

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

**Received**

MICHIGAN DEPARTMENT  
OF ENVIRONMENTAL QUALITY,

MAR 23 2017

Plaintiff,

ENRA DIVISION

v

File No. 15-663-CE

EVERGREENS, INC. a Michigan  
corporation, and FRANK FISHER,

Honorable Rosemarie Aquilina

Defendants.

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**CONSENT DECREE**

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## CONSENT DECREE

The Plaintiff is the Michigan Department of Environmental Quality (MDEQ).

The Defendants are Frank Fisher and Evergreens, Inc., a Michigan corporation.

The Complaint was filed in this matter on August 14, 2015.

This Consent Decree (Decree) is intended to resolve all remaining issues, except as specified herein, between the MDEQ and the Defendants arising out of releases of hazardous substances from the former Shiawassee Sanitary Landfill at property located in Owosso Township, Shiawassee County, Michigan (the "Property"). The Property is currently owned, at the time of ongoing releases of hazardous substances, or was owned and operated, at the time of disposal of hazardous substances, by the Defendants. Numerous entities generated or transported residential, commercial, and industrial waste material for disposal at the Property. The generators and transporters formed a Settlement Group and entered into an agreement on September 23, 2015, that requires the Settlement Group to extend and connect homes in the vicinity of the landfill to municipal drinking water, thereby addressing exposures to contaminated drinking water. The MDEQ has determined that the Defendants currently have insufficient funds to fulfill all the requirements of Part 201 to address the contamination at and near the Property, as reflected in this Decree.

The entry of this Decree by the Defendants is for settlement purposes only and is neither an admission or denial of liability with respect to any issue dealt with in this Decree nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the court by entering this Decree finds, that the response activities set forth herein are necessary to protect public health, safety, and welfare, and the environment.

The Defendants agree not to contest the authority or jurisdiction of the court to enter this Decree or any terms or conditions set forth herein.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission of any of the allegations in the complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

### **I. JURISDICTION**

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have with respect to jurisdiction of the court or to venue in this Circuit.

1.2 The court determines that the terms and conditions of this Decree are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

1.3 The court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Decree and to resolve disputes arising under this Decree, including those that may be necessary for its construction, execution, or implementation, subject to Section XI (Dispute Resolution).

## **II. PARTIES BOUND**

2.1 This Decree shall apply to and be binding upon the Defendants and the State and their successors. Frank Fisher and Evergreens, Inc. are jointly and severally liable for the performance of all activities specified in this Decree and for any penalties that may arise from violations of this Decree. Any change in the ownership, corporate, or legal status of the Defendants, including, but not limited to, any transfer of assets, or of real or personal property, shall not in any way alter the Defendants' responsibilities under this Decree. To the extent that the Defendants are the owner of a part or all of the Property, Defendants shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property and shall provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. The Defendants shall comply with the requirements of MCL 324.20116.

2.2 Notwithstanding the terms of any contract that the Defendants may enter with respect to the performance of response activities pursuant to this Decree, the Defendants are responsible for compliance with the terms of this Decree and shall ensure that their contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Decree.

2.3 The signatories to this Decree certify that they are authorized to execute this Decree and to legally bind the Parties they represent.

### **III. STATEMENT OF PURPOSE**

3.1 The Parties have determined that entry of this Decree is in the public interest; will minimize litigation; expedite the performance of response activities to protect public health, safety and welfare at the Property; and that Defendants will properly perform the response activities required by this Decree.

### **IV. DEFINITIONS**

4.1 "Decree" means this Consent Decree and any attachment hereto, including any future modifications, and any reports, plans, specifications, and schedules required by the Consent Decree which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Decree.

4.2 "Defendants" means Evergreens, Inc. (Evergreens) and its successors and Frank Fisher (Mr. Fisher), an individual.

4.3 “Effective Date” means the date that the court enters this Decree.

4.4 “Facility” means any area where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use as provided in MCL 324.20120a and the Part 201 Rules, has been released, deposited or disposed of at the property identified in Attachment 1, and any other area, place, parcel or parcels of property, or portion of a parcel of property, where it otherwise comes to be located, except as provided in MCL 324.20101(1)(s)(i-vi).

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

4.6 “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.

4.7 “Part 201 Rules” means the administrative rules promulgated under Part 201.

4.8 “Party” means either Defendant or the State. “Parties” mean the Defendants and the State.

4.9 "Property" means the property located in Section 23, T7N, R2E, Owosso Township, Shiawassee County, Michigan and legally described in Attachment 1.

4.10 "Response Activity Costs" mean all costs incurred in taking or conducting a response activity, including enforcement costs.

4.11 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

4.12 "State" or "State of Michigan" means the Michigan Department of Attorney General (MDAG) and the MDEQ, and any authorized representatives acting on their behalf.

4.13 "Submission" means all plans, reports, schedules, and other submissions that the Defendants are required to provide to the State or the MDEQ pursuant to this Decree. "Submission" does not include the notifications set forth in Section IX (*Force Majeure*).

4.14 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201 Rules, shall have the same meaning in this Decree as in Parts 3 and 201 and the Part 201 Rules. Unless otherwise specified in this Decree, "day" means a calendar day.

## **V. COMPLIANCE WITH STATE AND FEDERAL LAWS**

5.1 All actions required to be taken pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations, including, but not limited to, Part 201, the Part 201 Rules, and laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Decree.

5.2 This Decree does not relieve the Defendants' obligations to obtain and maintain compliance with permits.

## **VI. PERFORMANCE OF RESPONSE ACTIVITIES**

6.1 To the extent that one of the Defendants owns or operates part or all of the Facility, each Defendant shall undertake all response activities necessary to achieve and maintain compliance with MCL 324.20107a.

(a) A Defendant with obligations under MCL 324.20107a shall maintain, and upon the MDEQ's request submit, documentation to the MDEQ for review and approval that summarizes the actions the Defendant has taken or is taking to comply with MCL 324.20107a and the Part 201 Rules. Failure of that Defendant to comply with the requirements of this paragraph, MCL 324.20107a, or the Part 201 Rules shall constitute a violation of this Decree and shall be subject to the provisions of Section X (Stipulated Penalties) of this Decree.

6.2 Within thirty (30) days of the Effective Date, Defendants shall file the Restrictive Covenant for the Property provided in Attachment 2 with the Shiawassee County Register of Deeds.

6.3 Defendants shall construct and permanently maintain a chain-link perimeter fence to restrict access to any land where waste and surficial contamination attributable to the former landfill at the Property has been identified as of the Effective Date, in conformance with the following:

(a) Within one (1) year of the Effective Date, Defendants shall construct a fence to the specifications described in Attachment 3 on the Property in the location described and depicted in Attachment 3.

(b) Within one (1) year of the Effective Date, Defendants shall take all necessary actions, including legal, to obtain any required permissions to construct a fence across Etta Street from the Southeast corner of Lot 25 to the Southwest corner of Lot 24 as currently platted in Roby's Subdivision of Lot 49 of Supervisor's Plat of Bock's Sub'd of E½ of the SW¼ Sec 23 T7N R2E, Owosso Twp, Shiawassee County, Michigan ("Roby's Subdivision"), necessary to comply with the performance objectives of this paragraph 6.3. See Attachment 3 for a description and depiction of the location to be fenced. Such necessary actions must be completed with sufficient time for the fence to be completed within the one (1) year timeframe, and may or may not include any or all of the following: requesting that the Shiawassee County Road Commission abandon portions of Etta

Street pursuant to "Public Highways and Private Roads," 1909 PA 283, MCL 220.1 *et seq.*; requesting that Owosso Charter Township vacate portions of Etta Street pursuant to the "Land Division Act," 1967 PA 288, MCL 560.101 *et seq.*; and obtaining releases from all lot owners in Roby's Subdivision of easement rights they may have in portions of Etta Street. Within sixty (60) days of obtaining any required permissions, but not later than one (1) year after the Effective Date, the Defendants shall construct the fence to the specifications described in Attachment 3.

(c) Upon completion of any portion of the perimeter fence, Defendants shall install and maintain, on that portion, professionally-manufactured "No Trespass" signs. When fully constructed, the perimeter fence shall have no fewer than six (6) signs posted.

(d) The area required to be fenced pursuant to paragraphs 6.3(a) and (b) may be changed by agreement between the Defendants and the MDEQ.

6.4 Within one (1) year of the Effective Date, the Defendants shall take all necessary actions, including legal, to record the Restrictive Covenant provided in Attachment 4 with the Shiawassee County Register of Deeds, restricting that portion of Etta Street as currently platted in Roby's Subdivision north of a line extending from the southeast corner of Lot 25 to the southwest corner of Lot 24, in order to restrict land where waste and surficial contamination attributable to the former landfill at the Property has

been identified as of the Effective Date. Such necessary actions may include acquiring title to that portion of Etta Street. Actions to acquire title could include: requesting that the Shiawassee County Road Commission abandon portions of Etta Street pursuant to "Public Highways and Private Roads," 1909 PA 283, MCL 220.1 *et seq.*; requesting that Owosso Charter Township vacate portions of Etta Street pursuant to the "Land Division Act," 1967 PA 288, MCL 560.101 *et seq.*; and Evergreens Inc. acquiring title to portions of Etta Street by amending Roby's Subdivision plat pursuant to the Land Division Act, MCL 560.221 to 560.229. The portion of Etta Street required to be restricted may be changed by agreement between the Defendants and the MDEQ. Once it is legally permissible, Defendants shall record the Restrictive Covenant within thirty (30) days. If the Defendants acquire title to that portion of Etta Street required to be restricted under this paragraph, and the Restrictive Covenant required to be recorded pursuant to paragraph 6.2 effectively restricts the property required to be restricted under this paragraph, the Defendants shall not be required to record the Restrictive Covenant provided in Attachment 4.

6.5 Defendants shall execute and record with the Shiawassee County Register of Deeds the Easement provided in Attachment 5 to provide access for MDEQ to the Property to perform response activities if necessary. The Defendants shall obtain the City of Owosso's consent, as holders of a Conservation Easement, recorded at Liber 1076 Page 575, Shiawassee

County Records, to the activities permitted in the Easement. The Defendants shall record Easement within thirty (30) days of obtaining the City of Owosso's consent, but not later than one (1) year after the Effective Date.

6.6 If the Defendants acquire title to Etta Street as currently platted in Roby's Subdivision north of a line extending from the southeast corner of Lot 25 to the southwest corner of Lot 24, then they shall record the Easement provided in Attachment 6 with the Shiawassee County Register of Deeds. The Defendants shall obtain the consent from the City of Owosso, as holders of a Conservation Easement, recorded at Liber 1076 Page 575, Shiawassee County Records, to the activities permitted in the Easement, if recording the Easement is necessary. The Defendants shall record the Easement within thirty (30) days of obtaining the City of Owosso's consent, but not later than six (6) months after acquiring title. If after acquiring title, the Easement required to be recorded pursuant to paragraph 6.5 effectively provide MDEQ access to portion of Etta Street identified in this paragraph, the Defendants shall not be required to record the Easement provided in Attachment 6.

6.7 Within ten (10) days of completion of all the required response activities provided in Paragraphs 6.2 through 6.6, Defendants shall send to the MDEQ the Notice of Achievement form provided in Attachment 7 certifying that the tasks in Paragraphs 6.2 through 6.6 are done. The Notice

of Achievement, including copies of the recorded Restrictive Covenants and Easements, shall be mailed to:

Eric Van Riper, Project Manager  
Lansing District Office  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O Box 30242  
Lansing, MI 48909-7742  
E-mail address: [vanripere@michigan.gov](mailto:vanripere@michigan.gov)  
Phone: 517-285-5163

and

Andrew Prins, Assistant Attorney General  
Environment, Natural Resources, and Agriculture  
Division  
G. Mennen Williams Building, 6<sup>th</sup> Floor  
525 West Ottawa Street  
Lansing, MI 48933  
E-mail address: [prinsa@michigan.gov](mailto:prinsa@michigan.gov)

Upon MDEQ receipt of the Notice of Achievement and concurrence that all tasks are done, the MDEQ will send Defendants a Letter of Acknowledgement.

