

GALIEN TOWNSHIP
COUNTY OF BERRIEN
STATE OF MICHIGAN

RESOLUTION NO. 2013- 02

At a Regular Meeting of the Township Board of Galien Township, County of Berrien, State of Michigan, held in the Township Hall, 203 N. Cleveland, Galien, Michigan on the 20th day of March, A. D., 2013, at 7:00 o'clock p.m., Eastern Standard Time.

PRESENT: Bruce Williams, Larry Metzger, Kendra Truhn,
Jennifer Richter, Lesta Doyle

ABSENT: _____

The following preamble and resolution was offered by Board Member B. Williams
and supported by Board Member L.Metzger.

RESOLUTION

WHEREAS, the Township has been the fee simple owner of property located at 108 George Street, Galien, Michigan, since 1966, which property was leased from 1979 to 1990 to Berrien County as the Berrien County Sheriff's Substation (the "BCSS Facility") and

WHEREAS, in 1990 a release of regulated substances from an underground storage tank system was confirmed at or near the BCSS Facility (Release No. C-0340-90), and

WHEREAS, the 108 George Street property and the BCSS Facility is the location of Michigan Department of Environmental Quality ("DEQ") Facility I.D. 50000304, DEQ Site I.D. 11000093, and

WHEREAS, subsequent to the release, the County performed corrective actions at the former BCSS Facility and recovered approximately 2,084 gallons of light non-aqueous phase liquids, and

WHEREAS, the DEQ believes that the former BCSS Facility remains a "Site" as defined in Part 213, which defines a "Site" as a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfied the applicable Risk Based Screening Levels or Site Specific Target Levels, and

WHEREAS, the DEQ has offered the attached Agreement and Consent for Access to the Township to allow the DEQ to have access to the site and perform corrective actions pursuant to the terms of the attached Agreement, and

WHEREAS, the Township believes that the Agreement is in the Township's best interests and will allow the DEQ to perform corrective actions on the BCSS Facility as defined in the Agreement, and will also give the Township Fire Department, which currently is located at the property, adequate time to relocate.

NOW, THEREFORE, BE IT RESOLVED, that the Galien Township Board hereby approves the Agreement and Consent for Access and Exhibit A attached hereto, and

NOW, THEREFORE BE IT FURTHER RESOLVED that the Galien Township Board authorizes the Agreement and Consent for Access and other documents related to the Agreement to be signed and executed by Bruce Williams, the Township Supervisor, and Lesta Doyle, the Township Clerk.

AYES: B. Williams, L. Metzger, K. Truhn, J. Richter, L. Doyle

NAYS: _____

ABSTAIN: _____

RESOLUTION DECLARED ADOPTED.

Lesta Doyle
LESTA DOYLE, Township Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Township of Galien, County of Berrien, State of Michigan, at a Regular Meeting, held on the 20th day of March, 2013, and that said Meeting was conducted and public notice of said meeting was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and that the Minutes of said meeting were kept and will be or have been made available as required by said Act.

Lesta Doyle
LESTA DOYLE, Township Clerk

3/19/13

Agreement and Consent for Access

This letter agreement is entered into voluntarily by and between the Michigan Department of Environmental Quality (DEQ), Berrien County (County), and Galien Township (Township) (collectively the "Parties") to address a release of regulated substances at or from an underground storage tank system at or in the proximity of real property where the former Berrien County Sheriff's Substation was located, 108 George Street, Galien Township, Berrien County, MI, DEQ Facility ID 50000304, DEQ Site ID 11000093 (the former BCSS Facility), pursuant to Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.21301 *et seq.* All terms used in this letter agreement that are defined in Part 213 shall have the same meaning herein.

Background

- A. The Township is the current fee title holder of the former BCSS Facility, and has been since 1966.
- B. The former BCSS Facility was leased by the Township to the County for use by the County's Sheriff from approximately 1979 to 1990.
- C. In 1990 a release of regulated substances from an underground storage tank system was confirmed at or in the proximity of the former BCSS Facility (Release No. C-0340-90).
- D. Subsequent to the release the County performed corrective actions at the former BCSS Facility and recovered approximately 2,084 gallons of light non-aqueous phase liquids.
- E. The DEQ believes that the former BCSS Facility remains a "Site" as defined in Part 213. Under Part 213, "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfied the applicable Risk Based Screening Levels or Site Specific Target Levels.

