry wall and LNAPL collection system.***



- I. **Insert as appropriate:**
- on the Property
  - within the portions of the Property designated in Exhibit 2 as [*insert designation*]

- J. **Enter the following paragraph if permanent markers are required; if not, remove and renumber the paragraphs as appropriate:**

**Permanent Markers.** *The Owner shall not remove, cover, obscure, or otherwise alter or interfere with the permanent markers placed at the location(s) noted in Exhibit 2. The Owner shall keep vegetation and other materials clear of the permanent markers to assure that the markers are readily visible.*

- K. **Enter the name of the entity responsible for assuring compliance with the Restrictive Covenant.**

- L. **OPTIONAL – Enter the name of the person or entity that has the right to enforce the restrictive covenant, including, but not limited to, the local unit of government in which the property is located or the United States Environmental Protection Agency.**

- M. **Enter the following if portions of the Property subject to land use or resource use restrictions overlap and affect any easement holders' property interests:**

and all other holders of a legal interest whose interest is affected by this Restrictive Covenant as documented and attached hereto as Exhibit [*insert number of the Exhibit that contains the Consent of Easement Holder documentation*].

- N. **OPTIONAL ADDITIONAL PROVISIONS: A restrictive covenant may contain other information, restrictions, requirements, and rights agreed to by the persons signing it. These provisions are not required in order to be in compliance with Part 201. In addition, these provisions may be agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, EGLE may not enforce the Owner's obligations. The provisions may include, but are not limited to, 1 or more of the following:**

**Notice** – A provision requiring notice to the department or other persons upon transfer or before construction or changes in use that could affect environmental contamination or increase exposure at the property.

**Example: Conveyance of Property Interest.** *The Owner shall provide notice to EGLE of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. 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 applicable provisions of Section 20116 of the NREPA. The notice required to be made to EGLE under this Paragraph shall be made to: Director, Remediation and Redevelopment Division, EGLE, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, EGLE Reference Number [REDACTED] (B). 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.**

**Access** – A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.

**Example: EGLE Access.** *The Owner grants to EGLE, [enter the name of the owner of the property] and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance, including the right to take samples, inspect the operation and maintenance of the response activity measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 201.*

**Subordination** – A provision subordinating a property interest that has priority, if agreed to by the person that owns the superior interest.

**Monitoring and Maintenance** – A provision obligating the owner of the land subject to the restrictive covenant to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy.

**Notice of Aesthetic Impact** – A provision providing notice of hazardous substances that exceed aesthetic-based cleanup criteria.

- O. OPTION: If party that is filing the Declaration of Restrictive Covenant is different than the Property Owner, insert the following sentence:**

***I authorize [enter the name of the person proposing to file the Declaration of Restrictive Covenant] to file the Declaration of Restrictive Covenant with the [enter the name of the county where the Property is located] County Register of Deeds for recording.***

- P. Enter the appropriate form of acknowledgement from the following:**

**OPTION 1: For an individual:**

The foregoing instrument was acknowledged before me this [date] by [name of individual].

**OPTION 2: For a corporation:**

The foregoing instrument was acknowledged before me this **[date]** by **[name of officer or agent, title of officer or agent]** of **[name of corporation]**, a **[state or place of incorporation]**, on behalf of the corporation.

**OPTION 3: For a partnership:**

The foregoing instrument was acknowledged before me this **[date]** by **[name of partnership or agent]**, partner **[or agent]** on behalf of **[name of partnership]**, a partnership.

**OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):**

The foregoing instrument was acknowledged before me this **[date]** by **[name of attorney in fact]** as attorney in fact on behalf of **[name of principal]**.

**Q. Stamp name of the Notary Public.**

**EXHIBIT 1: LEGAL DESCRIPTION OF PROPERTY:**

***This exhibit must provide the legal description of the property, including parcel identification number(s) of the property.***

**EXHIBIT 2: LIMITS OF LAND OR RESOURCE USE RESTRICTIONS.**

***This exhibit must be titled as appropriate for the restricted area. The depiction must identify, clearly delineate, and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and any key features of the response activities. This exhibit shall contain one of the following pursuant to Section 20121(2)(a):***

- 1. A legal description and scaled drawing of the portion of the Property that is restricted,***
- 2. A survey of the portion of Property that is restricted, or***
- 3. Another type of description or drawing of the portion of Property that is restricted that is approved by EGLE.***

**EXHIBIT 3: CONSENT OF [choose one of the following: EASEMENT HOLDERS or SUBSURFACE MINERAL RIGHTS OWNERS]**

***This Exhibit is only necessary if easement holders or severed subsurface mineral rights owners on the property have their rights affected by the restrictions set forth in the Restrictive Covenant. This document provides the express written permission of the easement holder or severed subsurface mineral rights owner to record the restrictive covenant and have their property rights subject to and subordinate to the terms of the restrictive covenant. Insert additional pages if multiple easement holders or severed subsurface mineral rights owners exist for the Property.***

#### **EXHIBIT 4: HORIZONTAL AND VERTICAL EXTENT OF LNAPL IN RELATION TO PROPERTY BOUNDARIES**

*This Exhibit must depict the horizontal and vertical extent of the LNAPL in relation to the Property boundaries.*

#### **EXHIBIT 5: AS-BUILT DESIGN AND SCALED DRAWING OF THE BUILDING SHOWING LOCATION OF VAPOR MITIGATION SYSTEM**

*This Exhibit must identify, establish, delineate, and graphically depict the spatial extent of all components of the VMS in relation to the structure. It must also include a figure that identifies the entire structure in relation to all property lines and any system component that may require periodic inspection, replacement, or maintenance. All drawings and figures must be to scale, and it is recommended that each figure contains a certified engineer seal. This Exhibit should include both vertical and horizontal as-builts that identify and establish key VMS components.*