6.8 Defendants shall annually inspect the perimeter fence and repair it, as necessary, to maintain the original integrity of the fence every August after construction.

6.9 The MDEQ's Performance of Response Activities. If the Defendants cease to perform the response activities required by this Decree, are not performing response activities in accordance with this Decree, or are performing response activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to the

Defendants, take over the performance of those response activities. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section VIII (Emergency Response) of this Decree. If the MDEQ finds it necessary to take over the performance of response activities that the Defendants are obligated to perform under this Decree, the MDEQ reserves the right to seek reimbursement for its costs to perform these response activities, including any accrued interest, through a separate action. Interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the MDEQ's costs on the day the MDEQ begins to incur costs for those response activities.

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

## VII. ACCESS

7.1 Upon the Effective Date of this Decree, the Defendants shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated properties are owned, controlled by, or available to the Defendants. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, MDEQ staff and its authorized

employees, agents, representatives, contractors, and consultants shall be allowed to enter the Facility and associated properties for the purpose of conducting any activity to which access is required for the implementation of this Decree or to otherwise fulfill any responsibility under state or federal laws with respect to the Facility, including, but not limited to the following:

- (a) Monitoring response activities or any other activities taking place pursuant to this Decree at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Assessing the need for, or planning, or conducting, investigations relating to the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting, response activities at or near the Facility;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the remedial action;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;

(h) Determining whether the Facility or other property is being used in a manner that is or may need to be prohibited or restricted pursuant to this Decree; and

(i) Assuring the protection of public health, safety, and welfare, and the environment.

7.2 To the extent that the Facility, or any other property where the response activities are to be performed by the Defendants under this Decree, is owned or controlled by persons other than the Defendants, the Defendants shall use best efforts to secure from such persons written access agreements or judicial orders providing access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. The Defendants shall provide the MDEQ with a copy of each written access agreement or judicial order secured pursuant to this section. For purposes of this paragraph, "best efforts" include, but are not limited to, providing reasonable consideration acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, the Defendants shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after the Defendants' receipt of the MDEQ's approval of the Response Activity Plan for which such access is needed. If the Defendants have not been able to obtain access within sixty (60) days after filing judicial action, the Defendants shall promptly notify the MDEQ of the status of its

efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a Force Majeure event pursuant to Section IX (Force Majeure).

7.3 Any lease, purchase, contract, or other agreement entered into by the Defendants that transfers to another person a right of control over the Facility or a portion of the Facility 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.

7.4 Any person granted access to the Facility pursuant to this Decree shall comply with all applicable health and safety laws and regulations.

### **VIII. EMERGENCY RESPONSE**

8.1 If during the course of the Defendants performance of response activities pursuant to this Decree, an act or the occurrence of an event causes a release or threat of release of a hazardous substance at or from the Facility, or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, the Defendants shall immediately notify the MDEQ

Project Manager via either email or phone as provided in Paragraph 6.7 of this Decree. In the event of the MDEQ Project Manager's unavailability, the Defendant shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706.

#### **IX. FORCE MAJEURE**

9.1 The Defendants shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure*." Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Decree in accordance with this section.

9.2 For the purposes of this Decree, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of the Defendants, of any person controlled by the Defendants, or of the Defendants' contractors, that delays or prevents the performance of any obligation under this Decree despite the Defendants' "best efforts to fulfill the obligation." The requirement that the Defendants exercise "best efforts to fulfill the obligation" includes the Defendants using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that the Defendants minimize any delays in the performance of any obligation under this Decree to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and

without the fault of the Defendants, such as an act of God, untimely review of permit applications or submission by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by diligence of the Defendants and that delay the performance of an obligation under this Decree. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of the Defendants.

9.3 The Defendants shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Decree. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by the Defendants to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Defendants shall use best efforts to avoid or minimize any such delay.

9.4 Failure of the Defendants to comply with the notice requirements of Paragraph 9.3 above, shall render this Section IX void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 9.3 of this Decree.

9.5 If the parties agree that the delay or anticipated delay was beyond the control of the Defendants, this may be so stipulated and the parties to this Decree may agree upon an appropriate modification of this Decree. If the parties to this Decree are unable to reach such agreement, the dispute shall be resolved in accordance with Section XI (Dispute Resolution) of this Decree. The burden of proving that any delay was beyond the control of the Defendants, and that all the requirements of this section have been met by the Defendants, is on the Defendants.

9.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the Defendants qualify for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

## **X. STIPULATED PENALTIES**

10.1 Except as provided in Section IX (Force Majeure) and Section XI (Dispute Resolution) of this Decree, if the Defendants fail or refuse to comply with any term or condition of this Decree, the Defendants shall pay the MDEQ stipulated penalties of one-hundred dollars [\$100.00] a day for each and every failure or refusal to comply. "Failure to Comply" by the Defendants shall include, but is not limited to, failure to complete the tasks as required in Paragraphs 6.1 to 6.6 of this Decree.

10.2 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation.

10.3 Except as provided in Section XI (Dispute Resolution) of this Decree, Defendants shall pay stipulated penalties owed to the State no later than thirty (30) days after the Defendants' receipt of a written demand from the State. Interest, at the rate provided for in MCL 324.20126a(3), shall begin to accrue on the unpaid balance at the end of the thirty (30) day period, on the day after payment was due, until the date upon which the Defendants make full payment of those stipulated penalties and the accrued interest to the MDEQ.

10.4 The payment of stipulated penalties shall not alter in any way the Defendants' obligation to perform the response activities required by this Decree.

10.5 If the Defendants fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if the Defendants violate this Decree. For any failure or refusal of the Defendants to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law including, but not

limited to, seeking civil fines, injunctive relief, the specific performance of response activities, and reimbursement of costs, exemplary damages pursuant to MCL 324.20119(4) in the amount of three (3) times the costs incurred by the State as a result of the Defendants' violation of or failure to comply with this Decree, and sanctions for contempt of court.

10.6 Notwithstanding any other provision of this section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Decree.

## **XI. DISPUTE RESOLUTION**

11.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree, except Section VIII (Emergency Response) of this Decree, which are not disputable. However, the procedures set forth in this section shall not apply to actions by the State to enforce any of the Defendants' obligations that have not been disputed in accordance with this section. Engagement of dispute resolution pursuant to this section shall not be cause for the Defendants to delay the performance of any response activity required under this Decree.

11.2 The State shall maintain an administrative record of any disputes initiated pursuant to this section. The administrative record shall include the information the Defendants provide to the State under Paragraphs 11.3 through 11.5 of this Decree and any documents the MDEQ

and the State rely on to make the decisions set forth in Paragraphs 11.3 through 11.5 of this Decree.

11.3 Except for undisputable matters identified in Paragraph 11.1 of this Decree, any dispute that arises under this Decree with respect to the MDEQ's disapproval, modification, or other decision concerning requirements of this Decree shall in the first instance be the subject of informal negotiations between the Project Manager representing the MDEQ and the Defendants. A dispute shall be considered to have arisen on the date that a Party to this Decree receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event Defendants object to any MDEQ notice of disapproval, modification, or decision concerning the requirements of this Decree that is subject to dispute under this Section, Defendants shall submit the Notice of Dispute within ten (10) days of receipt of the MDEQ's notice of disapproval, modification or decision. The period of informal negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty (20) days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide the MDEQ's Statement of

Position, in writing, to the Defendants. In the absence of initiation of formal dispute resolution by the Defendants under Paragraph 11.4 of this Decree, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

11.4 If the Defendants and the MDEQ cannot informally resolve a dispute under Paragraph 11.3 of this Decree, the Defendants may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Manager, requesting a review of the disputed issues. This Request for Review must be submitted within ten (10) days of the Defendant's receipt of the Statement of Position issued by the MDEQ pursuant to Paragraph 11.3 of this Decree. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Within twenty (20) days of the RRD Chief's receipt of the Defendants' Request for Review, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to the Defendants, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. In the

absence of initiation of procedures set forth in Paragraph 11.5 of this Decree by the Defendants, the MDEQ's Statement of Decision shall be binding on the Parties.

11.5 The MDEQ's Statement of Decision pursuant to Paragraph 11.4 shall control unless, within twenty (20) days after Defendants' receipt of the MDEQ's Statement of Decision, Defendants file with this Court a motion for resolution of the dispute, which sets forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Decree. Within thirty (30) days of Defendants' filing of a motion asking the court to resolve a dispute, the MDEQ will file with the court the administrative record that is maintained pursuant to Paragraph 11.2 of this Decree.

11.6 Any judicial review of the MDEQ's Statement of Decision shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are subject of this Decree, the Defendants shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, the Defendants shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent the MDEQ from arguing that the court should

apply the arbitrary and capricious standard of review to any dispute under this Decree.

11.7 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of the Defendants' failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that the Defendants do not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and the Defendants shall pay stipulated penalties as set forth in Paragraph 10.5 of Section X (Stipulated Penalties) of this Decree. The Defendants shall not be assessed stipulated penalties for disputes that are resolved in their favor. The Michigan Department of Attorney General (MDAG), on behalf of the MDEQ, may take civil enforcement action against the Defendants to seek the assessment of civil penalties or damages pursuant to MCL 324.20119(4) and 324.20137(1) or other statutory and equitable authorities.

11.8 Notwithstanding the provisions of this section and in accordance with Section X (Stipulated Penalties) of this Decree, the Defendant shall pay to the MDEQ stipulated penalties that are not the subject of an ongoing dispute resolution proceeding.

## **XII. INDEMNIFICATION**

12.1 The State of Michigan does not assume any liability by entering into this Decree. This Decree shall not be construed to be an indemnity by the State for the benefit of the Defendants or any other person.

12.2 The Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of the Defendants, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Decree.

12.3 The Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between the Defendants and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

12.4 The State shall provide the Defendants notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 12.2 or 12.3 of this Decree.

12.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of the Defendants for the performance of activities required by this Decree. Neither the Defendants nor any contractor shall be considered an agent of the State.

12.6 The Defendants waive all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement between the Defendants and any other person for the performance of response activities at the Facility, including any claims on account of construction delays.

### **XIII. COVENANTS NOT TO SUE BY THE STATE**

13.1 In consideration of the actions that will be performed by the Defendants under the terms of this Decree, and the Defendants' lack of ability to pay, and except as specifically provided for in this section and Section XIV (Reservation of Rights by the State) of this Decree, the State of Michigan hereby covenants not to sue or to take further administrative action against the Defendants for:

- (a) Response activities related to the release of hazardous substances at the Facility;

(b) Recovery of response activity costs associated with the Facility; and

(c) Payment of civil fines for violations of Part 201 of the NREPA associated with the Facility.

13.2 The covenants not to sue shall take effect under this Decree upon MDEQ's issuance of the Letter of Acknowledgment as provided in Paragraph 6.7 of the Decree.

13.3 The covenants not to sue extend only to the Defendants and do not extend to any other person.

#### **XIV. RESERVATION OF RIGHTS BY THE STATE**

14.1 The covenants not to sue apply only to those matters specified in Paragraph 13.1 of Section XIII (Covenants Not to Sue by the State) of this Decree. The State expressly reserves, and this Decree is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against the Defendants with respect to the following:

(a) The performance of response activities that are required to comply with Section VI (Performance of Response Activities) of this Decree.

(b) Performance of response activities and recovery of unreimbursed Response Activity Costs associated with the Facility if the Defendants have a significant change in financial status.

