

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

MDEQ Reference No. AACNTS-RRD-05-001

The operation of certain Irrigation Wells at the Shanty Creek/Schuss Mountain Resort, Antrim County, Michigan.

Proceeding under Section 20133 of Part 201, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20133, and the inherent authority of the Michigan Department of Attorney General to resolve legal disputes on behalf of the State of Michigan.

ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE

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ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE

This Administrative Agreement and Covenant Not to Sue (Agreement) is executed by and between the State of Michigan (State), through the Department of Attorney General and the Department of Environmental Quality, and Comerica Bank, VRB Corp., and Douglas P. Wilson, Receiver (the "Receiver"). By execution of this Agreement, the State and Comerica Bank, VRB Corp., and the Receiver stipulate and agree to be bound by all its terms and conditions herein.

I. DEFINITIONS

1.1 "Administrative Agreement and Covenant Not to Sue" or "Agreement" means this document and all of its attachments. Upon approval by the MDEQ, any reports or plans and their attachments submitted to and approved or accepted by the MDEQ pursuant to this document are incorporated into and made an enforceable part of this Agreement.

1.2 "Comerica" means Comerica Bank, VRB Corp., a wholly-owned subsidiary of Comerica Bank that presently holds fee title to the Resort; and Douglas P. Wilson, not individually, but as Receiver, the court-appointed receiver for that portion of the Resort described in the Order (Attachment 7), and each of their legal successors and assigns and other entities to which this Agreement is transferred to pursuant to Section X (Assignment of the Agreement) of this Agreement.

1.3 "Comerica Bank" means the entity that held the first mortgages on all of the Resort's real property and purchased these properties at the Sheriff's foreclosure sale conducted on September 24, 2004, and its successors and assigns.

1.4 "Day" means a calendar day unless otherwise specified in this Agreement.

1.5 “Due Care” means the obligations and responsibilities created under the provisions of Section 20107a of the NREPA, MCL 324.20107a; and Part 10 of the Part 201 Administrative Rules.

1.6 “Effective Date” means the date that the MDEQ signs this Agreement.

1.7 “Facility” means any area of the Resort identified in Attachment 1 where the Wickes Manufacturing TCE Plume, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17); or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, has been released, deposited, or disposed of, or otherwise comes to be located; and any other area, place, or property where the Wickes Manufacturing TCE Plume, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the Wickes Manufacturing TCE Plume from the Wickes Manufacturing Plant in Mancelona, Michigan.

1.8 “Response Activity Costs” means all costs incurred by the State to develop, oversee, enforce, monitor, and document compliance with this Agreement, including, but not limited to, costs incurred to: review and comment on the Operation Maintenance and Monitoring Plan, the contingency plan, quarterly progress reports, and other submittals by Comerica; observe and comment on field activities required by this Agreement; collect and evaluate samples associated with oversight of the Irrigation System’s operation; attend and participate in meetings associated with this Agreement; and prepare cost reimbursement documentation available to the MDEQ associated with this Agreement. Such oversight costs shall not include MDEQ’s Response Activity Costs that are not attributable to oversight of the Irrigation System’s operation and this Agreement. Contractor costs are also considered Response Activity Costs.

1.9 “Irrigation System” means the Irrigation Wells and the distribution system for the water produced by those wells as depicted in Attachment 2.

1.10 “Irrigation Wells” means Schuss Irrigation Well 1 and Schuss Irrigation Well 2, as depicted in Attachment 3.

1.11 “MDAG” means the Michigan Department of Attorney General, its successor entities, and those authorized persons or entities acting on its behalf.

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

1.13 “Part 201” means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.*; and the Part 201 Administrative Rules, R 299.5101 *et seq.*

1.14 “Part 201 Rules” means the Part 201 Administrative Rules, R 299.5101, *et seq.*, promulgated under Part 201.

1.15 “Party” means either Comerica or the State. “Parties” means Comerica and the State.

1.16 “RRD” means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

1.17 “Resort” means that part of the property known as the Schuss Mountain/Shanty Creek Resort in Antrim County, Michigan, which includes all separately described legal parcels as foreclosed by Comerica Bank on September 24, 2004, pursuant to a Sheriff’s Deed of Mortgage Sale dated and recorded on September 24, 2004, Liber 722, Pages 1447 to 1488, Antrim County Records as described in the legal description provided in Attachment 4 and illustrated by the map in Attachment 5.

1.18 “State” or “State of Michigan” means the MDAG and the MDEQ, and any authorized representatives acting on their behalf.