Agreement

1. The Township consents to DEQ, its officers, employees, agents, authorized representatives, contractors and/or subcontractors entering and having continued access to the former BCSS Facility for the purpose of performing corrective actions which may include, but are not limited to: building demolition, removal and disposal of impacted soils, installation and removal of sheet piling, injection of a chemical oxidant, backfilling of soil and compaction, groundwater monitoring, abandonment of monitoring wells and site restoration. This letter agreement does not constitute a warranty of any kind by DEQ that the corrective actions performed will result in the achievement of performance objectives or the remedial criteria established by law, or that the corrective actions will assure protection of public health, safety, or welfare, or the environment.
2. DEQ will prepare a restrictive covenant for the former BCSS Facility, in a form roughly equivalent to Attachment A, that contains land use restrictions that are necessary to protect

the public health, safety, or welfare, or the environment, and prevent unacceptable exposure to regulated substances and protect the integrity and effectiveness of the corrective actions taken at the former BCSS Facility.

3. The Township agrees to execute and record the DEQ-prepared restrictive covenant with the Berrien County Register of Deeds within 30 days of receipt of the DEQ- prepared covenant, unless another time frame is agreed to by the Township and the DEQ Kalamazoo District Supervisor for the Remediation and Redevelopment Division, in writing.
4. Within 244 days of execution of this letter agreement, unless another time frame is agreed to by the Township and the DEQ Kalamazoo District Supervisor for the Remediation and Redevelopment Division, in writing, the Township shall remove all personal property from the former BCSS Facility and shall vacate the former BCSS Facility so that the DEQ may proceed with corrective actions without delay. The Township shall notify DEQ in writing when it has complied with this Paragraph. If any personal property of the Township remains after such notice, DEQ may dispose of the personal property at its own discretion. Notice shall be provided to:

David Harn, Project Manager
DEQ, Kalamazoo District Office
Remediation and Redevelopment Division
7953 Adobe Road
Kalamazoo, MI 49009-5025
(269) 567-3500

5. The County agrees to pay the Township \$63,000.00 within 30 days of the execution of this letter agreement for purposes of relocating the Township's fire department that is currently located at the former BCSS Facility.
6. Notwithstanding the above, the DEQ does not intend to pursue cost recovery from the County in relation to Release No. C-0340-90 or further corrective actions at the former BCSS Facility by the County in relation to Release No. C-0340-90: provided however, the DEQ has the right of withdrawal of this intent if the DEQ discovers that the County provided the DEQ with false, fraudulent or misleading information or withheld material information in the County's possession regarding liability for the subject release, contamination associated with the subject release, and/or corrective actions by the County at the former BCSS Facility associated with the subject release. DEQ's determination is not a determination that the County has fully complied with the requirements of Part 213. DEQ reserves the right to pursue additional corrective actions by the County or cost recovery from the County if the County does not make the agreed-upon payment to the Township in furtherance of additional corrective actions as described above.
7. Notwithstanding the above, and excepting actions related to obligations under MCL 324.21304b, MCL 324.21304c and MCL 324.21304d, the DEQ does not intend to pursue cost recovery from the Township in relation to Release No. C-0340-90 or further corrective actions at the former BCSS Facility by the Township in relation to Release No. C-0340-

90: provided however, the DEQ has the right of withdrawal of this intent if the DEQ discovers that the Township provided the DEQ with false, fraudulent or misleading information or withheld material information in the Township's possession regarding liability for the subject release, contamination associated with the subject release, and/or corrective actions at the former BCSS Facility associated with the subject release. DEQ's determination is not a determination that the Township has fully complied with the requirements of Part 213. DEQ reserves the right to pursue additional corrective actions by the Township or cost recovery from the Township if the Township does not comply with any term of this letter agreement.