(c) Reimbursement of Response Activity Costs incurred by the MDEQ for implementing response activities pursuant to Paragraph 6.9 (The MDEQ's Performance of Response Activities) or Section VIII (Emergency Response).

(d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility.

(e) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility.

(f) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.

(g) Criminal acts.

(h) Any matters for which the State is owed indemnification under Section XII (Indemnification) of this Decree.

(i) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Decree or any other violations of state or federal law for which Defendants have not received a covenant not to sue.

(j) Any issue addressed in MCL 324.20132(6) as it relates to unknown conditions at the Facility.

(k) The Defendants' failure to comply with: Section 20107a due care requirements; Section 20116 notification requirements; Section 20117 information and access requirements; Section 20120c relocation of contaminated soil requirements; the restrictions in the Restrictive Covenants recorded under paragraphs 6.2 and 6.4 of this Decree; and the requirements of the Easements recorded under paragraphs 6.5 and 6.6 of this Decree.

14.2 The State reserves the right to take action against the Defendants if it discovers at any time that any material information provided by the Defendants prior to or after entry of this Decree was false or misleading.

14.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree.

14.4 In addition to, and not as a limitation of any other provision of this Decree, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary.

14.5 In addition to, and not as a limitation of any provision of this Decree, the MDEQ and the MDAG retain all of their information-gathering, inspection, access and enforcement authorities and rights under Part 201, and any other applicable statute or regulation.

14.6 Failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this Decree in a timely manner shall not:

(a) Provide or be construed to provide a defense for the Defendants' noncompliance with any such term, condition, or requirement of this Decree.

(b) Estop or limit the authority of the MDEQ or the MDAG to enforce any such term, condition, or requirement of the Decree, or to seek any other remedy provided by law.

14.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by the Defendants or by MDEQ under this Decree will result in the achievement of any particular requirement or the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

14.8 Except as provided in Paragraph 13.1(a) of Section XIII (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to MCL 324.20132(8), to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

## **XV. COVENANT NOT TO SUE BY THE DEFENDANT**

15.1 The Defendants hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to MCL 324.20119(5) or any other provision of law.

15.2 After the Effective Date of this Decree, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, the Defendants agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a defense that contends any claims raised by the MDEQ or the MDAG in such a proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue as set forth in Section XIII (Covenants Not to Sue by the State) of this Decree.

## **XVI. CONTRIBUTION**

16.1 Pursuant to MCL 324.20129(5) and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to

the extent provided in Section XIII (Covenants Not to Sue by the State) of this Decree, the Defendants shall not be liable for claims for contribution for the matters set forth in Paragraph 13.1 of Section XIII (Covenants Not to Sue by the State) of this Decree, to the extent allowable by law. The parties agree that entry of this Decree constitutes a judicially approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Defendants have, as of the Effective Date, resolved their liability to the MDEQ for the matters set forth in Paragraph 13.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under MCL 324.20126, or Sections 9607 and 9613 of the CERCLA. Pursuant to MCL 324.20129(9), any action by Defendants for contribution from any person that is not a Party to this Decree shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable state or federal law.

## **XVII. MODIFICATIONS**

17.1 The Parties may only modify this Decree according to the terms of this section. The modification of any Submission or schedule required by this Decree may be made only upon written approval from the MDEQ.

17.2 Modification of any other provision of this Decree shall be made only by written agreement between the Defendants, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG, and shall be entered with the court.

### **XVIII. SEPARATE DOCUMENTS**

18.1 The Parties may execute this Decree in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

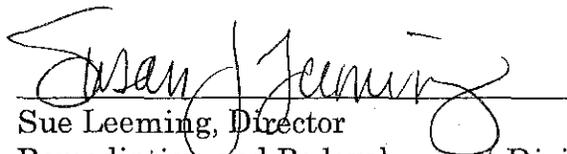
### **XIX. SEVERABILITY**

19.1 The provisions of this Consent Decree shall be severable. If a court of competent jurisdiction declares that any provision of this Consent Decree is inconsistent with state or federal law and therefore unenforceable, the remaining provisions of this Consent Decree shall remain in full force and effect.

IT IS SO AGREED BY:

FOR PLAINTIFF:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Sue Leeming, Director  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, MI 48933  
517-284-5087

Dated 17 March 2017

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Andrew T. Prins (P70157)  
Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
P.O. Box 30755  
Lansing, MI 48909

Dated 3-17-17

FOR DEFENDANTS:

FRANK FISHER

Frank Fisher  
2153 W. Hibbard Road  
Owosso, MI 48867

Dated 3/13/17

EVERGREENS, INC.

Frank Fisher  
Frank Fisher, President  
Evergreens, Inc.  
2153 W. Hibbard Road  
Owosso, MI 48867

Dated 3/13/17

COUNSEL FOR DEFENDANTS

Curtis L. Zaleski  
Curtis L. Zaleski (P53534)  
Attorney for Defendants  
535 E. Main St.  
Owosso, MI 48867  
989-723-8166

Dated 3/13/17

This Judgment is final and closes the case.

IT IS SO ORDERED AND ADJUDGED THIS 20 day of MARCH, 2017.

JUDGE ROSEMARIE E. AQUILINA

Honorable Rosemarie Aquilina

# **Attachment 1**

**Attachment 1**  
**Legal Description**

Lot(s) 50 and 51, SUPERVISOR'S PLAT OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 7 NORTH, RANGE 2 EAST, according to the recorded plat thereof, as recorded in Liber 11 of Plats, Page 193.

AND ALSO:

Lot 1 and Lots 24, 25, 26, 27, 28, 29 and 30 of ROBY'S SUBDIVISION OF LOT 49 OF SUPERVISOR'S PLAT OF BOCK'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 7 NORTH, RANGE 2 EAST, according to the recorded plat thereof, as recorded in Liber 12 of Plats, page 205.

## **Attachment 2**

## DECLARATION OF RESTRICTIVE COVENANT

DEQ Reference No: RC-RD-201-16-062

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Shiawassee 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 2000 W. Fredrick and legally described in Exhibit 1 attached hereto ("Property").

Response activities are being implemented to address environmental contamination at the Property pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The adequacy of the response activities implemented at the Property has not been subject to a facility specific review by the Michigan Department of Environmental Quality (DEQ), nor has the DEQ determined that the response activities comply with Part 201 of the NREPA.

The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. The DEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

The response activities require the recording of this Restrictive Covenant with the Shiawassee County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; 2) assure that the use of the Property is consistent with the exposure assumptions used to develop the Nonresidential cleanup criteria under Section 20120a(1)(b) of the NREPA and the exposure control measures relied upon at the Property; and 3) to prevent damage or disturbance of any element of the response activity constructed on the Property.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the Nonresidential cleanup criteria under Section 20120a(1)(b) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

## Definitions

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

"DEQ" 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 the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, 2002 Michigan Register; Effective December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

## Summary of Response Activities

The former Shiawassee Sanitary Landfill site was originally used as a gravel pit until 1967. From 1967 to 1973 the site was licensed as a solid waste disposal area. Groundwater is impacted with low levels of volatile organic compounds (VOCs), including 1,1,1-trichloroethane, vinyl chloride, trichloroethylene, 1,1-dichloroethane, tetrahydrofuran, benzene, and cis1,2-dichloroethylene. Surficial soil sampling and analysis revealed widespread polynuclear aromatic hydrocarbons, arsenic and lead levels above the MDEQ direct contract criteria across the surface of the landfill area. The results of the methane gas investigation revealed that methane gas is present in the soil at concentrations above the acute flammability and explosivity screening levels on the Property.

NOW THEREFORE,

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

Evergreens, Inc., a Michigan corporation, with an address of 2153 W. Hibbard Road, Owosso, MI 48867, as the Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

- a. The Owner shall prohibit all uses of the Property that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 20120a(1)(b) of the NREPA.

b. Prohibited Activities to Eliminate Unacceptable Exposure to Hazardous Substances. The Owner shall prohibit activities on the Property that may result in exposures to hazardous substances at the Property. These prohibited activities include:

(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:

(1) 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.

(2) 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.

(ii) 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 20107a of the NREPA.

(iii) The disturbance of any soils present on the Property, unless such activity incorporates measures designed to eliminate any potential unacceptable exposures to hazardous substances and does not exacerbate the environmental condition of the Property.

(iv) The removal or stripping of any vegetation at or from the Property by any method, including, but not limited to trimming, cutting, burning and the use of chemical agents such as herbicides, unless such activity incorporates measures designed to eliminate any potential unacceptable exposures to hazardous

substances and does not exacerbate the environmental condition of the Restricted Property.

c. Prohibited Activities to Ensure the Effectiveness and Integrity of the Response Activity. Except as provided below, the Owner shall prohibit any and all access to or entry upon the Property.

(i) Activities related to any element of the response activities conducted or authorized by DEQ, or by the Owner so long as the Owner received prior approval from the DEQ for any such response activities, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the response activities implemented at the Property; provided, however, Owner may access the Property to maintain the fence pursuant to paragraph 2.

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

2. Fencing. The Owner shall maintain permanent, secure fencing around the perimeter of the Property with a locked gate to prevent any unauthorized access at the locations of the Property identified on Exhibit 2.

3. Access. The Owner grants to the DEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the response activities, including the right to take samples, inspect the operation of the response activities and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201.

4. Conveyance of Property Interest. The Owner shall provide notice to the DEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the applicable provisions of Section 20116 of the NREPA. The notice required to be made to the DEQ under this Paragraph shall be made to: Chief, Remediation and Redevelopment Division, Michigan DEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, DEQ Reference Number RC-RRD-16-062. 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.

5. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner, future owners, and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the DEQ or its successor determines that hazardous 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 DEQ.

6. Enforcement of Restrictive Covenant. The State of Michigan, through the DEQ, and Evergreens, Inc., may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

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

8. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, Evergreens, Inc., and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, Frank W. Fisher, President of Evergreens, Inc., has caused these presents to be signed in his name for Evergreens, Inc.

Dated this 13th day of March, 2017.

Frank W. Fisher  
Frank W. Fisher, President  
Evergreens, Inc.

STATE OF MICHIGAN  
COUNTY OF Shiawassee

Acknowledged before me in Shiawassee County, Michigan, on 13th of March, 2017 by Frank W. Fisher of Evergreens, Inc., a Michigan corporation, for the corporation.

Sarah E. Bakalian  
Sarah E. Bakalian, Notary Public  
State of Michigan, County of Shiawassee  
Acting in the County of Shiawassee  
My commission expires: 12/31/2020

When recorded return to:

Frank W. Fisher  
2153 W. Hibbard Rd.  
Owosso, MI 48867

Prepared by:

Vicki Katko  
Remediation and Redevelopment Division  
Department of Environmental Quality  
Lansing District Office  
P.O. Box 30242  
Lansing, Michigan 48909

APPROVED AS TO FORM:

Andrew Prins  
Andrew T. Prins (P70157)  
Assistant Attorney General  
Environment, Natural Resources and  
Agriculture Division

3-17-17  
Date

## EXHIBIT 1

### LEGAL DESCRIPTION OF PROPERTY

The land situated in the County of Shiawassee, Township of Owosso, State of Michigan, is described as follows:

Lots Fifty (50) and Fifty-One (51) of Supervisor's Plat of the East Half (E1/2) of the Southwest Quarter (SW1/4) of Section Twenty-Three (23), Town Seven (7) North, Range Two (2) East, Owosso Township, Shiawassee County, Michigan.

AND ALSO:

Lot One (1) and Lots Twenty-Four (24), Twenty-Five (25), Twenty-Six (26), Twenty-Seven (27), Twenty-Eight (28), Twenty-Nine (29), and Thirty (30) of Roby's Subdivision of Lot Forty-Nine (49) of Supervisor's Plat of Bock's Subdivision of the East Half (E1/2) of the Southwest Quarter (SW1/4) of Section Twenty-Three (23), Town Seven (7), North, Range Two (2) East, Owosso Township, Shiawassee County, Michigan.