1.19 “Wickes Manufacturing TCE Plume” or Wickes Plume” means the contaminated groundwater migrating from the Wickes Manufacturing Plant in Mancelona, Antrim County, Michigan, as currently described in Attachment 1. The primary constituent of the Wickes Plume is trichloroethene (TCE), but it may include other hazardous substances.

1.20 Unless otherwise stated herein, all other terms used in this Agreement, that are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201 of the NREPA; or the Part 201 Rules, shall have the same meaning in this Agreement as in Parts 3 and 201 of the NREPA, and the Part 201 Rules.

II. STATEMENT OF PURPOSE

In entering into this Agreement, it is the mutual intent of the Parties to: (a) establish an MDEQ-approved response activity plan that will address the operation of the Irrigation System located on the Resort, without the operation of the Irrigation System being considered a new release or a violation of Due Care; (b) yield new resources to augment and expedite State response activity at a currently orphaned facility known as the Wickes Manufacturing TCE Plume site; (c) provide a mechanism for reuse, redevelopment, and future investment at the Resort by Comerica Bank and others, as may be allowed by this Agreement; and, (d) engender the social and economic benefits accompanying the reuse and redevelopment of the Resort.

III. AUTHORITY

The State is authorized to enter this Agreement under common law and Section 20133 of the NREPA, and the inherent authority of the Michigan Department of Attorney General to resolve legal disputes on behalf of the State of Michigan.

IV. BACKGROUND INFORMATION CONCERNING THE FACILITY

4.1 The Resort is a golf and ski resort located in Antrim County, Michigan, formerly owned and operated by Go Forward Operating Limited Partnership (Go Forward). Comerica Bank was a secured lender of Go Forward and held first mortgages on all of the Resort's real property. Those mortgages have been foreclosed and Comerica Bank purchased the properties comprising the Resort at a sheriff's sale conducted on September 24, 2004. The period of redemption expired on March 24, 2005. On or about March 22, 2005 Comerica Bank transferred by quit claim deed its interest in the Resort to VRB Corp. The Antrim County Circuit Court has appointed Douglas P. Wilson, Receiver, as receiver to operate the Resort business and he is continuing to serve as receiver as of the Effective Date of this Agreement. Comerica Bank has been seeking and will continue to seek new owners or investors to take over ownership of the Resort. Comerica Bank plans to continue to use a receiver or will contract with an operator for the Resort until new owners or investors can be secured.

4.2 The Receiver is acting in this matter solely pursuant to the Second Restated and Amended Order Appointing Receiver, entered on March 28, 2005, in the Circuit Court for the County of Antrim (the "Order"), included in Attachment 7.

4.3 During Comerica Bank's due diligence, Comerica Bank identified two very localized areas of surface soil staining. According to Comerica Bank, the stained soils will be removed and confirmatory samples will be collected shortly after the redemption period ends.

4.4 The Wickes Plume has been identified as a recognized environmental condition.

4.5 The Resort is impacted by the leading edge of the Wickes Plume whose primary constituent is TCE. However, other hazardous substances are occasionally observed in water samples withdrawn from the plume. TCE is a hazardous substance, as that term is defined in Section 20101(1)(t) of the NREPA, MCL 324.20101(1)(t). The concentrations of TCE

observed in one or more monitoring wells exceed the Part 201 Generic Residential Drinking Water Criteria. As a result, the Resort is a facility, as that term is defined in Section 20101(l)(o) of the NREPA, MCL 324.20101(o).

4.6 At the present time, the eastern side of the Resort and adjacent private properties are served by a municipal water system extended by the MDEQ, such that consumptive water for properties affected by the Wickes Plume is provided by municipal water.

4.7 While Comerica Bank has tested the Schuss Irrigation Well 1 and Schuss Irrigation Well 2, as of October 2004, and found them to be non-detect for TCE, the continued operation of the Irrigation System, which is essential for the continued operation of the Resort, may pose a risk of either drawing the Wickes Plume towards the Irrigation Wells, potentially exacerbating the groundwater contamination or, if the Wickes Plume reaches any of the wells, discharging potentially contaminated groundwater over the ground surface.

4.8 The MDEQ, RRD, has and continues to investigate the Wickes Plume. There is, however, considerable additional investigation needed to understand the Wickes Plume and its migration pathways. To date, MDEQ's remedial investigation has not progressed to the point where it can predict whether the Wickes Plume will impact the Irrigation Wells or whether there is an interaction between the operation of those wells and the movement of the Wickes Plume.