8. The Township agrees that if the Township does not vacate the former BCSS Facility and remove all personal property from the former BCSS Facility in accordance with Paragraph 4, the Township shall pay DEQ \$63,000.00.
9. The Township's consent for DEQ, its officers, employees, agents, authorized representatives, contractors and/or subcontractors to enter and conduct corrective actions at the former BCSS Facility shall terminate upon DEQ providing written notice to the Township that DEQ is ceasing corrective action at the former BCSS Facility and that restoration activities are complete. Restoration activities include removal of equipment used in the corrective action, backfilling, grading, and seeding the former BCSS Facility. Notice shall be provided to:

Bruce Williams, Supervisor
PO Box 246
Galien, MI 49113
269-757-3890
doyle0183@sbcglobal.net

10. This letter agreement may be modified by written agreement of the Parties, collectively.

This agreement may be executed in counterpart. The signature of the representatives of DEQ, the County, and Township indicates the agreement of the respective entities to the terms of this letter agreement. By signing this letter agreement, the signatories certify that they are authorized to execute this letter agreement on behalf of their respective entity. This letter agreement is binding upon any successors and assigns of the aforementioned entities and this letter agreement becomes effective upon the date of the signature by the DEQ representative.



Bruce Williams
Supervisor
Township of Galien

3/20/13

Date

Jon Hinkelman
Jon Hinkelman
Chairman of the Board of Commissioners
Berrien County

4-11-13
Date

Attested by: Sharon Tyler
Sharon Tyler, County Clerk

4-11-13
Date

Frank Ballo, District Supervisor
[Name]
[Title]
Michigan Department of Environmental Quality

5/1/2013
Date



Susan Erickson
Assistant Division Chief,
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

Dated: May 3, 2013

Attachment A



Michigan Department of Environmental Quality
Remediation and Redevelopment Division

THE ATTACHED MODEL DOCUMENT ENTITLED:

DECLARATION OF RESTRICTIVE COVENANT

IS A DRAFT DOCUMENT WHICH IS SUBJECT TO REVISION. IT IS PROVIDED TO THE PUBLIC AS PRELIMINARY GUIDANCE AS TO THE CONTENT, FORMAT, AND TERMS OF THIS COVENANT. IT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY SUBSTANTIVE OR PROCEDURAL RIGHTS BY ANY OTHER PARTY.

PLEASE CONTACT THE COMPLIANCE AND ENFORCEMENT SECTION, REMEDIATION AND REDEVELOPMENT DIVISION, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, AT 517-373-7818 TO RECEIVE THE MOST RECENT DRAFT OF THIS DOCUMENT.

NOTE: There are recording requirements for instruments filed with Michigan county register of deeds offices contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201, [link to Act 103](#).

The Michigan Department of Environmental Quality (MDEQ) will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. Questions or concerns should be directed to the Quality of Life Group, Office of Human Resources, P.O. Box 30473, Lansing, MI 48909.

**DECLARATION OF RESTRICTIVE COVENANT
FOR A (LIMITED RESIDENTIAL, LIMITED NONRESIDENTIAL, LIMITED SITE-SPECIFIC)
CORRECTIVE ACTION**

MDEQ Reference No: ___(A)___

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the ___(B)___ 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 ___(C)___ and legally described in Exhibit 2 (Legal Description of Property attached hereto (Property)). ___(D)___

The Property is associated with ___(E)___ for which a ___(F)___ 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 ___(F)___ dated ___(G)___ . A copy of the ___(F)___ is available from the MDEQ Remediation and Redevelopment Division (RRD) District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The Michigan Department of Environmental Quality (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 21304c of the NREPA.

Part 213 requires the recording of this Restrictive Covenant with the ___(B)___ 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 ___(F)___ are effective; ___(H)___.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the corrective action was implemented by ___(I)___; Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the ___(F)___; 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 ___(F)___; 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. The adequacy of the corrective actions undertaken pursuant to the ___(F)___ may not have been reviewed by the MDEQ.

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.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA and Part 213 of the NREPA, shall have the same meaning in this document as in Part 3 and Part 213 of the NREPA as of the date this Restrictive Covenant is filed.

Summary of Environmental Conditions and Corrective Action

___(J)___

NOW THEREFORE,

1. Declaration of Land or Resource Use Restrictions:

___(I)___, ___(K)___ hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. ___(L)___

b. Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances.