## EXHIBIT 2

### FENCE SPECIFICATIONS

The fence shall be constructed by a professional entity and shall be 6 feet high with at least a bottom tension cable and made of 11 or 11½ gauge steel mesh or of material of similar strength, with at least one gate to enter the Property.

**The fence shall be located as described below:**

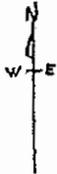
Beginning at the Southeast corner of Lot 50 of Supervisor's Plat of the East ½ of the Southwest ¼ of Section 23, Town 7 North, Range 2 East, Owosso Township, Shiawassee County, Michigan, recorded in Liber 11 of Plats, Page 193, Shiawassee County Records ("Supervisor's Plat"), thence N 01°52' E along the line common to Lots 50, 51 and Helena St., 429 feet to the Northeast corner of Lot 51 in said Supervisor's Plat, thence westerly along the line common to Lot 51 and Lots 16 through 12 to the Northwest corner of Lot 51, thence S 01°50' W along the west line of Lots 51 and 50 of said Supervisor's Plat and the west line of Lots 25 through 30 of Roby's Subdivision of Lot 49 of Supervisor's Plat of Bock's Subdivision of the East ½ of the Southwest ¼ of Section 23, Town 7 North, Range 2 East, Owosso Township, Shiawassee County, Michigan, recorded in Liber 12 of Plats, Page 205, Shiawassee County Records ("Roby's Subdivision") 826.5 feet to the Southwest corner of Lot 30 and Roby St. of Roby's Subdivision, thence easterly along the line common to Lot 30 and Roby St., 20.0 feet to a corner of Lot 30 and Roby St., thence southerly along the line common to Lot 30 and Roby St., 17.0 feet to the most southerly lot line of Lot 30, being common with Roby St., thence S 89°18' E along said line common to Lot 30 and Roby St., 261.28 feet to the Southeast corner of Lot 30, thence N 01°52" E along the line common to Lots 30 through 26 and Etta Street, 300.00 feet.

**AND ALSO:**

Beginning at the Southwest corner of Lot 24 of Roby's Subdivision, thence easterly along the line common to Lots 23 and 24 and 1 and 2 and, 264 feet to the Southeast corner of Lot 1 of Roby's Subdivision, thence N 01°52" E along the line common to Lot 1 of Roby's Subdivision and Helena St. of Supervisor's Plat to Northeast corner of Lot 1 of Roby's Subdivision.

**AND ALSO:**

Beginning at the Southeast corner of Lot 25 of Roby's Subdivision and thence easterly along the easterly extension of the line common to Lots 25 and 26, 66.0 feet to the Southwest corner of Lot 24.

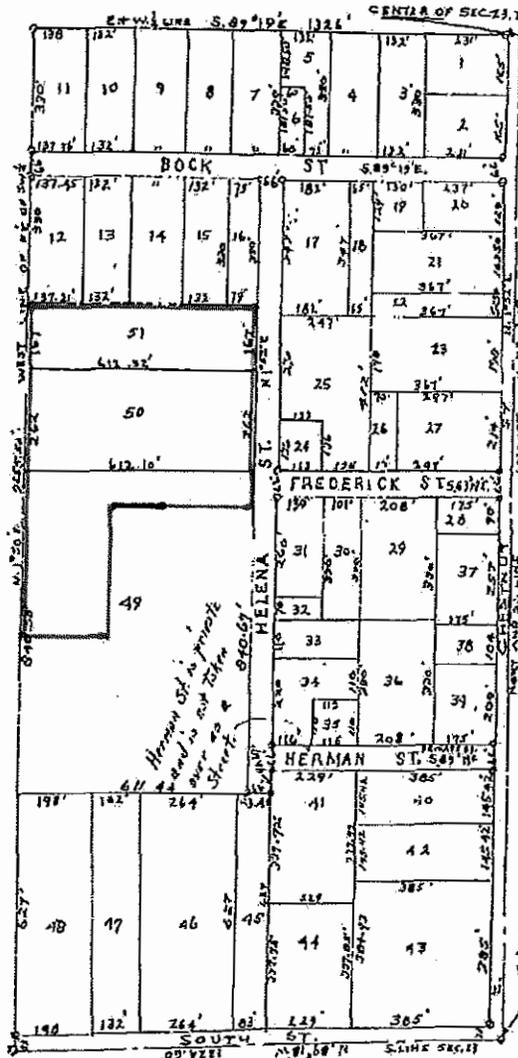


40068

# SUPERVISOR'S PLAT OF E 1/2 OF THE SW 1/4 SEC. 23, T.7N, R.2E, OWOSSO TWP. SHIAWASSEE CO., MICHIGAN.

Scale - 200 Ft. per inch.

Note - All dimensions are given in feet and decimals thereof.



**CERTIFICATE**

BEFORE ALL MEY BY THESE PRESENTS, that I, CHARLES POH, Supervisor of Owooso Township, Shiawassee County, Michigan, by virtue of authority in me vested by Section 25, Act 112 of 1899, having been duly authorized by the Township Board, have caused the lands embraced in the annexed plat to be surveyed, laid out and platted, to be known as SUPERVISOR'S PLAT OF E. 1/2 OF THE SW 1/4, SEC. 23, T. 7 N., R. 2 E., OWOSSO TWP., SHIAWASSEE CO., MICHIGAN, and that the streets as shown on said plat are now being used for such purposes.

*Marion Russell Sutton* Charles Post (S.S.)  
Treasurer of the Township of Owooso, Supervisor of the Township of Owooso.

*Oliver N. Elliot*  
Oliver N. Elliot  
TOWNSHIP CLERK

State of Michigan, ) ss.  
County of Shiawassee, )

On this 8 day of November, 1926, before me, a Notary Public in and for said County, State of Michigan, appeared the above named Supervisor of Owooso Township, Michigan, known to me to be the person whose name is subscribed to the foregoing, and acknowledged the plat to be his and acted as such Supervisor.

*Marion Russell Sutton*  
Notary Public in and for this State in said County, Michigan.

**CERTIFICATE OF MUNICIPAL OFFICIAL**

This plat was approved by the Township Board of Owooso Township, Shiawassee County, Michigan at a meeting held on the 27th day of November, 1926

*Charles Post*  
Treasurer

**CERTIFICATE OF APPROVAL BY BOARD OF COUNTY COMMISSIONERS**

This plat has been approved and was approved on the 27th day of November, 1926, by the Shiawassee County Board of Commissioners.

*George M. Weston* President  
*Robert M. Richardson* Treasurer  
*Alvin Baker* Clerk  
*W. H. ...* ...

**DESCRIPTION OF LANDS PLATED**

The lands embraced in the annexed plat of SUPERVISOR'S PLAT OF E. 1/2 OF THE SW 1/4, SEC. 23, T. 7 N., R. 2 E., OWOSSO TWP., SHIAWASSEE CO., MICHIGAN, is described as follows:

The East 1/2 of the Southeast 1/4 of Section 23, in Township 7 North, Range 2 East, in Michigan, and further described as beginning at the corner of said Section 23, thence South 150' West along the South and South quarter line 1855.81 feet to the South quarter post of said section, thence North 83'10" East along the section line 1324.60 feet, to the West line of said East 1/2 of Southeast quarter of said section, thence North 190' East along the section line 2655.50 feet to the East and West quarter line of said section, and thence North 83'10" East along said quarter line 1262.00 feet to the place of beginning. Said plat consists of 51 lots, numbered from 1 through 51.

**NOTARY'S CERTIFICATE**

I hereby certify that the plat herein delineated is a street and all that permanent and permanent or existing or here and there are small holes in diameter and 35 inches long, or shorter but at least one-half inch in diameter spaced over each other at least six inches with an overall length of not less than 36 inches, secured in a concrete cylinder at least 4 inches in diameter and 35 inches deep have been placed at points marked thus ( ) as shown at all angles in the boundaries of the lands platted, at all intersections of lines of streets, and at the intersections of the lines of the streets with the boundaries of the plat, as shown on said plat.

*Oliver N. Elliot*  
Oliver N. Elliot  
Registered Land Surveyor No. 2071.

**CERTIFICATE OF APPROVAL BY COUNTY CLERK**

This plat was approved on the 27th day of November, 1926, by the Shiawassee County Clerk.

*Charles Post* Clerk  
*W. H. ...* ...

- Area required to be fenced under paragraph 6.3(a) of Consent Decree (Orange).
- Area required to be fenced under paragraph 6.3(b) of Consent Decree (Green).

**COPY**

*Marion Russell Sutton*  
*Oliver N. Elliot*  
*Charles Post*  
*George M. Weston*  
*Robert M. Richardson*  
*Alvin Baker*  
*W. H. ...*  
*Oliver N. Elliot*  
*Charles Post*  
*George M. Weston*  
*Robert M. Richardson*  
*Alvin Baker*  
*W. H. ...*

Area required to be fenced under paragraph 6.3(a) of Consent Decree (Orange).

Area required to be fenced under paragraph 6.3(b) of the Consent Decree (Green).

# ROBY'S SUBDIVISION

OF LOT 49 OF SUPERVISOR'S PLAT OF BOCK'S SUBD.  
OF E/2 OF THE SW 1/4 SEC. 23 T.7N R.2E. OWOSSO TWP.,  
SHIawassee CO., MICHIGAN

SCALE - 100 PER INCH

Center point of Sec. 23, T.7N R.2E

Note: All dimensions are given in feet and decimals thereof.

### DESCRIPTION OF LAND PLATTED.

The lands embraced in the annexed plat of ROBY'S SUBDIVISION of Lot 49 of Supervisor's Plat of Bock's Subd. of E. 1/2 of the SW 1/4, Sec. 23, T. 7 N., R. 2 E., Owosso Twp., Shiawassee Co., Michigan, is described as follows: Lot 49 of Supervisor's Plat of E. 1/2 of the SW 1/4, Sec. 23, T. 7 N., R. 2 E., Owosso Twp., Shiawassee Co., Michigan, described as beginning at the Southeast corner of said Lot 49, said Southeast corner of said lot being determined by commencing at the centerpoint of said section 23 of Township 7 North, Range 2 East, in Michigan and run thence South 1 1/2° West along the North and South quarter line 1995.87 feet and thence North 85° 19' West parallel with the East and West quarter line 713 feet to the Southeast corner of said Lot 49 and the place of beginning thence from the point of beginning they determined run North 1°52' East parallel with the North and South quarter line of said section and along the West line of Malcom Street 840.67 feet to the Northwest corner of said Lot 49, thence North 89°21' West along the North line of said Lot and parallel with the East and West quarter line of said Section and 1255 feet distant therefrom a distance of 611.10 feet to the Northwest corner of said Lot 49 and the West one-eighth line thereof a distance of 840.50 feet to the Southwest corner of said Lot 49, and thence South 89°18' East along the South line of said Lot 49 and parallel with the South line of said Section 23 and 660 feet distant therefrom a distance of 611.14 feet to the point of beginning. This subdivision consists of 36 lots numbered beginning with No. 1 and continuing through 36.

### CERTIFICATE OF MUNICIPAL APPROVAL.

This plat was approved by the Township Board of the Township of Owosso, Shiawassee County, Michigan, at a meeting held on the 19th day of 1958.

### RECITATION.

Know all men by these presents, that we, WILLIAM F. ROBY and OLIVE E. ROBY, husband and wife, Thomas William Dwyer, (also known as Thomas W. Dwyer) and Nancy A. Dwyer, husband and wife, Donald Lewis and Marie Davis, husband and wife, James A. Dwyer, a single man, John J. Schulte, Jr., a single man, and Elias Ford White and Gale Ann White, husband and wife, as preparators, have caused the lands embraced in the annexed plat to be surveyed, laid out and platted, to be known as ROBY'S SUBDIVISION of Lot 49 of Supervisor's Plat of Bock's Subd. of E. 1/2 of S.W. 1/4, Sec. 23, T. 7 N., R. 2 E., Owosso Twp., Shiawassee Co., Michigan, and that the streets and alleys as shown on said plat are hereby dedicated to the use of the public.