4.9 Comerica and the State wish to reach agreement on the operation of the Irrigation Wells and to cooperate with regard to data collection in order to allow the State to better understand the Wickes Plume while allowing for a controlled and protective operation of the Irrigation Wells.

4.10 Comerica and the State wish to avoid operating the Irrigation System in a manner that would pose a threat to human health or the environment or would exacerbate the

Wickes Plume. Comerica and the State also recognize that the ski and golf activities at the Resort require from time to time substantial withdrawal of groundwater.

4.11 Concentrations of TCE in the Wickes Plume within the Resort do not currently pose an imminent risk to health or the environment except for the groundwater consumption pathway.

4.12 The State wants to continue its response activities on the Resort and wants to obtain data from the Resort's Irrigation System for use in its remedial investigation of the Wickes Plume.

V. IMPLEMENTATION OF RESPONSE ACTIVITIES

5.1 Comerica Bank shall perform the MDEQ-agreed-upon response activities as follows:

A. Within sixty (60) days of the Effective Date of this Agreement, Comerica Bank shall prepare for MDEQ review and approval, an "Operation, Maintenance and Monitoring Plan" (OM& M Plan) to address the operation and monitoring of the Irrigation System. The OM& M Plan shall provide the applicable information identified in Rules 538 and 540 of the Part 201 Rules; and, in addition, shall also include, but not be limited to:

(1) The general operating parameters for the Irrigation System, as well as a description of the methods and practices for maintaining the Irrigation Wells;

(2) Schematics of the Irrigation System as previously prepared by the current or prior owners or operators of the Resort (which generally describe piping runs conveying water from the Irrigation Wells and points where the water is or can be discharged from the pipes);

(3) A method to measure flows by methods and at locations approved by the MDEQ to measure the volume of water pumped by the Irrigations Wells. Comerica shall maintain records of pump operation;

(4) Pump operation and flow data in a format and on a schedule approved by the MDEQ;

(5) A Contingency Plan identifying the actions that will be taken with respect to the operation of the Irrigation System if either of the following conditions occurs:

(a) TCE is detected in water produced by the Irrigation Wells in excess of one-half the acceptable concentration for the relevant exposure pathway (i.e., the trigger concentration), with “pathway” hereby defined as “dermal contact with groundwater.” The TCE cleanup criteria for dermal contact with groundwater is 22,000 ppb., resulting in a trigger concentration of 11,000 ppb.; or

(b) The MDEQ obtains information that it is more likely than not that the TCE or other hazardous substance is causing an unacceptable exposure as described in Rule 1013 of the Part 201 Rules, as the result of operation of the Irrigation System.

(6) Comerica Bank shall sample the Irrigation Wells quarterly. The first sampling event shall take place within thirty (30) days of the MDEQ’s written approval of the OM & M Plan and every three (3) months thereafter. The sampling frequency may be revised upon written agreement by both Parties.

(7) Comerica Bank shall provide quarterly reports of Irrigation System monitoring and sampling results to the MDEQ within sixty (60) days after the end of each sampling event. The reports shall provide notice of any planned substantial change in the operation of the Irrigation System.

5.2 Comerica Bank, or its consultants or subcontractors, shall provide the MDEQ a ten (10)-day notice prior to any sampling activity to be conducted pursuant to this Agreement to allow the MDEQ Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where a ten (10)-day notice is not possible, Comerica Bank, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the MDEQ Project Coordinator and explain why earlier notification was not possible. If the

MDEQ Project Coordinator concurs with the explanation provided, Comerica Bank may forego the ten (10)-day notification period for that particular sampling event.

5.3 Comerica Bank shall provide the MDEQ with the results of all sampling and other analytical data generated in the performance or monitoring of any specific requirement under this Agreement. These results shall be included in the quarterly reports set forth in Paragraph 5.1A(7).

5.4 For the purpose of quality assurance monitoring, Comerica Bank shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory used by Comerica Bank in implementing this Agreement.

5.5 All sampling and analysis conducted pursuant to this Agreement shall be conducted in accordance with the OM & M Plan.

5.6 The Parties shall act reasonably to keep each other informed of new data that may impact the operation of the Irrigation Wells.

5.7 If either of the conditions described above in Paragraph 5.1A(5)(a) or (b) occurs, Comerica shall implement the Contingency Plan provided in the MDEQ-approved OM & M Plan.

A. The Contingency Plan shall be implemented on the earlier of:

(1) Receipt of analytical results exceeding the trigger concentration, in which event Comerica Bank shall notify the MDEQ Project Coordinator and the representatives identified in this Agreement for VRB Corp. and the Receiver of the exceedance within five (5) days of receiving the analytical results; or

(2) Written notice from the MDEQ stating that the MDEQ has concluded that an unacceptable risk of exposure has occurred due to the operation of the

Irrigation System, which notice shall set forth the factual basis for concluding an unacceptable risk of exposure exists.