The Owner shall prohibit activities ___(M)___ that may result in exposures above levels established in the ___(F)___ . These prohibited activities include:

___(N)___

- 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 ___(F)___, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the ___(F)___ . These prohibited activities include:

___(O)___

2. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located ___(M)___ in accordance with the applicable requirements of Sections 21304b 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.

3. Access. The Owner grants to the MDEQ, ___(I)___ and both of their designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the ___(F)___, 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 ___(F)___ . The right of access provided to ___(I)___ above is not required under Part 213 to obtain MDEQ approval of the corrective action. This provision was agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, The MDEQ will not enforce the Owner's obligation to provide access to ___(I)___.

4. 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 ___(F)___ 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 21310a(2)(c) of the NREPA.

5. 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.

6. 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 it is determined that the regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. This Restrictive Covenant may only be modified or rescinded with the written approval of the MDEQ.

7. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, and ___(I)___ may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction

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 ___(P)___, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, ___(Q)___ has caused this Restrictive Covenant, ___(A)___, to be executed on this ___(R)___ day of ___(S)___, 20___(T)___.

___(Q)___

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ___(U)___
COUNTY OF ___(V)___

___(W)___

Notary Public Signature
___(X)___, ___(Y)___ County, ___(Z)___
Acting in the County of ___(AA)___
My Commission Expires: ___(BB)___

Prepared by:
___(CC)___

When recorded return to:
___(DD)___

EXHIBIT 1

CONSENT OF OWNER

I, ___(EE)___, the current and legal Owner of the Property, do hereby consent to the recording of this Restrictive Covenant, ___(A)___, and authorize ___(Q)___ to file the Restrictive Covenant with the ___(B)___ County Register of Deeds for recording.

___(EE)___

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ___(U)___
COUNTY OF ___(V)___

___(W)___

Notary Public Signature
___(X)___, ___(Y)___ County, ___(Z)___
Acting in the County of ___(AA)___
My Commission Expires: ___(BB)___

EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 3

SURVEY OF THE PROPERTY

OR

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

EXHIBIT 4

DESCRIPTION OF ALLOWABLE USES

EXHIBIT 5

CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land 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.

____(FF)____

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF ____ (U) ____
COUNTY OF ____ (V) ____

____ (W) ____

Notary Public Signature
____ (X) ____, ____ (Y) ____ County, ____ (Z) ____
Acting in the County of ____ (AA) ____
My Commission Expires: ____ (BB) ____



Remediation and Redevelopment Division

Michigan Department of Environmental Quality

02/12/2013

PART 213 DECLARATION OF RESTRICTIVE COVENANT

This document provides instruction for the model Declaration of Restrictive Covenant (EQP3854) to be used to comply with Section 21310a(2) and Section 21316 of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), when the corrective actions at a site result in a final remedy that relies on an institutional control in the form of a Restrictive Covenant (RC). This form is not required if the corrective action relies on an ordinance under Section 21310a(3) of the NREPA, or an alternate mechanism that is approved by the Michigan Department of Environmental Quality (MDEQ) pursuant to 21310a(4) of the NREPA.

Approval and consent of property owner(s), including any easement holders affected by the RC, must be obtained prior to recording with the Register of Deeds. A copy of the RC and proof of recording must be submitted with the Closure Report (EQP3843) to the appropriate MDEQ District Office at the address listed in form EQP4410. Form EQP3854 must be completed in its entirety. 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), MCL 565.201. Act 103 is available at, <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

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 insertion directions appear as ***bold italicized print***.

- A. MDEQ Reference No: RC-RRD-213-[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 MDEQ Reference Number can be obtained from the MDEQ, Remediation and Redevelopment Division (RRD) at deq-rrd@michigan.gov or 517-373-4805.***
- B. ***Enter the name of the county where the Property is located.***
- C. ***Enter the address location of the Property, including city or township and county.***
- D. ***Select the appropriate option based upon the proposed restricted area:***

OPTION 1: To be used if the entire Property is subject to all the land and/or resource use restrictions provided in this RC. Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:

Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions) provides a survey of the Property that is subject to the land and/or resource-use restrictions specified in this Restrictive Covenant.