Signed and sealed in presence of

*Oliver M. Elliott*  
OLIVER M. ELLIOTT  
*William L. Dwyer*  
WILLIAM L. DWYER

*William F. Roby* (h.s.)  
William F. Roby  
*Oliver E. Roby* (h.s.)  
Olive E. Roby  
*Thomas William Dwyer* (h.s.)  
Thomas William Dwyer  
*Nancy A. Dwyer* (h.s.)  
Nancy A. Dwyer  
*Donald Lewis* (h.s.)  
Donald Lewis  
*Marie Davis* (h.s.)  
Marie Davis  
*James A. Dwyer* (h.s.)  
James A. Dwyer  
*John J. Schulte, Jr.* (h.s.)  
John J. Schulte, Jr.  
*Elias Ford White* (h.s.)  
Elias Ford White  
*Gale Ann White* (h.s.)  
Gale Ann White

Witnesses

*Frank M. Hopkins*  
Frank M. Hopkins  
*R. D. Harmon* (h.s.)  
R. D. Harmon  
(h.s.)

### ACKNOWLEDGMENT

State of Michigan, County of Shiawassee, } ss.  
On this 19th day of July 1958, before me, a Notary Public in and for said County personally came the above named William F. Roby and Olive E. Roby, husband and wife, Thomas William Dwyer, w/f/o Thomas W. Dwyer and Nancy A. Dwyer, husband and wife, Donald Lewis and Marie Davis, husband and wife, James A. Dwyer, a single man, John J. Schulte, Jr., a single man, Elias Ford White and Gale Ann White, husband and wife, known to me to be the persons who executed the above dedication, and acknowledged the same to be their free act and deed.

*Oliver M. Elliott*  
OLIVER M. ELLIOTT, Notary Public  
Shiawassee County, Michigan.  
My commission expires April 20, 1961

COPY  
Shiawassee County  
Notary Public's Subdivision  
was executed on 9th day of  
January 1958 at Owosso, Michigan.  
County of Shiawassee  
State of Michigan

### SURVEYOR'S PARTICIPATE

I hereby certify that the plat herein delineated is a correct one and that permanent metal monuments consisting of iron rods at least one-half inch in diameter and 36 inches in length, or shorter bars not less than one-half inch in diameter lapped over each other at least six inches with an overall length of not less than 36 inches, encased in a concrete cylinder at least 4 inches in diameter and 36 inches in length have been placed at points marked thus O as thereon shown, at all angles in the boundaries of the land platted, at all intersections of the lines of streets, intersections of alleys, or of streets and alleys, and at the intersections of streets and alleys with the boundaries of the plat as shown on said plat.

*Oliver M. Elliott*  
Oliver M. Elliott  
Registered Land Surveyor No. 2097.

### COUNTY TREASURER'S CERTIFICATE

OFFICE OF THE COUNTY TREASURER  
Shiawassee County, Michigan  
I hereby certify that there are no tax liens or titles held by the State on the lands described herein, and that there are no tax liens or titles held by individuals on said lands for the five years preceding the 1st day of January 1958, and that the taxes for said period of five years are paid, as shown by the records of this office. This certificate does not apply to taxes, if any, now in the process of collection by the Township collecting officers.

*Kathleen A. Dwyer*  
Kathleen A. Dwyer, County Treasurer.

### CERTIFICATE OF APPROVAL BY THE BOARD OF COUNTY ROAD COMMISSIONERS

This plat has been examined and was approved on the 19th day of July 1958, by the Shiawassee County Board of Road Commissioners.

*A. J. Bales* (Chairman)  
*George Warren* (Member)

### CERTIFICATE OF APPROVAL OF COUNTY PLAT BOARD

This plat was approved on the 19th day of July 1957, by the Shiawassee County Plat Board.

*Kathleen A. Dwyer*  
Kathleen A. Dwyer, County Treasurer.  
*C. E. Colby*  
C. E. Colby, County Board Commissioner.

FILED IN REGISTERED PLAT BOOK NO. 1958  
ON FEBRUARY 12, 1958  
COUNTY CLERK  
Shiawassee County, Michigan

EXHIBIT 3

CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

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

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

My Commission Expires: \_\_\_\_\_

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

# **Attachment 3**

**Attachment 3**  
**Fence Specifications**

The fence shall be constructed by a professional entity and shall be 6 feet high with at least a bottom tension cable and made of 11 or 11½ gauge steel mesh or of material of similar strength; with at least one gate to enter the Property.

**The fence shall be located as described below in order to comply with paragraph 6.3(a) of the Consent Decree:**

Beginning at the Southeast corner of Lot 50 of Supervisor's Plat of the East ½ of the Southwest ¼ of Section 23, Town 7 North, Range 2 East, Owosso Township, Shiawassee County, Michigan, recorded in Liber 11 of Plats, Page 193, Shiawassee County Records ("Supervisor's Plat"), thence N 01°52' E along the line common to Lots 50, 51 and Helena St., 429 feet to the Northeast corner of Lot 51 in said Supervisor's Plat, thence westerly along the line common to Lot 51 and Lots 16 through 12 to the Northwest corner of Lot 51, thence S 01°50' W along the west line of Lots 51 and 50 of said Supervisor's Plat and the west line of Lots 25 through 30 of Roby's Subdivision of Lot 49 of Supervisor's Plat of Bock's Subdivision of the East ½ of the Southwest ¼ of Section 23, Town 7 North, Range 2 East, Owosso Township, Shiawassee County, Michigan, recorded in Liber 12 of Plats, Page 205, Shiawassee County Records ("Roby's Subdivision") 826.5 feet to the Southwest corner of Lot 30 and Roby St. of Roby's Subdivision, thence easterly along the line common to Lot 30 and Roby St., 20.0 feet to a corner of Lot 30 and Roby St., thence southerly along the line common to Lot 30 and Roby St., 17.0 feet to the most southerly lot line of Lot 30, being common with Roby St., thence S 89°18' E along said line common to Lot 30 and Roby St., 261.28 feet to the Southeast corner of Lot 30, thence N 01°52" E along the line common to Lots 30 through 26 and Etta Street, 300.00 feet.

**AND ALSO:**

Beginning at the Southwest corner of Lot 24 of Roby's Subdivision, thence easterly along the line common to Lots 23 and 24 and 1 and 2 and, 264 feet to the Southeast corner of Lot 1 of Roby's Subdivision, thence N.01°52" E along the line common to Lot 1 of Roby's Subdivision and Helena St. of Supervisor's Plat to Northeast corner of Lot 1 of Roby's Subdivision.

**The fence shall be located as described below in order to comply with paragraph 6.3(b) of the Consent Decree:**

Beginning at the Southeast corner of Lot 25 of Roby's Subdivision and thence easterly along the easterly extension of the line common to Lots 25 and 26, 66.0 feet to the Southwest corner of Lot 24.



Area required to be fenced under paragraph 6.3(a) of Consent Decree (Orange).

Area required to be fenced under paragraph 6.3(b) of the Consent Decree (Green).

# ROBY'S SUBDIVISION

OF LOT 49 OF SUPERVISOR'S PLAT OF BOCK'S SUBD.  
OF E 1/2 OF THE SW 1/4 SEC. 23 T. 7 N. R. 2 E. OWOSSO TWP.,  
SHIAWASSEE CO., MICHIGAN

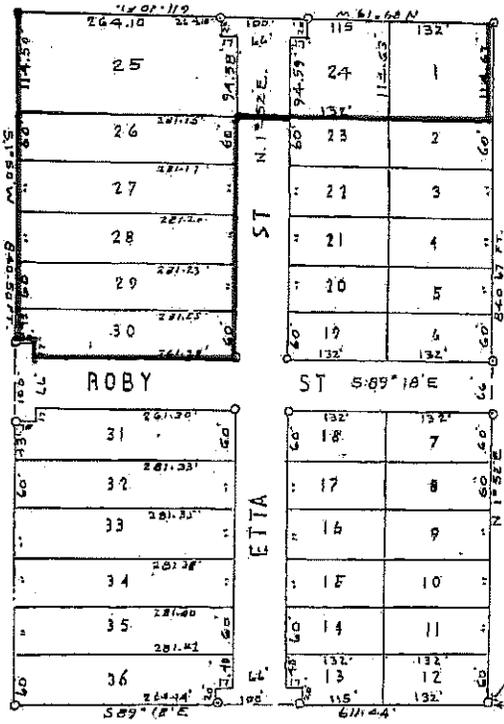
SCALE - 100 PER INCH

Center point of Sec. 23, T. 7 N. R. 2 E.

Note: All dimensions are given in feet and decimals thereof.

### DESCRIPTION OF LAND PLATTED.

The lands embraced in the annexed plat of ROBY'S SUBDIVISION of Lot 49 of Supervisor's Plat of Bock's Subd. of E. 1/2 of the SW 1/4, Sec. 23, T. 7 N., R. 2 E., Owosso Twp., Shiawassee Co., Michigan, is described as follows: Lot 49 of Supervisor's Plat of E. 1/2 of the SW 1/4, Sec. 23, T. 7 N., R. 2 E., Owosso Twp., Shiawassee Co., Michigan, described as beginning at the Southeast corner of said Lot 49, said Southeast corner of said lot being determined by commencing at the centerpoint of said section 23 of Township 7 North, Range 2 East, in Michigan, and run thence South 1°52' West along the North and South quarter line 1995.47 feet and thence North 89°12' West parallel with the East and West quarter line 713 feet to the Southeast corner of said Lot 49 and the place of beginning; thence from the point of beginning three distances run North 1°52' East parallel with the North and South quarter line of said section and along the West line of Helena Street 860.67 feet to the Northeast corner of said Lot 49, thence North 89°12' West along the North line of said Lot and parallel with the East and West quarter line of said Section and 1313 feet distant therefrom a distance of 411.30 feet to the Northwest corner of said Lot 49 and the West one-eighth line of said Section, thence South 1°50' West along the West line of said Lot 49 and the one-eighth line aforesaid a distance of 840.50 feet to the Southwest corner of said Lot 49, and thence South 89°12' East along the South line of said Lot 49 and parallel with the South line of said Section 23 and 860 feet distant therefrom a distance of 611.66 feet to the point of beginning. This subdivision consists of 36 lots numbered beginning with No. 1 and continuing through 36.



**SURVEYOR'S CERTIFICATE**  
I hereby certify that the plat herein delineated is a correct one and that permanent metal monuments consisting of iron rods at least one-half inch in diameter and 36 inches in length, or shorter bars not less than one-half inch in diameter tapped ever each other at least six inches with an overall length of not less than 36 inches, embedded in a concrete cylinder at least 4 inches in diameter and 36 inches in depth have been placed at points marked with C as thereon shown, at all angles in the boundaries of the land platted, at all intersections of the lines of streets, intersections of alleys, or of streets and alleys, and at the intersections of streets and alleys with the boundaries of the plat as shown on said plat.

*Oliver M. Elliot*  
Oliver M. Elliot  
Registered Land Surveyor No. 2097.

**COUNTY TREASURER'S CERTIFICATE RELATING TO TAXES**  
Office of the County Treasurer of Shiawassee County, Michigan:  
I hereby certify that there are no tax liens or lites held by the State on the lands described herein, and that there are no lites or lites held by individuals on said lands for the five years preceding the 1st day of January, 1958, and that the taxes for said period of five years are PAID, as shown by the records of this office. This certificate does not apply to taxes, if any, now in the process of collection by the Township collecting officers.