B. In the event Comerica fails to take an action provided for in the MDEQ-approved Contingency Plan within the time frames provided for in the Contingency Plan, this Agreement shall be without force and effect with regard to the operation of the Irrigation System.

5.8 Upon the receipt of:

A. Any work plan, including the OM & M Plan, submitted for approval pursuant to this Agreement, the MDEQ Project Coordinator will in writing:

- (1) Approve the work plan;
- (2) Approve the work plan with modifications; or
- (3) Disapprove the work plan and notify Comerica Bank of the deficiencies in the work plan.

B. A notice of approval from the MDEQ, Comerica Bank shall take the actions and perform the response activities required by the approved work plan.

C. An approval with modifications or a notice of disapproval from the MDEQ pursuant to Paragraph 5.8A, Comerica Bank shall agree to the modifications or cure the deficiencies, and provide the revised work plan to the MDEQ for review and approval or otherwise respond within thirty (30) days, unless a longer time period for resubmission is provided by the MDEQ.

5.9 If the MDEQ determines that a modification to the OM & M Plan or other plan required under this Agreement is necessary to meet and maintain the requirements of this Agreement; to comply with Part 201; or to otherwise ensure the protection of the public health, safety, welfare or the environment or prevent exacerbation, the MDEQ may require that such modification be incorporated into the previous MDEQ-approved plan. If extensive modifications

are necessary, the MDEQ may require Comerica Bank to develop and submit a new draft OM & M Plan or other work plan. Comerica Bank may request that the MDEQ consider a modification to the OM & M Plan or other work plan by submitting such request for modification along with the proposed changes to the MDEQ for review and approval. Any such request for modification by Comerica Bank must be forwarded to the MDEQ at least thirty (30) days prior to the date the performance of any affected response activity is due. Any modifications to the OM & M Plan or other work plan shall be developed in accordance with the applicable requirements of this Agreement and Part 201 and shall be submitted to the MDEQ for review and approval within thirty (30) days of MDEQ's written request and submitted in accordance with the procedures set forth in Paragraph 5.8. If Comerica Bank has not submitted an MDEQ-approvable plan within three (3) months of an MDEQ request for a modification pursuant to the provisions of Paragraph 5.8; or if Comerica Bank and the MDEQ cannot agree to the modification within the time frame provided, the State may find this Agreement to be without force and effect with regard to the subsequent operation of the Irrigation System, which finding shall take effect fourteen (14) days after the MDEQ notifies Comerica of its finding.

5.10 Upon the MDEQ's approval of any plan, including the OM & M Plan, submitted under this Agreement shall be deemed incorporated into this Agreement and shall be made an enforceable part of this Agreement.

5.11 By entering into this Agreement, the State does not guarantee or warrant that response activities performed by Comerica Bank in accordance with the MDEQ-approved plans required by this Agreement will not exacerbate the Wickes Plume

VI. ACCESS

6.1 For the purposes listed in Section 20117(3)(a)-(e) of NREPA and for the purpose of conducting response activities associated with monitoring the potential impact of the operation of the Irrigation System on the Wickes Plume and monitoring compliance with this Agreement, the MDEQ, its authorized agents, representatives, contractors and consultants, and

other persons performing response activities within the Resort pursuant to MDEQ-approved plans, shall have an irrevocable right of access to the Resort to the extent it is owned or controlled by Comerica, excluding access to any buildings except buildings associated with the Irrigation System. The exact location of new monitoring wells on Resort property will be subject to mutual agreement of the MDEQ and Comerica Bank. This grant of access does not extend to other response activities undertaken by the MDEQ to remediate the Wickes Plume that are not covered under this Agreement. This paragraph does not obligate Comerica to acquire access rights except as otherwise provided in this Agreement or required by law.

6.2 The access authorized by this Agreement shall be subject to the following conditions and understandings:

A. Upon request, any party granted access pursuant to the Agreement shall provide proper identification to the person in charge of the property;

B. Access granted pursuant to the Agreement shall be during reasonable times;

C. Any party granted access pursuant to this Agreement shall reasonably plan, coordinate, and conduct its activities with Comerica and shall use its best efforts to minimize interference with operations and activities of the Resort. Notwithstanding the foregoing, the MDEQ shall not be required to take any action that would result in incurring any material cost increases in performing response activities.