OPTION 2: To be used if not all of the Property is subject to the land and/or resource use restrictions provided in this RC. Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the Property and the specific area that will be subject to the restrictions is required. Insert the following:

Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions) provides a survey of the Property that depicts the area or areas subject to restriction and contains additional legal descriptions that distinguish those portions of the Property that are subject to the land and/or resource use restrictions specified in this Restrictive Covenant.

E. *Enter the Part 213 Site name and Facility ID number.*

F. *Insert as appropriate:*

- Final Assessment Report (FAR)
- Closure Report (CR)

G. *Enter the date of the Final Assessment Report (FAR) or the Closure Report (CR).*

H. *Add the following to the sentence if there is a long-term physical component of the corrective action (e.g., an asphalt cap, containment barrier, or monitoring wells):*

and 4) to prevent damage or disturbance of any element of the corrective action constructed on the Property.

If there is no long term physical component of the correction action remove the semi-colon and end the sentence.

I. *Enter the name of owner or operator, as defined by Section 21303 (a) or (b) of the NREPA, who is proposing the FAR or CR and the filing of this RC.*

J. *Insert a paragraph similar to the following example that briefly describes the nature and extent of the regulated substances released, the affected media and routes of potential exposure, any long-term components of the corrective action that are to remain in-place on the Property, and how the corrective action proposed including restricting land or resource uses will be effective to address unacceptable risks for all relevant pathways that require restrictions:*

Example: Hazardous substances including benzene, toluene, ethyl benzene, xylenes, naphthalene and trimethylbenzenes were released from an underground storage tank resulting in contamination of the Property. Soil and groundwater contamination remains present at levels that do not allow unrestricted use of the Property. Specifically, concentrations of regulated substances remain present in the groundwater in excess of the nonresidential drinking water cleanup criteria. This potential exposure risk has been addressed by preventing the use of the groundwater for ingestion. In addition, concentrations of regulated substances remain in the soils at certain locations on the Property that could pose an exposure risk from direct contact with the contaminated soils and from inhalation of the regulated substances in their vapor phase. An exposure barrier has been constructed (identified in Exhibit 3) to prevent direct contact with these contaminated soils. An engineered vapor barrier has been constructed under Building B (identified in Exhibit 3) to prevent migration of contaminants in the vapor phase into the building at levels that would result in unacceptable exposures through inhalation.

[Insert the following language if nonaqueous-phase liquid is being left in place a the Property]

Residual (or mobile) Light Nonaqueous-Phase Liquid (LNAPL), including *[gasoline/diesel/fuel oil/waste oil]* were properly characterized using a Conceptual Site Model in accordance with

ASTM E 2531-06 and will remain in place. The LNAPL exists below the ground surface at a depth of *[insert approximate depth]*. The location of the LNAPL in the attached Exhibit 3 (survey and map) describes and provides the location of the institutional control and the horizontal and vertical extent of the LNAPL is described in Exhibit *[insert Exhibit number and include an exhibit to the restrictive covenant that depicts the horizontal and vertical extent of the LNAPL in relation to the Property boundaries]*. 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 21304a(2) of the NREPA.

K. **Enter as appropriate:**

- as Owner of the Property
- with the express written permission of the Owner of the Property

L. **Select one 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 is subject to land use restrictions required to satisfy the nonresidential cleanup criteria, insert the following paragraph below:

a. **Prohibited Land Uses:** The Owner shall prohibit all uses of *[insert as appropriate: the Property or portions of the Property as described in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions)]* that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 21304a(2) of the NREPA. Uses that are compatible with nonresidential cleanup criteria are generally described in Exhibit 4 (Allowable Uses). **[If the local zoning ordinance allows for residential uses within the Property's current zoning, insert the following:** At the time of recording of this Restrictive Covenant, the *[insert name of local zoning authority and zoning code designation]* zoning code designation allowed for the following residential uses that are not compatible with the nonresidential cleanup criteria and are therefore prohibited by this Restrictive Covenant *[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: If the Property is subject to land use restrictions required to satisfy site-specific cleanup criteria, insert the following paragraph below:

a. **Prohibited Land Uses:** The Owner shall prohibit all uses of *[insert as appropriate: the Property or portions of the Property as described in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions)]* that are not compatible with or are inconsistent with the assumptions and basis for the site-specific cleanup criteria developed for the Property. Uses that are compatible with the site-specific criteria developed for the Property are generally described in Exhibit 4 (Allowable Uses). **[If the local zoning ordinance allows for uses within the Property's current zoning that are not compatible with the site-specific criteria developed for the Property, insert the following:** At the time of recording of this Restrictive Covenant, the *[insert name of local zoning authority and zoning code designation]* zoning code designation allowed for the following uses that are not compatible with the site-specific cleanup criteria developed for the Property and are therefore prohibited by

this Restrictive Covenant [*list prohibited uses*].]

OPTION 3: If the Property does not require any restrictions on land use because hazardous substances left in place would allow for a limited or restricted residential cleanup with the appropriate resource use restrictions, there is no need to insert any restriction language under "Prohibited Land Uses." Therefore this paragraph should be excluded from the Restrictive Covenant and the remainder of the paragraphs should be renumbered accordingly.

M. Enter as appropriate:

- on the Property
- within the portions of the Property designated in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions) as [*insert designation*].

N. Enter additional paragraphs, as appropriate, to describe the prohibited activities necessary to reliably restrict exposure to regulated substances located on the Property or within the portions of the Property designated in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions). The following are examples that may or may not be appropriate for use. Number each new restriction accordingly when entering the information into the Restrictive Covenant.

Examples:

Exposure Restriction for Use of Groundwater:

- (i.) 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:
 - (a) 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.
 - (b) 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.

Direct Contact Exposure Barrier Restriction:

- (ii.) Any excavation or other intrusive activity that could affect the integrity of the [*insert thickness and material of barrier*] that serves to prevent direct contact exposure to contaminated soils at the Property. The [*insert thickness and material of barrier*] barrier has a base elevation of [*insert reproducible benchmark*] and is located on the Property as shown on Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions). Disturbance of the barrier may be allowed 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 213.

Vapor Intrusion Exposure Restriction (no buildings):

- (iii.) The construction of new structures, unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the new structure at concentrations greater than applicable criteria; or, unless prior to construction of any structure, an evaluation of the potential for any hazardous substances to volatilize into indoor air assures the protection of persons who may be present in the buildings and is in compliance with Section 21304c of the NREPA.

- O. ***Enter additional paragraphs, as appropriate, to describe the prohibited activities necessary to maintain the effectiveness and integrity of the response activity implemented at the Property. The following examples may or may not be appropriate for use. Number each new restriction accordingly when entering the information in to the Restrictive Covenant.***

Examples

Infiltration Barrier Restriction:

- (i.) Any excavation or other intrusive activity that could affect the integrity of the [*insert thickness and material of barrier*] that serves to prevent infiltration of water through contaminated soils at the Property. The [*insert thickness and material of barrier*] barrier has a base elevation of [*insert reproducible benchmark*] and is located on the Property as shown on Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions). Any excavation or other intrusive activity that could affect the integrity of the [*insert material of barrier*] is prohibited, 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 213.

Monitoring Well Disturbance Restriction:

- (ii.) 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.

Treatment System Restriction:

- (iii.) Any activity that could affect the integrity, effectiveness, and operation of the groundwater interception trench and treatment system as described in the FAR and

depicted in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions).

P. *Insert if portions of the Property subject to land or resource use restrictions overlap and affect any easement holder's Property interests:*

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

Q. *Enter the name of the person proposing to file the Restrictive Covenant.*

R. *Enter the current day of the month.*

S. *Enter the current month.*

T. *Enter the current year.*

U. *Enter the state where the document is signed.*

V. *Enter the county where the document is signed.*

W. *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].

X. *Print, Type, or Stamp name of Notary Public.*

Y. *Enter the county Notary is commissioned in*

Z. *Enter the state Notary is commissioned in.*

AA. *Enter the county where the Notary signed the document.*

BB. *Enter the expiration date of the Notary's commission.*

CC. *Enter the name of the person preparing the document*

DD. *Enter the address to return the document once recorded with the Register of Deeds.*

EXHIBIT 1: CONSENT OF OWNER ATTACHMENT:

This form is only necessary if the current Property owner and the person signing the Restrictive Covenant are not the same person. This document provides the express written permission of the current Property owner for recording. If the Consent of Owner attachment is not used, renumber the Exhibits accordingly and make the appropriate changes to the Exhibit references throughout the document.