*Russell A. Dwyer*  
Russell A. Dwyer, County Treasurer.

**CERTIFICATE OF APPROVAL BY THE BOARD OF COUNTY ROAD COMMISSIONERS**  
This plat has been examined and was approved on the \_\_\_\_\_ day of \_\_\_\_\_, 1958, by the Shiawassee County Board of Road Commissioners.

*George Warren*  
George Warren (Member)

**CERTIFICATE OF APPROVAL BY COUNTY PLAT BOARD**  
This plat was approved on the \_\_\_\_\_ day of \_\_\_\_\_, 1957, by the Shiawassee County Plat Board.

*Clark I. Kingsbury*  
Clark I. Kingsbury, County Clerk.  
*Russell A. Dwyer*  
Russell A. Dwyer, County Treasurer.  
*C. E. Selby*  
C. E. Selby, County Board Commissioner.

### CERTIFICATE OF MUNICIPAL APPROVAL.

This plat was approved by the Township Board of the Township of Owosso, Shiawassee County, Michigan, at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 1958.

### RECITATION.

Know all men by these presents, that we, WILLIAM F. ROBY and OLIVE E. ROBY, husband and wife, Thomas William Dwyer, (also known as Thomas W. Dwyer) and Nancy A. Dwyer, husband and wife, Donald Davis and Marie Davis, husband and wife, James A. Dwyer, a single man, John J. Schulte, Jr., a single man, and Silas Ford White and Gale Ann White, husband and wife, as proprietors, have caused the lands embraced in the annexed plat to be surveyed, laid out and platted, to be known as ROBY'S SUBDIVISION of Lot 49 of Supervisor's plat of Bock's Subd. of E. 1/2 of S.W. 1/4, Sec. 23, T. 7 N., R. 2 E., Owosso Twp., Shiawassee Co., Michigan, and that the streets and alleys as shown on said plat are hereby dedicated to the use of the public.

**ACKNOWLEDGMENT**  
State of Michigan, County of Shiawassee. } ss. On this 24th day of July, 1958, before me, a Notary Public in and for said County personally came the above named William F. Roby and Olive E. Roby, husband and wife, Thomas William Dwyer, w/o/a Thomas W. Dwyer and Nancy A. Dwyer, husband and wife, Donald Davis and Marie Davis, husband and wife, James A. Dwyer, a single man, John J. Schulte, a single man, Silas Ford White and Gale Ann White, husband and wife,

known to me to be the persons who executed the above dedication; and acknowledged the same to be their free act and deed.

*Oliver M. Elliot*  
Oliver M. Elliot, Notary Public  
Shiawassee County, Michigan.  
My commission expires April 20 1961

- Signed and sealed in presence of
- William F. Roby* (i.s.)
  - Oliver M. Elliot* (i.s.)
  - William L. Dwyer* (i.s.)
  - Thomas William Dwyer* (i.s.)
  - Nancy A. Dwyer* (i.s.)
  - Donald Davis* (i.s.)
  - Marie Davis* (i.s.)
  - James A. Dwyer* (i.s.)
  - John J. Schulte, Jr.* (i.s.)
  - Silas Ford White* (i.s.)
  - Gale Ann White* (i.s.)
  - Raymond M. ...* (i.s.)
  - R. D. ...* (i.s.)

**COPY**  
I hereby certify that this is a true and correct copy of the original plat as shown to me.

was recorded on 9th day of September, 1958, at 11:00 AM, in the Public Records of Shiawassee County, Michigan, in Book 22, page 116.

*George Warren*  
George Warren, County Clerk.  
1958  
1957  
1957  
1957  
1957

# **Attachment 4**

## DECLARATION OF RESTRICTIVE COVENANT

DEQ Reference No: RC-RD-201-16-062

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Shiawassee 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 2000 W. Fredrick and legally described in Exhibit 1 attached hereto ("Property").

Response activities are being implemented to address environmental contamination at the Property pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The adequacy of the response activities implemented at the Property has not been subject to a facility specific review by the Michigan Department of Environmental Quality (DEQ), nor has the DEQ determined that the response activities comply with Part 201 of the NREPA.

The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. The DEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

The response activities require the recording of this Restrictive Covenant with the Shiawassee County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; 2) assure that the use of the Property is consistent with the exposure assumptions used to develop the Nonresidential cleanup criteria under Section 20120a(1)(b) of the NREPA and the exposure control measures relied upon at the Property; and 3) to prevent damage or disturbance of any element of the response activity constructed on the Property.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the Nonresidential cleanup criteria under Section 20120a(1)(b) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

## Definitions

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

"DEQ" 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 the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, 2002 Michigan Register; Effective December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

## Summary of Response Activities

The former Shiawassee Sanitary Landfill site was originally used as a gravel pit until 1967. From 1967 to 1973 the site was licensed as a solid waste disposal area. Groundwater is impacted with low levels of volatile organic compounds (VOCs), including 1,1,1-trichloroethane, vinyl chloride, trichloroethylene, 1,1-dichloroethane, tetrahydrofuran, benzene, and cis1,2-dichloroethylene. Surficial soil sampling and analysis revealed widespread polynuclear aromatic hydrocarbons, arsenic and lead levels above the MDEQ direct contract criteria across the surface of the landfill area. The results of the methane gas investigation revealed that methane gas is present in the soil at concentrations above the acute flammability and explosivity screening levels on the Property.

NOW THEREFORE,

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

\_\_\_\_\_, with an address of \_\_\_\_\_, as the Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

- a. The Owner shall prohibit all uses of the Property that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 20120a(1)(b) of the NREPA.

b. Prohibited Activities to Eliminate Unacceptable Exposure to Hazardous Substances. The Owner shall prohibit activities on the Property that may result in exposures to hazardous substances at the Property. These prohibited activities include:

(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:

(1) 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.

(2) 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.

(ii) 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 20107a of the NREPA.

(iii) The disturbance of any soils present on the Property, unless such activity incorporates measures designed to eliminate any potential unacceptable exposures to hazardous substances and does not exacerbate the environmental condition of the Property.

(iv) The removal or stripping of any vegetation at or from the Property by any method, including, but not limited to trimming, cutting, burning and the use of chemical agents such as herbicides, unless such activity incorporates measures

designed to eliminate any potential unacceptable exposures to hazardous substances and does not exacerbate the environmental condition of the Restricted Property.

c. Prohibited Activities to Ensure the Effectiveness and Integrity of the Response Activity. Except as provided below, the Owner shall prohibit any and all access to or entry upon the Property.

(i) Activities related to any element of the response activities conducted or authorized by DEQ, or by the Owner so long as the Owner received prior approval from the DEQ for any such response activities, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the response activities implemented at the Property; provided, however, Owner may access the Property to maintain the fence pursuant to paragraph 2.

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

2. Fencing. The Owner shall maintain permanent, secure fencing around the perimeter of the Property with a locked gate to prevent any unauthorized access at the locations of the Property identified on Exhibit 2.

3. Access. The Owner grants to the DEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the response activities, including the right to take samples, inspect the operation of the response activities and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201.

4. Conveyance of Property Interest. The Owner shall provide notice to the DEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the applicable provisions of Section 20116 of the NREPA. The notice required to be made to the DEQ under this Paragraph shall be made to: Chief, Remediation and Redevelopment Division, Michigan DEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and

shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, DEQ Reference Number RC-RRD-16-062. 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.

5. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner, future owners, and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the DEQ or its successor determines that hazardous 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 DEQ.

6. Enforcement of Restrictive Covenant. The State of Michigan, through the DEQ, and Grantor, may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

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

8. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, \_\_\_\_\_, and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, \_\_\_\_\_, Inc., has caused these presents to be signed in his name for \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

STATE OF MICHIGAN)  
COUNTY OF \_\_\_\_\_)

Acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a Michigan corporation, for the corporation.

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

When recorded return to:

Frank W. Fisher  
2153 W. Hibbard Rd.  
Owosso, MI 48867

Prepared by:

Vicki Katko  
Remediation and Redevelopment Division  
Department of Environmental Quality  
Lansing District Office  
P.O. Box 30242  
Lansing, Michigan 48909

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew T. Prins (P70157)  
Assistant Attorney General  
Environment, Natural Resources and  
Agriculture Division

\_\_\_\_\_  
Date

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

The land situated in the County of Shiawassee, Township of Owosso, State of Michigan, is described as follows:

[Insert appropriate legal description.]

## EXHIBIT 2

### FENCE SPECIFICATIONS

The fence shall be constructed by a professional entity and shall be 6 feet high with at least a bottom tension cable and made of 11 or 11½ gauge steel mesh or of material of similar strength, with at least one gate to enter the Property.

**The fence shall be located as described below:**

Beginning at the Southeast corner of Lot 50 of Supervisor's Plat of the East ½ of the Southwest ¼ of Section 23, Town 7 North, Range 2 East, Owosso Township, Shiawassee County, Michigan, recorded in Liber 11 of Plats, Page 193, Shiawassee County Records ("Supervisor's Plat"), thence N 01°52' E along the line common to Lots 50, 51 and Helena St., 429 feet to the Northeast corner of Lot 51 in said Supervisor's Plat, thence westerly along the line common to Lot 51 and Lots 16 through 12 to the Northwest corner of Lot 51, thence S 01°50' W along the west line of Lots 51 and 50 of said Supervisor's Plat and the west line of Lots 25 through 30 of Roby's Subdivision of Lot 49 of Supervisor's Plat of Bock's Subdivision of the East ½ of the Southwest ¼ of Section 23, Town 7 North, Range 2 East, Owosso Township, Shiawassee County, Michigan, recorded in Liber 12 of Plats, Page 205, Shiawassee County Records ("Roby's Subdivision") 826.5 feet to the Southwest corner of Lot 30 and Roby St. of Roby's Subdivision, thence easterly along the line common to Lot 30 and Roby St., 20.0 feet to a corner of Lot 30 and Roby St., thence southerly along the line common to Lot 30 and Roby St., 17.0 feet to the most southerly lot line of Lot 30, being common with Roby St., thence S 89°18' E along said line common to Lot 30 and Roby St., 261.28 feet to the Southeast corner of Lot 30, thence N 01°52" E along the line common to Lots 30 through 26 and Etta Street, 300.00 feet.

**AND ALSO:**

Beginning at the Southwest corner of Lot 24 of Roby's Subdivision, thence easterly along the line common to Lots 23 and 24 and 1 and 2 and, 264 feet to the Southeast corner of Lot 1 of Roby's Subdivision, thence N 01°52" E along the line common to Lot 1 of Roby's Subdivision and Helena St. of Supervisor's Plat to Northeast corner of Lot 1 of Roby's Subdivision.

**AND ALSO:**

Beginning at the Southeast corner of Lot 25 of Roby's Subdivision and thence easterly along the easterly extension of the line common to Lots 25 and 26, 66.0 feet to the Southwest corner of Lot 24.



# ROBY'S SUBDIVISION OF LOT 49 OF SUPERVISOR'S PLAT OF BOCK'S SUBD. OF E1/2 OF THE S.W. 1/4 SEC. 23 T.7N.2E. OWOSSO TWP., SHIAWASSEE CO., MICHIGAN

Area required to be fenced  
under paragraph 6.3(a) of  
Consent Decree (Orange).

Area required to be fenced  
under paragraph 6.3(b) of  
the Consent Decree  
(Green).

SCALE - 100 PER INCH

Center post of  
Sec 23, T7N. R2E

Note: All dimensions are given in feet and decimals thereof.