#### **EXHIBIT 6: VAPOR MITIGATION SYSTEM OPERATION, MAINTENANCE AND MONITORING MANUAL AND PERFORMANCE OBJECTIVES**

*This Exhibit must provide the following drawings and figures to scale that include a certified engineer seal and identifies:*

- *The location of the VMS in relation to the entire structure including all subsurface features including sumps, pits, foundations, utility penetrations or other features that are likely to impact the operation of the VMS,*
- *Key components of the VMS that require operation, maintenance, or monitoring,*
- *The spatial extent and location of all components of the VMS in relation to the structure and their location within it,*
- *Locations and description of any expendable components that may wear out due to use or that may become ineffective over time,*
- *Mechanical operating equipment signage and any notification placards that must be maintained,*
- *Seals that are installed that aid in the system functioning, and*
- *Location of and operation of any installed electronic alarms or monitoring equipment that is designed to identify the operating status of the VMS.*

*Text must also be provided in the Exhibit that:*

- *Identifies metrics that must be measured and maintained for the system to be considered operating as designed and commissioned,*
- *Establishes an inspection or maintenance schedule that must be performed, and*
- *Discusses what steps are necessary to implement if the VMS is found to be not operating, if any installed electronic alarm has been activated, or if any visual indicators or audible signal is encountered.*

--END OF GUIDANCE AND INSTRUCTIONS--

**DECLARATION OF RESTRICTIVE COVENANT  
FOR A (A) REMEDIAL ACTION**

EGLE Reference No: (B)

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the **[enter the name of the county where the Property is located]** County Register of Deeds for the purpose of protecting 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 at **[enter the address location of the Property, including city or township and county]** and legally described in Exhibit 1 attached hereto (Property). (C)

The Property is associated with **[enter the Part 201 Site name and Site ID number]** for which response activities were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. EGLE recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the due care requirements of Section 20107a of the NREPA.

The restrictions contained in this Restrictive Covenant, recorded pursuant to Section 20121(2) of the NREPA, are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the cleanup criteria as defined in the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, 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:

“EGLE” means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, Michigan Administrative Code, 2013 AACS R 299.1 – R 299.50, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

### Summary of Response Activities and Environmental Contamination

(D)

### **NOW THEREFORE,**

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

(E), (F) hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

##### a. Activity and Use Limitations.

(G)

(H)

b. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located (I) in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Toxic Substances Control Act (TSCA), 15 USC 2601 *et seq.*; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

c. (J)

2. Running with the Land. This Restrictive Covenant shall run with the Property and shall be 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. Pursuant to Section 20121(5)(b) of the NREPA, this Restrictive Covenant shall continue in effect until it is determined that the hazardous substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to hazardous substances may result in the need to perform additional response activities by those parties responsible for performing response activity at the Property or to comply with Section 20107a of the NREPA.

3. Enforcement of Restrictive Covenant. The State of Michigan, through EGLE, and (K), (L) may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

4. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

5. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner (M), and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

6. Additional Provisions. The provisions provided in the section below are not required for this restrictive covenant to be in compliance with Part 201 of the NREPA. These provisions were agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, EGLE may not enforce the Owner's obligations outlined in these provisions.

(N)



IN WITNESS WHEREOF,

**[Option 1: use if individual or single owner of property]**

I, **[insert name of owner]**, the current and legal Owner of the Property, has caused this Restrictive Covenant to be executed on this **[enter day of the month]** day of **[enter month]**, **[enter year]**.       (O)      

**[Option 2: use if more than one owner of the property]**

We, **[insert name of owners]**, the current and legal Owners of the Property, has caused this Restrictive Covenant to be executed on this **[enter day of the month]** day of **[enter month]**, **[enter year]**.       (O)      

**[include additional signature blocks as appropriate if more than one owner.]**  
**[enter the name of the current property owner]**

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

Name: \_\_\_\_\_  
Print or Type Name

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

STATE OF **[enter the state where the document is signed]**  
COUNTY OF **[enter the county where the document is signed]**

      (P)      

\_\_\_\_\_  
Notary Public Signature  
      (Q)      

Prepared by:  
**[Enter the name of the person preparing the document]**

When recorded return to:  
**[Enter the address to return the document to once recorded with the Register of Deeds]**

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT 2**

**LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**

**EXHIBIT 3**

**CONSENT OF [choose one of the following: EASEMENT HOLDERS or  
SUBSURFACE MINERAL RIGHTS OWNERS]**

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 and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

**[enter the name of the easement holder or subsurface mineral right owner]**

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

Name: \_\_\_\_\_  
Print or Type Name

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

STATE OF [enter the state where the document is signed]  
COUNTY OF [enter the county where the document is signed]

\_\_\_\_\_  
(P)

\_\_\_\_\_  
Notary Public Signature  
\_\_\_\_\_  
(Q)

**EXHIBIT 4**

**HORIZONTAL AND VERTICAL EXTENT OF LNAPL IN RELATION TO PROPERTY  
BOUNDARIES**

**EXHIBIT 5**

**AS-BUILT DESIGN AND  
SCALED DRAWING OF THE BUILDING SHOWING LOCATION OF  
VAPOR MITIGATION SYSTEM**

**EXHIBIT 6**  
**VAPOR MITIGATION SYSTEM OPERATION, MAINTENANCE AND MONITORING**  
**MANUAL AND PERFORMANCE OBJECTIVES**

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