6.3 Comerica shall not interfere with the MDEQ, its contractors, or other persons conducting response activities approved by the MDEQ.

6.4 Any lease, purchase, contract, or other agreement entered into by Comerica that transfers to another person a right of control over the Resort or a portion of the Resort shall

contain a provision preserving for the MDEQ or any other person undertaking the response activities, and their authorized representatives, the access provided under this section.

6.5 Comerica agrees to be bound by access agreements made by Go Forward which are still in effect as of the date of this Agreement, and these access agreements are attached as Attachment 6.

6.6 Comerica agrees in principle to enter into access agreements with the MDEQ in the future which are reasonably acceptable to Comerica, as necessary, to permit other response activities that need to be undertaken by the MDEQ to remediate the Wickes Plume but which are not covered under this Agreement.

6.7 Any person granted access to the Resort pursuant to this Agreement shall comply with all applicable health and safety laws and regulations.

6.8 Except in the case of an emergency, the MDEQ will give Comerica seven (7) days advance notice of entry on the Resort to conduct the response activities contemplated by this Agreement. Notice shall be given by telephone and in writing to Comerica as provided in Section VII (Project Coordinators and Communications/Notices).

6.9 Comerica representatives shall be entitled to accompany the MDEQ, its employees, contractors, or authorized representatives during the MDEQ's performance of response activities and to participate in the collection of any split samples taken as part of these activities. Comerica shall comply with the requirements of the facility health and safety plan while accompanying the MDEQ during these sampling activities. Within 45 days after any site visit to the Resort, the MDEQ shall provide to Comerica a copy of any field notes, sample analysis results, photographs, or videotapes taken by the MDEQ or its contractors as part of these activities. Comerica Bank shall reimburse the MDEQ or its contractors for the reasonable cost of providing those copies.

6.10 By entering into this Agreement, accompanying the MDEQ on site visits, or commenting on the MDEQ's plans, Comerica does not approve any specific action that MDEQ or its contractors take at the Resort. Comerica retains all of its rights of action against the State of Michigan, the MDEQ, and all other persons under any legal or equitable theory related to conditions at the Resort or related to or arising out of actions taken by MDEQ, its employees, contractors, or authorized representatives pursuant to this Agreement, and reserves all defenses to any claims that may be asserted against Comerica that are related to conditions at the Resort or related to or arising out of actions taken by the MDEQ, its employees, contractors, or authorized representatives. In addition, by entering into this Agreement, the MDEQ neither waives nor limits any defense it may have to any action that may be filed by Comerica.

6.11 After completion of the activities performed under this Agreement, the MDEQ will undertake reasonable efforts to restore to original condition any property disturbed by those activities.

6.12 Pursuant to their contract with the MDEQ, the MDEQ's contractors keep in force, with insurance companies licensed to do business in Michigan, certain insurance coverage with respect to their activities, including activities under this Agreement. To the extent an MDEQ contractor agrees, Comerica will be named as an additional insured.

VII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

7.1 Comerica Bank, VRB Corp., and the Receiver, and the MDEQ shall each designate one or more Project Coordinators. Whenever notices, progress reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by either Comerica or the MDEQ to the other, under this Agreement, or whenever other communications between them is needed, such communications shall be directed to the designated Project Coordinator at the address listed below. If Comerica Bank, the Receiver or the MDEQ changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other, in writing, as soon as practicable.

A. As to the MDEQ:

(1) For all matters pertaining to this Agreement, except those specified in Paragraphs 7.1A(2), (3), and (4) below:

Janice A. Adams, Project Coordinator
Cadillac District Office, Gaylord Field Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
2100 West M-32
Gaylord, Michigan 49735
Telephone: 989-705-3434
Fax: 989-731-6181
E-mail address: adamsja@michigan.gov

This Project Coordinator will have primary responsibility for the MDEQ for overseeing the performance of response activities at the Facility and other requirements specified in this Agreement.

(2) For all matters specified in this Agreement that are to be directed to the RRD Chief:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926
Telephone: 517-335-1104
Fax: 517-373-2637

Via courier:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933-2125

A copy of all correspondence that is sent to the Chief of the RRD shall also be provided to the MDEQ Project Coordinator designated in Paragraph 7.1A(1).

- (3) For Section VIII (Reimbursement of Costs):

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926
Telephone: 517-373-7818
Fax: 517-373-2637

Via Courier:

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933-2125

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, RRD, shall also be provided to the MDEQ Project Coordinator designated in Paragraph 7.1A(1).