### DESCRIPTION OF LAND PLATTED.

The lands embraced in the annexed plat of ROBY'S SUBDIVISION of Lot 49 of Supervisor's Plat of Bock's Subd. of E. 1/2 of the S.W. 1/4, Sec. 23, T. 7 N., R. 2 E., Owooso Twp., Shiawassee Co., Michigan, is described as follows:-  
Lot 49 of Supervisor's Plat of E. 1/2 of the S.W. 1/4, Sec. 23, T. 7 N., R. 2 E., Owooso Twp., Shiawassee Co., Michigan, described as beginning at the Southeast corner of said lot 49, said Southeast corner of said lot being determined by commencing at the centerpost of said section 23 of Township 7 North, Range 2 East, in Michigan and running South 1°52' West along the North and South quarter line 1995.47 feet and thence North 89°19' East parallel with the East and West quarter line 713 feet to the Southeast corner of said lot 49 and the place of beginning thence from the point of beginning then determined run North 1°52' East parallel with the North and South quarter line of said section and along the West line of Helena Street 840.67 feet to the Northeast corner of said lot 49, thence North 89°19' East along the North line of said lot and parallel with the East and West quarter line of said section and 1115 feet distant therefrom a distance of 411.30 feet to the Northwest corner of said lot 49 and the West one-eighth line of said section, thence South 1°50' West along the West line of said lot 49 and the one-eighth line aforesaid a distance of 840.50 feet to the Southwest corner of said lot 49, and thence South 89°18' East along the South line of said lot 49 and parallel with the South line of said section 23 and 1660 feet distant therefrom a distance of 411.44 feet to the point of beginning. This subdivision consists of 36 lots numbered beginning with No. 1 and continuing through 36.

### CERTIFICATE OF MUNICIPAL APPROVAL.

This plat was approved by the Township Board of the Township of Owooso, Shiawassee County, Michigan, at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 1958.

### CERTIFICATION.

Know all men by these presents, that we, WILLIAM F. ROBY and OLIVE E. ROBY, husband and wife, Thomas William Dwyer, (also known as Thomas W. Dwyer) and Nancy A. Dwyer, husband and wife, Donald Davis and Marie Davis, husband and wife, James A. Dwyer, a single man, John J. Schulte, Jr., a single man, and Elias Ford White and Gale Ann White, husband and wife, as proprietors, have caused the lands embraced in the annexed plat to be surveyed, laid out and platted, to be known as ROBY'S SUBDIVISION of Lot 49 of Supervisor's plat of Bock's Subd of E. 1/2 of S.W. 1/4, Sec. 23, T. 7 N., R. 2 E., Owooso Twp., Shiawassee Co., Michigan, and that the streets and alleys as shown on said plat are hereby dedicated to the use of the public.

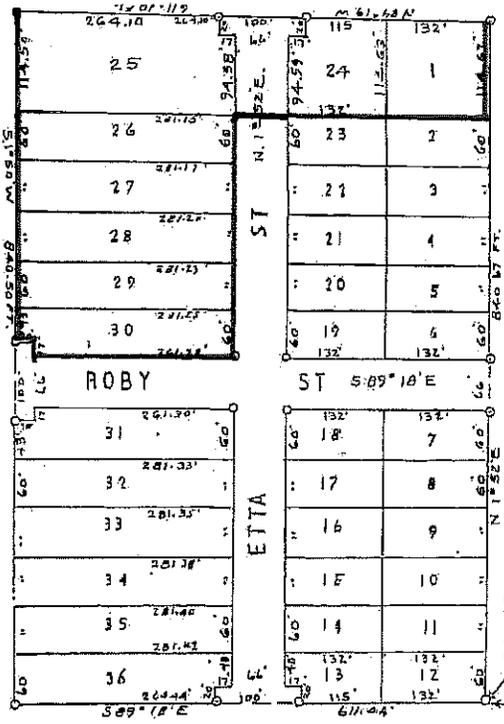
Signed and sealed in presence of  
Oliver M. Elliot  
OLIVER M. ELLIOT  
William L. Dwyer  
WILLIAM L. DWYER  
William F. Roby  
WILLIAM F. ROBY  
Oliver E. Roby  
OLIVE E. ROBY  
Thomas William Dwyer  
THOMAS WILLIAM DWYER  
Nancy A. Dwyer  
NANCY A. DWYER  
Donald Davis  
DONALD DAVIS  
Marie Davis  
MARIE DAVIS  
James A. Dwyer  
JAMES A. DWYER  
John J. Schulte, Jr.  
JOHN J. SCHULTE, JR.  
Elias Ford White  
ELIAS FORD WHITE  
Gale Ann White  
GALE ANN WHITE  
Raymond M. Hopkins  
RAYMOND M. HOPKINS  
R. D. Harman  
R. D. HARMAN

ACKNOWLEDGMENT  
State of Michigan, }  
County of Shiawassee, } ss. On this 24th day of  
July 1958, before me, a Notary Public  
in and for said County personally came the above  
named William F. Roby and Olive E. Roby, husband  
and wife, Thomas William Dwyer, a/k/a Thomas W. Dwyer and  
Nancy A. Dwyer, husband and wife, Donald Davis and  
Marie Davis, husband and wife, James A. Dwyer, a  
single man, John J. Schulte, a single man,  
Elias Ford White and Gale Ann White, husband and wife,  
known to me to be the persons who executed the above  
dedication, and acknowledged the same to be their  
free act and deed

Oliver M. Elliot  
OLIVER M. ELLIOT, Notary Public  
Shiawassee County, Michigan.  
My commission expires 11/20/1961

### COPY

Original filed  
in the office of the  
Notary Public  
was recorded on 9th day of  
September, 1958  
at Owooso, Michigan  
by  
Conroy L. Howell



SURVEYOR'S CERTIFICATE  
I hereby certify that the plat herein delineated is a correct one and that permanent metal monuments consisting of iron rods at least one-half inch in diameter and 36 inches in length or shorter bars not less than one-half inch in diameter lapped over each other at least six inches with an overall length of not less than 36 inches, encased in a concrete cylinder at least 4 inches in diameter and 36 inches in length have been placed at points marked thus C as thereon shown, at all angles in the boundaries of the land platted, as all intersections of the lines of streets, intersections of alleys, or of streets and alleys, and at the intersections of streets and alleys with the boundaries of the plat as shown on said plat.  
Oliver M. Elliot  
Oliver M. Elliot  
Registered Land Surveyor No. 2077.

COUNTY TREASURER'S CERTIFICATE  
RELATING TO TAXES  
Office of the County Treasurer  
of Shiawassee County, Michigan  
I hereby certify that there are no tax liens or titles held by the State on the lands described herein, and that there are no liens or titles held by individuals on said lands for the five years preceding the \_\_\_\_\_ day of \_\_\_\_\_ 1958, and that the taxes for said period of five years are PAID, as shown by the records of this office. This certificate does not apply to taxes, if any, now in the process of collection by the Township collecting officers.  
Kathleen A. Dwyer  
Kathleen A. Dwyer, County Treasurer.

CERTIFICATE OF APPROVAL BY THE  
BOARD OF COUNTY ROAD COMMISSIONERS  
This plat has been examined and was approved on the \_\_\_\_\_ day of \_\_\_\_\_ 1958, by the  
Shiawassee County Board of Road Commissioners.  
George Warren  
George Warren (Member)

CERTIFICATE OF APPROVAL OF COUNTY PLAT BOARD  
This plat was approved on the \_\_\_\_\_ day of \_\_\_\_\_ 1957, by the Shiawassee  
County Plat Board.  
Robert L. Foulke  
Robert L. Foulke, Registrar of Deeds.  
Clark F. Kingsbury  
Clark F. Kingsbury, County Clerk.  
Kathleen A. Dwyer  
Kathleen A. Dwyer, County Treasurer.

C. E. Galley, County Board Commissioners.  
Oliver M. Elliot  
OLIVER M. ELLIOT, Notary Public  
Shiawassee County, Michigan.  
My commission expires 11/20/1961  
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EXHIBIT 3

CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

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

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

My Commission Expires: \_\_\_\_\_

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

## **Attachment 5**

GRANT OF EASEMENT

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY

(This is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

Pursuant to its agreement in the consent decree entered in *Michigan Dep't of Environmental Quality v Evergreens, Inc.*, et al., Ingham County Circuit Court Case No. 15-663-CE, and for consideration of less than \$100.00, the GRANTOR,

Evergreens, Inc.  
2153 W. Hibbard Rd.  
Owosso, MI 48867

does hereby grant, convey, and release to the GRANTEE,

State of Michigan  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926

this GRANT OF EASEMENT (Easement), the purpose being for the performance of necessary response activities at the Shiawassee Sanitary Landfill Facility (Facility), at property the Grantor holds fee simple title to, located in the Township of Owosso, Shiawassee County, Michigan, which is legally identified in Attachment A (the "Property").

The Facility, which includes all or portions of the property subject to this Easement as identified in Attachment A, is a site of environmental contamination (a "facility" as defined by Part 201, Environmental Remediation, (Part 201), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101, *et seq.*).

The Michigan Department of Environmental Quality (MDEQ), is the agency charged with administering Part 201 of the NREPA. The Grantor has agreed to grant this Easement and conveys to the MDEQ this Easement to provide for access to the Property for the implementation of response activities at the Property by the Grantee acting under authority set forth in Sections 20117, 20118 of the NREPA, and Section 9604 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9604 *et seq.* The anticipated response activities may include, but are not limited to, remedial investigation; installation, operation, inspection, maintenance, repair, and replacement of groundwater treatment facilities; the evaluation and potential removal, treatment or installation of exposure controls (such as a landfill cap) related to abandoned hazardous

substances, or to vapor, soil, surface water, groundwater or sediments contaminated by hazardous substances; and the placement of land-use restrictions necessary to protect the public health, safety, and welfare, and the environment. This instrument shall be recorded with the Register of Deeds in the county in which the Property is located by the Grantee.

Pursuant to this Easement, full right and authority is provided to the GRANTEE and its agents and employees to enter at all times upon said premises for the purpose of performing response activities, subject to the following conditions:

- (1) Grantor warrants that Grantor has good and sufficient title to the Property.
- (2) Grantor warrants that any other existing interests or encumbrances in the Property have been disclosed to the MDEQ.
- (3) Grantee accepts this Easement subject to all prior valid and recorded easements, permits, licenses, leases, or other rights existing or pending at the time of the issuance of this Easement, which may have been granted on said Property.
- (4) This Easement shall be binding upon the successors and assigns of the parties (the Grantor and the Grantee) and shall run with the land in perpetuity unless modified by written agreement of the parties or terminated by the Grantee on all or some portion of the Property. For any reference that pertains to an event or circumstance that will or may occur after the execution of this Easement, the term Grantor shall mean the Grantor or the legal successor or assign of the Grantor who holds fee simple title to the Property or some relevant sub-portion of the Property. For any reference that pertains to an event or circumstance that will or may occur after the execution of this Easement, the term Grantee shall mean the Grantee or, if legally applicable, the successor or assign of the Grantee.
- (5) Grantee, to the fullest extent practicable, shall limit intrusive activities on said land to those areas subject to response activities pursuant to state law.
- (6) In granting this Easement, Grantor accepts no liability for the actions of the Grantee and accepts no liability for injury or mishap sustained or caused by the Grantee unless attributable to Grantor's actions, negligence, or violation of the law.
- (7) In granting this Easement, Grantor agrees not to interfere with, interrupt, change, or otherwise disturb any systems, equipment, or signs installed or utilized by Grantee. Grantor also agrees not to use said land in a manner that increases the cost of response activities, or otherwise exacerbates the existing contamination located on the Property. The term "exacerbation" as used in this Easement has the meaning as contained in Section 20101(1)(r) of the NREPA. The Grantor shall consult with the Grantee prior to performing any construction activities on the Property, to ensure that this Easement and its purpose of supporting the effective implementation of the response activities by the Grantee is not violated.
- (8) This Easement and the rights and obligations herein shall continue in full force and effect until such time as the response activities deemed necessary at the Facility by the Grantee have been completed. The Grantee agrees to release and quit claim all rights secured under this Easement to the Grantor upon completion of Grantee's response activities and upon request of the Grantor. Such determination to release the Easement is in the sole discretion of the Grantee.