EE. *Enter the name of the current Property owner.*

EXHIBIT 2: LEGAL DESCRIPTION OF PROPERTY:

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

EXHIBIT 3: SURVEY OF PROPERTY OR SURVEY OF THE PROPERTY AND LIMITS OF LAND AND RESOURCE USE RESTRICTIONS.

This exhibit must be titled as appropriate for the restricted area.

The survey 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 corrective action. The survey must also provide separate legal descriptions for any distinct restricted areas of the Property if not all areas of the Property are subject to the same restrictions.

To provide for a reliable and consistent standard of quality for surveys, all surveys shall be conducted by a licensed professional surveyor employed to provide land surveying services consistent with R339.17403 of Part 4, Standards of Practice and Professional Conduct, promulgated pursuant to Section 308 of the Occupational Code Act, 1980 PA 299, as amended, MCL 339.308.

At a minimum the survey shall include all the following as adopted from R339.17403:

- *A clear concise description of the property surveyed by bearings and distances, commencing with some corner marked and established in the United States public land survey, or reestablished in accordance with accepted methods.*
- *The graphical and numerical scaled used.*
- *A north arrow.*
- *Identification of all government corners and related witnesses.*
- *A statement of the manner of bearing determination.*
- *The ratio of closure of latitudes and departures, which shall be within limits accepted by the profession of land surveying.*

EXHIBIT 4: DESCRIPTION OF ALLOWABLE USES

This exhibit is only necessary when the Property is restricted to nonresidential or site-specific land uses. It must be consistent with the zoning of the Property (Do not include zoning code as part of this description) and with the generic exposure assumptions utilized in the FAR or CR under Section 21304a(2) of the NREPA, or the alternative exposure assumptions used to derive site-specific criteria if approved in the FAR or CR.

OPTION 1: Insert the following paragraph exactly as provided if the Property is restricted

to the nonresidential land use category:

Nonresidential Land Use: This land use is characterized by any use which is not residential in nature and is primarily characterized by industrial and commercial uses. Industrial uses typically involve manufacturing operations engaged in processing and manufacturing of materials or products. Other examples of industrial uses are utility companies, industrial research and development, and petroleum bulk storage. Commercial uses include any business or income-producing use such as commercial warehouses, lumber yards, retail gas stations, auto dealerships and service stations, as well as office buildings, banks, and medical/dental offices (not including hospitals). Commercial uses also include retail businesses whose principal activity is the sale of food or merchandise within an enclosed building and personal service establishments which perform services indoors such as health clubs, barber/beauty salons, photographic studios, etc.

Any residential use is specifically prohibited from the non-residential land use category. This would include the primary use of the Property for human habitation and includes structures such as single family dwellings, multiple family structures, mobile homes, condominiums, and apartment buildings. Residential use is also characterized by any use which is intended to house, educate, or provide care for children, the elderly, the infirm, or other sensitive populations, and therefore could include day care centers, educational facilities, hospitals, elder care facilities, and nursing homes. The use of any accessory building or portion of an existing building as a dwelling unit permitted for a proprietor or storekeeper and their families, located in the same building as their place of occupation, or for a watchman or caretaker is also prohibited. Any authority that allows for residential use of the Property as a legal non-conforming is also restricted per the prohibitions contained in this Restrictive Covenant.

OPTION 2: If the Property is restricted to the site-specific land use category, insert a paragraph that describes those uses that are consistent with assumptions used to develop site-specific criteria.

EXHIBIT 5: CONSENT OF EASEMENT HOLDERS

This Exhibit is only necessary if easement holders on the Property have their rights materially affected by the restrictions set forth in the Restrictive Covenant. This document provides the express written permission of the easement holder 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 exist for the Property.

FF. Enter the name of the easement holder.

-- END OF INSTRUCTIONS --