- (4) For all payments pursuant to Section VIII (Reimbursement of Costs):

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, Michigan 48909-8157

Via courier:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933-2125

To ensure proper credit, all payments made pursuant to this Agreement must reference the Shanty Creek/Schuss Mountain Resort, and the MDEQ Reference No. AACNTS-RRD-05-001.

A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in Paragraph 7.1A.(1), the Chief of the Compliance and Enforcement Section designated in Paragraph 7.1A.(3), and the Assistant Attorney General in Charge designated in Paragraph 7.1B.

B. As to the MDAG:

Assistant Attorney General in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
P.O. Box 30755
Lansing, Michigan 48909
Telephone: 517-373-7540
Fax: 517-373-1610

C. As to Comerica Bank and VRB Corp.:

Richard J. Plewa, Vice President (Project Coordinator)
Environmental Risk Management
Comerica Bank
Box 75000
Detroit, Michigan 48275-3218
Telephone: 313-222-9047
Fax: 313-961-1447
E-mail address: richard_j_plewa@comerica.com

With a Copy to:

R. Craig Hupp, Esq.
Bodman, LLP
100 Renaissance Center, 34th Floor
Detroit, Michigan 48243
Telephone: 313-393-7599
Fax: 313-393-7579
E-mail address: chupp@bodmanllp.com

D. As to the Receiver:

Douglas P. Wilson, Receiver
Douglas Wilson Companies
450 B Street, Suite 1900
San Diego, California 92101
Telephone: (619) 641-1141
Facsimile: (619) 641-1150

7.2 Comerica Bank's Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Agreement for Comerica.

7.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Agreement.

VIII. REIMBURSEMENT OF COSTS

8.1 Following the first anniversary of the Effective Date of this Agreement, and anytime thereafter until the Agreement terminates, the MDEQ may provide Comerica Bank with a summary report (Summary Report) that identifies all Response Activity Costs incurred that are associated with Comerica's compliance with this Agreement, or the future operation of the Irrigation System, that are reimbursable to the State for the period covered. Within thirty (30) days of Comerica Bank receiving the Summary Report, Comerica Bank shall reimburse the MDEQ. Payment shall be made pursuant to the provisions of Paragraph 7.1A(4).

8.2 Comerica Bank shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Comerica Bank may result in the MDEQ incurring additional Response

Activity Costs, which may be included in subsequent Summary Reports and requests for reimbursement.

8.3 All payments made pursuant to this Agreement shall be by certified check, made payable to the “State of Michigan – Environmental Response Fund,” and shall be sent by first class mail to the Revenue Control Unit at the address listed in Paragraph 7.1A.(4) of Section VII (Project Coordinators and Communications/Notices). “Shanty Creek” and the MDEQ Reference No. CNTS-RRD-05-001 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator at the address listed in Paragraph 7.1A.(1); the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 7.1A.(3); and the Assistant Attorney General in Charge at the address listed in Paragraph 7.1B. Costs recovered pursuant to this section shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA, MCL 324.20108(3).

8.4 If Comerica Bank fails to make full payment to the MDEQ for response activities covered under this Agreement as specified in Paragraphs 8.1 and 8.3, interest, at the rate specified in Section 20126a(3) of the NREPA, MCL 324.20126a(3), shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Comerica Bank makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by Comerica Bank to an MDEQ demand for reimbursement of costs, Comerica Bank shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA, MCL 324.20126a(1)(a), and that the response activities were not associated with assuring compliance with this agreement or future operation of the Irrigation System.

IX. AFFIRMATIVE COVENANTS AND CERTIFICATIONS AND ADDITIONAL OBLIGATIONS BY COMERICA

9.1 Subject, in the case of the Receiver, to Section XVII, Comerica Bank, VRB Corp. and the Receiver hereby each certify that, prior to the Effective Date of this Agreement, it has fully disclosed or made available to the State all information known to it relating to: (a) the nature and extent of the Wickes Plume or other hazardous substances that may be associated with groundwater pumped by the Irrigation Wells; and (b) any other environmental conditions relating to Irrigation System operation that may present a risk of harm to the public health, safety, or welfare, or the environment. In addition, Comerica Bank, VRB Corp, and the Receiver each certifies to the best of its knowledge, after reasonable inquiry, that on the Effective Date of this Agreement that it, including subsidiaries, successors, directors or officers, are not liable for any claims under Section 20126 of the NREPA, MCL 324.20126. Furthermore, subject, in the case of the Receiver, to Section XVII, Comerica Bank, VRB Corp. and the Receiver each certifies that it has or will disclose to the MDEQ a baseline environmental assessment consistent with the provisions of Section 20126(1)(c) of the NREPA, MCL 324.20126(1)(c); and Part 9 of the Part 201 Rules.