(9) Pursuant to this Easement, Grantor agrees that in any lease, transfer, deed, mortgage, land contract, plat, conveyance or assignment, or any other legal instrument used to convey an interest in the Property and entered into by the Grantor, concerning all or any portion of the Property, the Grantor will provide notice of this Easement to any entity receiving an interest in the Property from Grantor and shall assure that such person or entity receiving an interest in such portion is bound to comply with this Easement by including its terms in the legal instrument transferring or conveying any such interest.

(10) The Grantor agrees to provide access (via keys, combination, etc.) to any gates or fences erected at the Property. Such provision shall continue until the response activities have been concluded, unless released sooner by the Grantee.

(11) If any portion of this Easement is determined to be invalid by a court of law, the remaining provisions will remain in force.

(12) This Easement will be construed in accordance with Michigan law. All legal action related to this Easement must be filed and pursued in Michigan state courts.

(13) This Easement shall become effective on the date it is signed by the Grantor.

(14) The Grantor acknowledges that the Grantee does not warrant that response activities performed will achieve remedial criteria established by law; assure protection of public health, safety or welfare, or the environment; or result in closure or cleanup of the Property.

(15) The Grantor agrees that United States, acting by and through the U.S. EPA, and its successors and assigns, is a third party beneficiary of all the benefits, rights, and conditions granted to the Grantee in the Easement and shall have the right to enforce the Easement.

Unless otherwise stated herein, all terms used in this document, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301 *et seq.*; Part 201 of the NREPA, MCL 324.20101 *et seq.*; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACS R 299.5101, *et seq.*, as amended by changes at 2002 Michigan Register 24 that became effective on December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules.

Correspondence related to this Easement shall be made to the Grantee, Attention: Eric Van Riper, Shiawassee Sanitary Landfill Facility - Shiawassee County, Lansing District Office, Remediation and Redevelopment Division, Department of Environmental Quality, 525 West Allegan Street, Lansing, Michigan 48933.



## ATTACHMENT A

### Property Description

The land situated in the County of Shiawassee, Township of Owosso, State of Michigan, is described as follows:

Lots Fifty (50) and Fifty-One (51) of Supervisor's Plat of the East Half (E1/2) of the Southwest Quarter (SW1/4) of Section Twenty-Three (23), Town Seven (7) North, Range Two (2) East, Owosso Township, Shiawassee County, Michigan.

AND ALSO:

Lot One (1) and Lots Twenty-Four (24), Twenty-Five (25), Twenty-Six (26), Twenty-Seven (27), Twenty-Eight (28), Twenty-Nine (29), and Thirty (30) of Roby's Subdivision of Lot Forty-Nine (49) of Supervisor's Plat of Bock's Subdivision of the East Half (E1/2) of the Southwest Quarter (SW1/4) of Section Twenty-Three (23), Town Seven (7), North, Range Two (2) East, Owosso Township, Shiawassee County, Michigan.

## **Attachment 6**

GRANT OF EASEMENT

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY

(This is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

Pursuant to its agreement in the consent decree entered in *Michigan Dep't of Environmental Quality v Evergreens, Inc., et al.*, Ingham County Circuit Court Case No. 15-663-CE, and for consideration of less than \$100.00, the GRANTOR,

does hereby grant, convey, and release to the GRANTEE,

State of Michigan  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926

this GRANT OF EASEMENT (Easement), the purpose being for the performance of necessary response activities at the Shiawassee Sanitary Landfill Facility (Facility), at property the Grantor holds fee simple title to, located in the Township of Owosso, Shiawassee County, Michigan, which is legally identified in Attachment A (the "Property").

The Facility, which includes all or portions of the property subject to this Easement as identified in Attachment A, is a site of environmental contamination (a "facility" as defined by Part 201, Environmental Remediation, (Part 201), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101, *et seq.*).

The Michigan Department of Environmental Quality (MDEQ), is the agency charged with administering Part 201 of the NREPA. The Grantor has agreed to grant this Easement and conveys to the MDEQ this Easement to provide for access to the Property for the implementation of response activities at the Property by the Grantee acting under authority set forth in Sections 20117, 20118 of the NREPA, and Section 9604 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9604 *et seq.* The anticipated response activities may include, but are not limited to, remedial investigation; installation, operation, inspection, maintenance, repair, and replacement of groundwater treatment facilities; the evaluation and potential removal, treatment or installation of exposure controls (such as a landfill cap) related to abandoned hazardous substances, or to vapor, soil, surface water, groundwater or sediments contaminated by hazardous

substances; and the placement of land-use restrictions necessary to protect the public health, safety, and welfare, and the environment. This instrument shall be recorded with the Register of Deeds in the county in which the Property is located by the Grantee.

Pursuant to this Easement, full right and authority is provided to the GRANTEE and its agents and employees to enter at all times upon said premises for the purpose of performing response activities, subject to the following conditions:

- (1) Grantor warrants that Grantor has good and sufficient title to the Property.
- (2) Grantor warrants that any other existing interests or encumbrances in the Property have been disclosed to the MDEQ.
- (3) Grantee accepts this Easement subject to all prior valid and recorded easements, permits, licenses, leases, or other rights existing or pending at the time of the issuance of this Easement, which may have been granted on said Property.
- (4) This Easement shall be binding upon the successors and assigns of the parties (the Grantor and the Grantee) and shall run with the land in perpetuity unless modified by written agreement of the parties or terminated by the Grantee on all or some portion of the Property. For any reference that pertains to an event or circumstance that will or may occur after the execution of this Easement, the term Grantor shall mean the Grantor or the legal successor or assign of the Grantor who holds fee simple title to the Property or some relevant sub-portion of the Property. For any reference that pertains to an event or circumstance that will or may occur after the execution of this Easement, the term Grantee shall mean the Grantee or, if legally applicable, the successor or assign of the Grantee,
- (5) Grantee, to the fullest extent practicable, shall limit intrusive activities on said land to those areas subject to response activities pursuant to state law.
- (6) In granting this Easement, Grantor accepts no liability for the actions of the Grantee and accepts no liability for injury or mishap sustained or caused by the Grantee unless attributable to Grantor's actions, negligence, or violation of the law.
- (7) In granting this Easement, Grantor agrees not to interfere with, interrupt, change, or otherwise disturb any systems, equipment, or signs installed or utilized by Grantee. Grantor also agrees not to use said land in a manner that increases the cost of response activities, or otherwise exacerbates the existing contamination located on the Property. The term "exacerbation" as used in this Easement has the meaning as contained in Section 20101(1)(r) of the NREPA. The Grantor shall consult with the Grantee prior to performing any construction activities on the Property, to ensure that this Easement and its purpose of supporting the effective implementation of the response activities by the Grantee is not violated.
- (8) This Easement and the rights and obligations herein shall continue in full force and effect until such time as the response activities deemed necessary at the Facility by the Grantee have been completed. The Grantee agrees to release and quit claim all rights secured under this Easement to the Grantor upon completion of Grantee's response activities and upon request of the Grantor. Such determination to release the Easement is in the sole discretion of the Grantee.
- (9) Pursuant to this Easement, Grantor agrees that in any lease, transfer, deed, mortgage,

land contract, plat, conveyance or assignment, or any other legal instrument used to convey an interest in the Property and entered into by the Grantor, concerning all or any portion of the Property, the Grantor will provide notice of this Easement to any entity receiving an interest in the Property from Grantor and shall assure that such person or entity receiving an interest in such portion is bound to comply with this Easement by including its terms in the legal instrument transferring or conveying any such interest.

(10) The Grantor agrees to provide access (via keys, combination, etc.) to any gates or fences erected at the Property. Such provision shall continue until the response activities have been concluded, unless released sooner by the Grantee.

(11) If any portion of this Easement is determined to be invalid by a court of law, the remaining provisions will remain in force.

(12) This Easement will be construed in accordance with Michigan law. All legal action related to this Easement must be filed and pursued in Michigan state courts.

(13) This Easement shall become effective on the date it is signed by the Grantor.

(14) The Grantor acknowledges that the Grantee does not warrant that response activities performed will achieve remedial criteria established by law; assure protection of public health, safety or welfare, or the environment; or result in closure or cleanup of the Property.

(15) The Grantor agrees that United States, acting by and through the U.S. EPA, and its successors and assigns, is a third party beneficiary of all the benefits, rights, and conditions granted to the Grantee in the Easement and shall have the right to enforce the Easement.

Unless otherwise stated herein, all terms used in this document, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301 *et seq.*; Part 201 of the NREPA, MCL 324.20101 *et seq.*; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACRS R 299.5101, *et seq.*, as amended by changes at 2002 Michigan Register 24 that became effective on December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules.

Correspondence related to this Easement shall be made to the Grantee, Attention: Eric Van Riper, Shiawassee Sanitary Landfill Facility - Shiawassee County, Lansing District Office, Remediation and Redevelopment Division, Department of Environmental Quality, 525 West Allegan Street, Lansing, Michigan 48933.

SIGNATORY

The undersigned individual, \_\_\_\_\_, represents and warrants that he is fully authorized by \_\_\_\_\_ to enter into this Easement and to legally bind \_\_\_\_\_ to this Easement's terms and conditions.

IN WITNESS WHEREOF \_\_\_\_\_ has caused these presents to be signed in his name for \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed by: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

Acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, 2016, by \_\_\_\_\_.

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

Prepared by: Darren Bowling  
Compliance and Enforcement Section  
Remediation and Redevelopment Division  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew T. Prins (P70157)  
Assistant Attorney General  
Environment, Natural Resources and Agriculture Division  
Department of Attorney General

\_\_\_\_\_  
Date

**ATTACHMENT A**

**Property Description**

The land situated in the County of Shiawassee, Township of Owosso, State of Michigan, is described as follows:

[Insert appropriate legal description.]

# **Attachment 7**

**Attachment 7**  
**Notice of Achievement**

RE: *Michigan Dep't of Environmental Quality v Evergreens, Inc., et al.*  
Ingham County Case No 15-663-CE

I, \_\_\_\_\_ (print name), do hereby certify:

1. That construction of a chain-link fence surrounding the former Shiawassee Sanitary Landfill has been completed and it meets the specifications and in the locations identified in Attachment 3 to the Consent Decree entered in the above-reference action;

2. That \_\_\_\_ "No Trespass" signs have been installed on the chain-link fence;

3. That the Restrictive Covenant for the Property included as Attachment 2 to the Consent Decree was executed and recorded with the Shiawassee County Register of Deeds and a copy of the recorded document is included within this notice;

4. That the Easement for the Property included as Attachment 5 to the Consent Decree was executed and recorded with the Shiawassee County Register of Deeds and a copy of the recorded document is included within this notice;

5. That the Easement for Etta Street included as Attachment 6 to the Consent Decree was executed and recorded with the Shiawassee County Register of Deeds and a copy of the recorded document is included within this notice or MDEQ has been provided documentation explaining that recording

the Easement attached as Attachment 6 was not necessary for the reasons provided in paragraph 6.6 of the Consent Decree entered in the above-referenced action; and

6. That the Restrictive Covenant for Etta Street included as Attachment 4 to the Consent Decree was executed and recorded with the Shiawassee County Register of Deeds and a copy of the recorded document is included within this notice or MDEQ has been provided documentation explaining that recording the Restrictive Covenant attached as Attachment 4 was not necessary for the reasons provided in paragraph 6.4 of the Consent Decree entered in the above-referenced action.

FOR DEFENDANTS FRANK  
FISHER AND EVERGREENS,  
INC.

\_\_\_\_\_  
Name: \_\_\_\_\_ (print)

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, MI  
Acting in \_\_\_\_\_ County  
My Commission Expires: \_\_\_\_\_