9.2 Comerica Bank, VRB Corp and the Receiver each further certifies, in accordance with Section 20133(3) of the NREPA, MCL 324.20133(3), that it shall:

A. Cooperate and not interfere with the MDEQ, its contractors, or other persons conducting response activities approved by MDEQ; and

B. Comply with Section 20107a of the NREPA, MCL 324.20107a, with respect to contamination in the Wickes Plume that may exist on or under the Resort. Comerica Bank, VRB Corp and the Receiver each also certifies that to the best of their respective knowledge, its ownership, operation, or activities will not likely result in a release or threat of release or exacerbate or contribute to contamination on the Resort or pose any public health risk (provided, however, that the Receiver disclaims any ownership of any portion of the Resort, and

that the Receiver's duties hereunder shall be subject to any applicable limitations of the Orders in Attachment 7).

X. ASSIGNMENT OF THE AGREEMENT

This Agreement may be assigned by Comerica Bank, VRB Corp. and/or the Receiver at the reasonable discretion of the State. Consent to such assignment shall not be unreasonably withheld by the State provided: (1) the Agreement has not been terminated, (2) the prospective assignee(s) makes the appropriate demonstrations that it can and will comply with the provisions of the Agreement and Section 20133 of the NREPA, MCL 324.20133, and (3) the conditions at the Resort warrant the continuation of this Agreement.

XI. COVENANT NOT TO SUE BY THE STATE

11.1 Subject to the conditions contained in this Agreement, the State covenants not to sue or take any civil, judicial, or administrative action against Comerica Bank, VRB Corp. and/or the Receiver or any of their respective officers, employees, agents, directors, general managers, or successors, and assigns for claims arising from the potential exacerbation of the Wickes Plume, including the release of contaminated groundwater from the Irrigation System, so long as it is operated in accordance with the MDEQ-approved plans and this Agreement.

11.2 This Covenant Not to Sue shall only extend to the operation of the Irrigation System pursuant to the MDEQ-approved OM & M Plan and this Agreement. This Covenant Not to Sue shall not apply:

A. To operations, conditions or activities that are not covered under this Agreement;

B. To operation of the Irrigation System if it is not operated in compliance with this Agreement,

C. To operation of the Irrigation System after any Party terminates this Agreement according to its terms; or

D. If the State determines that Comerica Bank, VRB Corp. or the Receiver has materially misrepresented any of its certifications set forth in Section IX (Affirmative Covenants and Certifications and Additional Obligations by Comerica) of this Agreement.

11.3 The Covenant Not to Sue shall take effect upon the date the MDEQ provides written approval of the OM & M Plan submitted under Section V (Implementation of Response Activities) of this Agreement.

XII. CONTRIBUTION PROTECTION

To the extent available under law, Comerica Bank, VRB Corp. and the Receiver shall be afforded contribution protection pursuant to Section 20129(5) of the NREPA; and Section 113(f)(2) of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-570, as amended, 42 USC Section 9613(f), or other applicable law for claims arising out of the operation of the Irrigation System pursuant to this Agreement.

XIII. INDEMNIFICATION

13.1 Comerica Bank, to the extent allowed by law, shall indemnify and save and hold harmless the State and its departments, agencies, officials, agents employees, contractors, and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Comerica Bank, its officers, employees, agents, or contractors in connection with this Agreement. VRB Corp., to the extent allowed by law, shall indemnify and save and hold harmless the State and its departments, agencies, officials, agents employees, contractors, and representatives for any and all claims or causes of action arising from or on account of acts or omissions of VRB Corp., its officers, employees, agents, or contractors in connection with this Agreement. The Receiver, not personally, but solely as Receiver, to the extent allowed by

law, shall indemnify and save and hold harmless the State and its departments, agencies, officials, agents employees, contractors, and representatives for any and all claims or causes of action arising from or on account of acts or omissions of the Receiver, its officers, employees, agents, or contractors in connection with this Agreement

13.2 This Agreement shall not be construed as an indemnity by the State for the benefit of Comerica Bank, VRB Corp. and the Receiver or any other person.

XIV. COVENANT NOT TO SUE BY COMERICA

Comerica Bank, VRB Corp. and the Receiver each hereby covenants not to sue or take any civil, judicial or administrative action against the State of Michigan for any claim relating to the Wickes Plume for matters arising from this Agreement.

XV. TERMINATION

15.1 This Agreement may be terminated by either Party by providing the other Party sixty (60) days prior written notice thereof by certified mail, return receipt requested, or registered mail.

15.2 If Comerica Bank does not submit the OM & M Plan required under Section V (Implementation of Response Activities) of this Agreement within sixty (60) days of the Effective Date of this Agreement, or if the OM & M Plan required under Section V (Implementation of Response Activities) of this Agreement is not approved by the MDEQ within eight months of the Effective Date of this Agreement, the MDEQ may terminate this Agreement.

15.3 Upon assignment of this Agreement pursuant to Section X (Assignment), the Assignor's obligations under this Agreement are terminated and become the obligations of the Assignee. The remaining signatories' obligations continue as provided in this Agreement.

15.4 As to the Receiver, the provisions of this Agreement which impose any duties upon the Receiver to act in any manner shall terminate absolutely and automatically upon the termination of the receivership proceedings as described in the Order. Comerica shall timely notify the State upon termination of the receivership proceedings.

XVI. SEPARATE DOCUMENTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, which together shall constitute one and the same instrument. This Agreement may be executed in duplicate original form.

XVII. SIGNATORIES/LIMITATIONS

Each undersigned individual represents and warrants that he or she is fully authorized by the Party he or she represents to enter into this Agreement and legally bind such Party to the terms and conditions of this Agreement, provided, however, that the Parties acknowledge and agree that (i) the Receiver is acting in this matter solely pursuant to the Order, and pursuant to the powers provided to the Receiver as set forth therein, and that pursuant to the Order the Receiver is not the title or fee owner of any portion of the Resort, (ii) the Receiver's duties with respect to the Resort are expressly limited to those set forth in the Order, (iii) the Receiver has conducted no independent investigation with respect to any of the matters set forth herein, and exercised no independent duties or rights with respect to the Resort outside of any undertakings required under the terms of the Order, including, but not limited to duties or rights related to ownership, investigation or disclosure, and any information the Receiver has obtained regarding conditions at the Resort, has been obtained solely in conjunction with the Receiver's duties under the Order, and (iv) any representation by the Receiver as to any factual matter set forth herein is limited to any actual knowledge of the Receiver obtained in accordance with the exercise of the duties imposed upon the Receiver pursuant to the Order. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Receiver are undertaken by the Receiver solely in his

capacity as Receiver and not personally. Except as otherwise expressly set forth herein, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Receiver on account of any warranty, indemnity, representation, or any monetary covenant, undertaking or agreement of the Receiver in this agreement, all such liability being expressly waived by every person now or hereafter claiming any right hereunder.

XVIII. SEVERABILITY

The provisions of this Agreement shall be severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or State law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

THE STATE AND COMERICA AGREE TO ALL TERMS AND CONDITIONS
HERETOFORE SET FORTH.

IT IS SO STIPULATED;

For the Michigan Department of Attorney General

By: _____ Dated _____

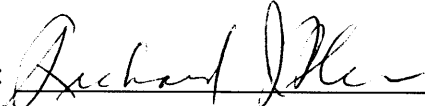
James L. Stropkai, Assistant Attorney General (P-24588)
Environment, Natural Resources, and Agriculture Division
Department of Attorney General


For the Michigan Department of Environmental Quality

By: _____ Dated: _____

Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

For Comerica Bank

By:  Dated: 7/11/05
Richard Plewa, Vice President
Comerica Bank

For VRB Corp.
By:  Dated: 7/8/05
John Regan, Vice President
VRB Corp.

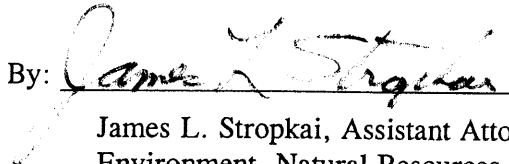
Douglas P. Wilson, Receiver

D. P. Wilson, Receiver Dated: 7-6-05

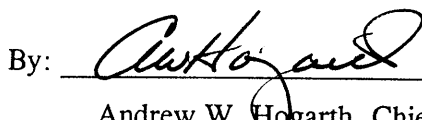
THE STATE AND COMERICA AGREE TO ALL TERMS AND CONDITIONS
HERETOFORE SET FORTH.

IT IS SO STIPULATED;

For the Michigan Department of Attorney General

By:  Dated 7/21/05
James L. Stropkai, Assistant Attorney General (P-24588)
Environment, Natural Resources, and Agriculture Division
Department of Attorney General

For the Michigan Department of Environmental Quality

By:  Dated: 7/21/05
Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality