MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

In the Matter of:

Willoughby Estates II, LLC Ingham County, Michigan

EGLE Reference No. PCA-RRD-20-001

POSTCLOSURE AGREEMENT FOR A LIMITED RESIDENTIAL REMEDIAL ACTION

This Agreement for a Limited Residential Remedial Action (Agreement) is entered into voluntarily by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation and Redevelopment Division (RRD), and Willoughby Estates II, LLC to specify the agreed upon activities required to be undertaken to maintain the effectiveness and integrity of the remedial action at the Willoughby Estates Property. By execution of this Agreement, EGLE and Willoughby Estates II, LLC agree to be bound by all of its terms.

BACKGROUND

A No Further Action (NFA) Report submitted to EGLE for approval pursuant to Section 20114d(3)(c) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (NREPA), must include a Postclosure Plan and a Postclosure Agreement.

Section 20114d(4) of the NREPA requires that a Postclosure Agreement submitted as part of a NFA Report include all of the following: (a) provisions for monitoring, operation and maintenance, and oversight necessary to assure the effectiveness and integrity of the remedial action; (b) financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action; (c) a provision requiring notice to EGLE of the owner's intent to convey any interest in the Property; and (d) a provision granting EGLE access to the property.

This Agreement pertains to the remedial action for the Property as defined in Paragraph 2.12 of this Agreement and legally described in Attachment A, as it relates to soil and

groundwater contamination of ammonia, aluminum, arsenic, iron, lead, magnesium, manganese, mercury, and vanadium related to historical site operations.

The remedial action set forth in the NFA Report does not comprehensively address all environmental contamination at the Property. Additional response activities may be necessary to address environmental contamination at the Property that is not addressed under this NFA and may be the subject of subsequent postclosure agreements with EGLE, as appropriate. The NFA does not address the groundwater surface water interface or volatilization to indoor air pathways.

Based on the information submitted to EGLE, as of the Effective Date, the NFA Report for a Limited Residential Remedial Action, including its Postclosure Plan, its attachments, and any EGLE-approved modifications, is approved by EGLE.

In order to meet the requirements of Section 20114d(4) of the NREPA, Willoughby Estates II, LLC and EGLE stipulate and agree as follows:

I. PARTIES BOUND

- 1.1 This Agreement shall apply to and be binding upon Willoughby Estates II, LLC and EGLE and their successors. No change in ownership or corporate or legal status of Willoughby Estates II, LLC, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Willoughby Estates II, LLC's responsibilities under this Agreement.
- 1.2 Willoughby Estates II, LLC shall provide EGLE with written notice at least fourteen (14) days prior to consummating the conveyance of any interest in the Property as required by Section 20114d(4)(c) of the NREPA. No conveyance of title, an easement, or other interest in property that comprises some or all of the Property shall be consummated by the Willoughby Estates II, LLC without adequate and complete provision for compliance with the terms and conditions of the NFA Report and this Agreement. No transfer of ownership interest shall occur without adequate and complete provision that allows Willoughby Estates II, LLC to carry out its obligations under this Agreement and to assure the effectiveness and integrity of the remedial action. Willoughby Estates II, LLC shall inform any transferee that the real

property is a Property, provide a copy of this Agreement to any subsequent owners or successors prior to the transfer of any ownership interests, and comply with the requirements of Section 20116 of the NREPA.

1.3 The signatories to this Agreement certify that they are authorized to execute it and legally bind the parties they represent.

II. <u>DEFINITIONS</u>

- 2.1 "Day" or "day" means a calendar day, unless otherwise specified in this Agreement.
- 2.2 "EGLE" means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those authorized persons or entities acting on its behalf.
- 2.3 "Effective Date" means the date that this Agreement is fully executed by all parties to it and a No Further Action Letter is issued to Willoughby Estates II, LLC.
- 2.4 "Long-Term Remedial Action Costs" shall mean those costs necessary to assure the performance of monitoring, operation and maintenance, oversight, and other costs that are determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action as set forth in the NFA Report, including this Agreement, in perpetuity.
- 2.5 "No Further Action Report" or "NFA Report" means the written report detailing the completion of the remedial action for the Property, the Postclosure Plan included in Attachment B, and this Agreement. The NFA Report, submitted to EGLE on July 31, 2020, is entitled, *No Further Action Report*, dated July 20, 2020, for the Willoughby Estates Property prepared by Triterra. Additional revisions were submitted on August 17, 2020.
- 2.6 "Part 31" means Part 31, Water Resources Protection, of the NREPA, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated thereunder.
- 2.7 "Part 201" means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, and the Administrative Rules promulgated thereunder.

- 2.8 "Postclosure Plan" means the plan set forth in Attachment B.
- 2.9 "Postclosure Agreement" means this Agreement.
- 2.10 "Property" means the property located at 4194 E. Willoughby Road, Ingham County, Michigan and legally described in Attachment A.
- 2.11 "Response Activity Costs" means all costs lawfully incurred by EGLE to oversee, enforce, monitor, and document compliance with this Agreement, including, but not limited to, costs incurred to: monitor response activities at the Property; observe and comment on field activities; review and comment on documents or reports required to be submitted to EGLE under this Agreement; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare cost reimbursement documentation; and perform response activities pursuant to Paragraph 11.3 of this Agreement.
- 2.12 Unless otherwise stated herein, all other terms used in this Agreement, which are defined in Part 3, Definitions, of the NREPA; or Part 201, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA.

III. IMPLEMENTATION

- 3.1 Willoughby Estates II, LLC agrees to implement and comply with the terms of the NFA Report, including the Postclosure Plan and this Agreement. As approved, each component of the NFA Report shall be deemed incorporated into this Agreement and made an enforceable part of this Agreement. The scope of the remedial action detailed in the NFA Report consists of maintenance of a direct contact exposure barrier; implementation of an Operations and Maintenance Plan detailing required inspections and maintenance for the remedial actions; and establishment of a restrictive covenant.
- 3.2 Willoughby Estates II, LLC certifies, to the best of its knowledge, the remedial action completed at the Property satisfies residential cleanup criteria established under Part 201, and all other requirements of Part 201 that are applicable to the remedial action. The specific performance objectives for the remedial action at the Property are as follows:

- (a) Prevent the unacceptable exposure to hazardous substances in the groundwater as a result of the use of the groundwater for drinking water.
- (b) Prevent the unacceptable exposure to hazardous substances in the soil as a result of direct contact with the soil.
 - (c) Assure continued compliance with the Postclosure Plan.
- (d) Assure the effectiveness and integrity of any exposure control mechanisms employed by the approved NFA Report.
- (e) Assure that the continued use of the Property is consistent with the land and resource uses allowed in restrictive covenant or other institutional control.
 - (f) Comply with applicable notice requirements pursuant to this Agreement.
- 3.3 The following describes the general response activities to be performed for monitoring, operation and maintenance, and oversight at the Property. These response activities are more specifically described in Attachment C.
 - (a) Visual Inspection of Exposure Barrier
- 3.4 Within sixty (60) days after of the first anniversary of this Agreement and within sixty (60) days after each anniversary thereafter, Willoughby Estates II, LLC shall provide an annual report to EGLE project manager describing the implementation of the response activities, including, but not limited to, operation and maintenance, monitoring activities, and any other response activities that have been undertaken by Willoughby Estates II, LLC at the Property for the prior year. The report shall include an assessment and documentation of the integrity of all exposure control mechanisms on which the remedial action is dependent (e.g., barriers, permanent markers); and compliance with land or resource use restrictions, including institutional controls.
- 3.5 Approval of the NFA Report shall not be construed to mean that EGLE concurs with all conclusions, methods, or statements in the NFA Report or warrants that the NFA Report comports with law.

- 3.6 Willoughby Estates II, LLC attests that all wells and other response activity related devices that were installed as part of the response activities at or related to the Property that will not be used in the long-term operation or monitoring of the remedial action provided in the NFA Report have been properly plugged and abandoned or removed.
- 3.7 Willoughby Estates II, LLC shall submit a plan for EGLE approval for additional response activities within sixty (60) days of discovery, if:
- (a) Monitoring demonstrates additional response activities are necessary to address potential exposure to the environmental contamination;
- (b) The remedial action that was the basis for the NFA Report fails to meet the performance objectives identified in the NFA Report; or
- (c) Any modifications are needed to assure the continued effectiveness and integrity of the remedial action.
- 3.8 If additional response activities are implemented in accordance with Paragraph 3.7 of this Agreement, Willoughby Estates II, LLC shall submit an amended NFA Report, including revised attachments, if applicable, for EGLE approval within sixty (60) days of completing those additional response activities.
- 3.9 Willoughby Estates II, LLC may submit an amended NFA Report at any time. The amended NFA Report shall include the proposed change(s) to the original NFA Report including revised attachments, if applicable; and an accompanying rationale for the proposed change(s). The process for review and approval set forth in Section 20114d of the NREPA shall be used for review and approval of an amended NFA Report.
- 3.10 This Agreement and the remedial action may only be modified through an amended NFA Report approved by EGLE.

IV. LAND USE OR RESOURCE USE RESTRICTIONS

- 4.1 The NFA Report relies on the following land use or resource use restriction:
 - (a) Restrictive Covenant

- 4.2 Willoughby Estates II, LLC attests that the land use or resource restriction(s) provided in the Postclosure Plan complies with the applicable requirements of Section 20121 of the NREPA, and is provided in Attachment B.
- 4.3 Pursuant to Section 20114c(3) of the NREPA, Willoughby Estates II, LLC attests the notice of the land use or resource use restriction(s) required by the remedial action was provided to the zoning authority for Delhi Township within thirty (30) days after recording. A copy of the notice provided to the local zoning authority is provided in the NFA Report.
- 4.4 If the land use or resource use restriction(s) is rescinded, revoked, terminated, allowed to lapse, or is modified, the Willoughby Estates II, LLC may become liable for additional response activities necessary to satisfy the performance objectives of Paragraph 3.2.

V. FINANCIAL ASSURANCE

The current estimate of Long-Term Remedial Action Costs at the Property is less than the threshold amount determined by EGLE to be de minimis pursuant to Section 20114d(3)(b). Therefore, EGLE concurs that a financial assurance mechanism is not required as of the Effective Date of this Agreement.

VI. PERMANENT MARKERS

6.1 Willoughby Estates II, LLC attests that, pursuant to Section 20114c(2)(b)(iii) of the NREPA, permanent markers are not required for this Property.

VII. COMPLIANCE WITH STATE AND FEDERAL LAWS

7.1 All actions required to be taken pursuant to this Agreement 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 and laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Agreement.

7.2 Nothing in this Agreement shall be construed as releasing or waving Willoughby Estates II, LLC from its duties and obligations to obtain and maintain compliance with any permit, authorization, or other governmental approval required under any applicable federal or state laws, including Part 201.

VIII. COMMUNICATIONS AND NOTICES

Whenever, under the terms of this Agreement, notice is required to be given or a report, sampling data, analysis, or other document is required to be provided by one party to the other, such correspondence shall be directed to the project manager at the addresses specified below or to such other individuals or at such other address as may subsequently be designated in writing:

As to EGLE:

Kim Sakowski, Senior Env. Quality Analyst Lansing District Office Remediation and Redevelopment Division Michigan Department of Environment, Great Lakes, and Energy 525 West Allegan Street Lansing, Michigan 48933

Telephone: 517-373-9837 Fax: 517-241-9581

As to Willoughby Estates II, LLC:

Steve Calverley Willoughby Estates II, LLC 4184 Willoughby Road Holt, Michigan 48842 Telephone: 517-333-9622

Fax: 517-333-9677

As to EGLE for submittals required under X (Reimbursement of Costs):

Manager, Compliance and Enforcement Section Remediation and Redevelopment Division Michigan Department of Environment, Great Lakes, and Energy P.O. Box 30426 Lansing, Michigan 48909-7926 Telephone: 517-284-5147

Fax: 517-241-9581

<u>Via Courier</u>
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933

IX. ACCESS TO PROPERTY AND RECORDS

- 9.1 Upon the Effective Date of this Agreement, EGLE and its authorized employees and representatives shall, to the extent the Property is owned, controlled or available to Willoughby Estates II, LLC, have an irrevocable right-of-access at all reasonable times to the Property for the purpose of determining and monitoring compliance with the NFA Report, including the right to take samples, inspect the operation of remedial action measures, and inspect records related to the NFA Report.
- 9.2 Pursuant to Section 20114d(7) of the NREPA, Willoughby Estates II, LLC shall maintain all documents and data prepared, acquired, or relied upon in connection with the NFA Report for at least ten (10) years after the later of the date on which EGLE approved the NFA Report; or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the NFA Report. All documents and data required to be maintained under this provision shall be made available to EGLE upon request.
- 9.3 This Agreement does not restrict or limit any right that EGLE may have to enter the Property or other properties to which access may be required for the protection of the public health, welfare, safety, or the environment pursuant to specific statutory or regulatory authority. Consistent with EGLE responsibilities under federal or state law, EGLE and its authorized representatives shall use their best efforts to minimize interference and whenever possible employ efforts that are the least intrusive to the operations and activities on the Property. "Best efforts" shall not require EGLE to incur any material cost increases in carrying out its responsibilities to protect the public health, safety, or welfare, or the environment.

X. REIMBURSEMENT OF COSTS

10.1 Following the first anniversary of the Effective Date of this Agreement, EGLE will provide Willoughby Estates II, LLC with a summary report (Summary Report) that identifies all Response Activity Costs incurred through the dates specified in the Summary Report. Thereafter, EGLE will periodically provide Willoughby Estates II, LLC subsequent Summary Reports that set forth all Response Activity Costs incurred from the dates specified in the previous Summary Report through the dates specified in the current Summary Report. Willoughby Estates II, LLC shall pay the Response Activity Costs within thirty (30) days of

receipt of each Summary Report. Payment is to be made by check payable to the "State of Michigan - Environmental Response Fund" and shall be sent to:

Michigan Department of Environment, Great Lakes, and Energy Cashier's Office for EGLE P.O. Box 30657 Lansing, Michigan 48909-8157

To ensure proper credit, payments made pursuant to this Agreement must be made by check referencing the Willoughby Estates, EGLE Reference No. PCA-RRD-20-001, and the Settlement ID No. RRD50127.

10.2 Willoughby Estates II, LLC shall have the right to request a full and complete accounting of all Response Activity Costs identified in the Summary Report, including: timesheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to EGLE. EGLE provision of these documents to Willoughby Estates II, LLC may result in EGLE incurring additional Response Activity Costs, which will be included in the Summary Report for payment of Response Activity Costs.

XI. REMEDIES FOR BREACH OF AGREEMENT

- 11.1 Willoughby Estates II, LLC and EGLE recognize and agree that this Agreement is a legally enforceable contract as required by Section 20114d of the NREPA and may be enforced in a court of competent jurisdiction. For that purpose, Willoughby Estates II, LLC consents to the jurisdiction of the Ingham County Circuit Court in any action by the State of Michigan to enforce this Agreement. Willoughby Estates II, LLC also recognizes and understands that EGLE remedies if Willoughby Estates II, LLC breaches the terms and conditions of this Agreement may include other statutory or common law remedies subject to the rights or defenses available to Willoughby Estates II, LLC under applicable law.
- 11.2 EGLE has approved the NFA Report, and if any of the provisions lapse or are not complied with as provided in this Agreement or the NFA Report, Willoughby Estates II, LLC may become liable for additional response activities necessary to satisfy performance objectives of the Agreement.

11.3 If Willoughby Estates II, LLC fails to correct the lapse or noncompliance under Paragraph 11.2 of this agreement within thirty (30) days of written notification by EGLE of the lapse or if Willoughby Estates II, LLC fails at any time to adequately implement the remedial action in accordance with the NFA Report and this Agreement, EGLE may implement those response activities that Willoughby Estates II, LLC has failed to perform. Costs which EGLE lawfully incurs in the performance of response activities shall be reimbursed by Willoughby Estates II, LLC pursuant to Section X (Reimbursement of Costs) of this agreement.

XII. COVENANT NOT TO SUE EGLE / INDEMNIFICATION

- 12.1 Willoughby Estates II, LLC hereby covenants not to sue or to take any civil, judicial, or administrative action against EGLE or their authorized representatives, for any claims arising from or connected with EGLE approval or Willoughby Estates II, LLC's implementation of the remedial action in the NFA Report or this Agreement.
- 12.2 Willoughby Estates II, LLC also agrees to indemnify EGLE, and their authorized representatives for any claims or for its costs of defending any claims brought by others that are based upon, arise from, or are connected with Willoughby Estates II, LLC's implementation of the remedial action in the NFA Report or this Agreement.

XIII. RESERVATION OF RIGHTS

- 13.1 EGLE reserves all rights to take administrative action or to file a new action pursuant to any applicable authority against Willoughby Estates II, LLC with respect to the following:
- (a) A subsequent release not addressed in the NFA Report if Willoughby Estates II, LLC is liable for that release.
- (b) Environmental contamination that is not addressed in the NFA Report and for which Willoughby Estates II, LLC is liable.
- (c) Willoughby Estates II, LLC's failure to perform additional response activities when monitoring necessary to assure the effectiveness and integrity of the remedial action demonstrates potential exposure to contamination in excess of the levels relied on in the NFA Report.

- (d) Willoughby Estates II, LLC's failure to perform additional response activities when the remedial action that is the basis for the NFA Report fail to satisfy the performance objectives of the NFA Report or otherwise comply with Part 201.
- 13.2 The parties reserve all rights available to them pursuant to Part 201 or any other legal authority.
- 13.3 Nothing in this Agreement shall be construed as a release or covenant not to sue by EGLE for the benefit of Willoughby Estates II, LLC or any other person.
- 13.4 Nothing in this Agreement shall limit the power and authority of EGLE or the State of Michigan to direct or order all appropriate action to: protect the public health, safety, or welfare, or the environment; prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Property; or to address a lapse or violation under the NFA Report or this Agreement.

XIV. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of Michigan. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of Part 201 and any other applicable laws.

XV. <u>SEVERABILITY</u>

The provisions of this Agreement are severable. If any provision is declared by a court of competent jurisdiction to be inconsistent with federal or state law and, therefore, unenforceable, the other provisions of this Agreement shall remain in effect, unless such severance causes this Agreement to fail in its essential intents and purposes, in which case, this Agreement shall become null and void.

XVI. SEPARATE DOCUMENTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

In the Matter of: EGLE Reference No. PCA-RRD-20-001

IT IS SO AGREED:

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Joshua Mosher, Assistant Division Director

Remediation and Redevelopment Division

Michigan Department of Environment, Great Lakes, and Energy

10/29/2020

Date

WILLOUGHBY ESTATES II, LLC

Joshua M. Moshua

Steve Calverley, Co-Owner

Willoughby Estates II, LLC

Date

List of Attachments

Attachment A – Legal Description of Property

Attachment B – Postclosure Plan

Attachment C – Monitoring, Operation and Maintenance, and Oversight

ATTACHMENT A – LEGAL DESCRIPTION OF THE PROPERTY

WILLOUGHBY ESTATES II, LLC

Part of the South 1/2 of Section 11, T3N, R2W, Delhi Township, Ingham County, Michigan, being more particularly described as follows; Commencing at the Southeast Corner of Section 11; thence N88° 40' 36"W, 1788.99 feet along the South line of Section 11 to the Point of Beginning of the following described parcel; thence continuing N88° 40' 36"W, 597.85 feet along the South line of Section 11; thence N22° 09' 04"W, 817.04 feet along the Easterly Right of Way of Jackson & Lansing Railroad to the North-South 1/4 line of Section 11; thence continuing, N22° 09' 04"W, 631.76 feet along said Easterly Right of Way; thence S88° 11' 56"E, 256.29 feet along the North line of the Southeast 1/4 of the Southwest 1/4 of Section 11 to the North-South 1/4 line of Section 11; thence S88° 30' 08"E, 296.86 feet along the North line of the Southwest 1/4 of the Southeast 1/4 of Section 11; thence along the Easterly line of the 100 foot wide Green Drain Easement (as surveyed) the following five courses: (1) S38°12'53"W, 41.19 feet; (2) S18° 05' 10"W, 74.18 feet; (3) S07° 34' 46"E, 62.27 feet; (4) S19° 30' 47"E, 76.85 feet; (5) S31° 47" 37"E, 29.12 feet; thence S88° 40' 36"E, 218.30 feet; thence S65°40'43"E, 101.07 feet; thence N42°55'10"E. 52.80 feet to Intermediate Traverse Point A: thence S88°40'36"E. 40 feet, more or less, to the Westerly edge of a Pond; thence Southeasterly 1193 feet, more or less, along the Westerly edge of said Pond; thence S01° 37' 29"W, 30.4 feet, more or less, to Intermediate Traverse Point B [said point being the following six courses from Intermediate Traverse Point A: (1) S26° 51' 37"E, 341.89 feet; (2) S69° 56' 16"E, 221.07 feet; (3) S20° 09' 06"W, 132.69 feet; (4) S31° 39' 21"W, 190.69 feet; (5) S04° 35' 26"W, 332.13 feet; (6) S88° 40' 36"E, 56.27 feet]; thence continuing S01° 37' 29"W, 70.00 feet to the Point of Beginning. Contains 21.63 acres, more or less within the traversed area and a total of 22.8 acres, more or less. Subject to the right of way for Willoughby Road. Also subject to any easements or restrictions of use or record.

ATTACHMENT B – POSTCLOSURE PLAN RC-RRD-201-20-025





INST. # 2020-029329

DERRICK QUINNEY

REGISTER OF DEEDS

INGHAM COUNTY MICHIGAN

RECORDED ON:

09/09/2020 08:56 AM

PAGES: 8

DECLARATION OF RESTRICTIVE COVENANT FOR A RESIDENTAL REMEDIAL ACTION

EGLE Reference No: RC-RRD-201-20-025

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Ingham 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 4194 Willoughby Road, Holt, Ingham County, Michigan and legally described in Exhibit 1 (Legal Description of the Property).

The Property is associated with Willoughby Estates, BEA ID Numbers B201702171LA and B201702189LA for which response activitites were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq*. The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. The EGLE recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the due care requirements of Section 20107a of the NREPA.

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

<u>Definitions</u>

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

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

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

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

Summary of Response Activities and Environmental Contamination

Hazardous substances, including but not limited to ammonia, aluminum, arsenic, iron, magnesium, and manganese have been released and/or disposed on the Property from historical uses. Hazardous substances remain present on the Property that require controls in the form of groundwater use restrictions and soil management restrictions to prevent unacceptable exposure. An exposure barrier consisting of existing building structures with associated slab foundations, hard surfaced roadways, entrances, parking lots and open space areas with at least 6 inches of topsoil and landscaping were placed across the entire site to prevent direct contact with arsenic.

NOW THEREFORE,

1. <u>Declaration of Land Use or Resource Use Restrictions</u>

Willoughby Estates II, LLC as the Owner of the Property hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. Activity and Use Limitations

1. Exposure Restriction for Use of Groundwater

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

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

2. <u>Direct Contact Exposure Barrier Restriction</u>

The exposure barrier consisting of existing building structures with associated slab foundations, hard surfaced roadways, entrances, parking lots and open space areas with at least 6 inches of topsoil and landscaping across the entire site serves to prevent exposures to contaminated soils at the Property. The Owner shall prohibit the excavation or other intrusive activity that could affect the integrity of the exposure barrier, except during short-term construction or repair projects or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the exposure barrier, that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.

b. <u>Contaminated Soil Management</u> The Owner 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; Toxic Substances Control Act (TSCA), 15 USC 2601 *et seq.*; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

- 2. Running with the Land. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. Pursuant to Section 20121(5)(b) of the NREPA, the duration of this Restrictive Convent is perpetual. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to regulated substances may result in the need to perform additional response activities by those parties responsible for performing response activity at the Property or to comply with Section 20107a of the NREPA.
- 3. <u>Enforcement of Restrictive Covenant</u>. The State of Michigan, through the EGLE, and the Owner may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.
- 4. <u>Severability</u>. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.
- 5. <u>Authority to Execute Restrictive Covenant</u>. 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 record this Restrictive Covenant.

IN WITNESS WHEREOF, Willoughby Estates II caused this Restrictive Covenant to be executed		
	Ву:	Willoughby Estates II, LLC Signature Willoughby Estates II, LLC
	Name:	Steven J. Calverley Print or Type Name
	Its:	Co-Owner Title
STATE OF MICHIGAN COUNTY OF INGHAM		
The foregoing instrument was acknowledged be Owner of Willoughby Estates II, LLC, a Michigan	fore me gan Cor	this $\frac{9/3)3030}{500}$ by Steven J. Calverley, Coporation, on behalf of the corporation
ALYSSA LOVEGROVE Notary Public, State of Michigan	Notary	ANSO RIVER ()
County of Eaton My Commission Expires 08-22-2026 acting in the County of Ingham		

Prepared by: Brannon Roach, Triterra 1305 S. Washington Avenue – Suite 102 Lansing, MI 48910

When recorded return to:
Triterra
1305 S. Washington Avenue - Suite 102
Lansing, MI 48910

EXHIBIT 1 LEGAL DECRIPTION OF PROPERTY

PARCEL MAP

PROPERTY DESCRIPTION:

WILLOUGHBY ESTATES II, LLC

Part of the South 1/2 of Section 11, T3N, R2W, Delhi Township, Ingham County, Michigan, being more particularly described as follows; Commencing at the Southeast Corner of Section 11; thence N88*40'36"W, 1788.99 feet along the South line of Section 11 to the Point of Beginning of the following described parcel; thence continuing N88°40'36"W, 597.85 feet along the South line of Section 11; thence N22°09'04"W, 817.04 feet along the Easterly Right of Way of Jackson & Lansing Railroad to the North-South 1/4 line of Section 11; thence continuing, N22*09'04"W, 631.76 feet along said Easterly Right of Way; thence S88*11'56"E, 256.29 feet along the North line of the Southeast 1/4 of the Southwest 1/4 of Section 11 to the North—South 1/4 line of Section 11; thence S88°30'08"E, 296.86 feet along the North line of the Southwest 1/4 of the Southeast 1/4 of Section 11; thence along the Easterly line of the 100 foot wide Green Drain Easement (as surveyed) the following five courses: (1) S3812'53"W, 41.19 feet; (2) S1805'10"W, 74.18 feet; (3) S07*34'46"E, 62.27 feet; (4) S19*30'47"E, 76.85 feet; (5) S31*47'37"E, 29.12 feet; thence S88*40'36"E, 218.30 feet; thence S65°40'43"E, 101.07 feet; thence N42°55'10"E, 52.80 feet to Intermediate A; thence S88°40'36"E, 40 feet, more or less, to the Westerly edge of a Pond; thence Southeasterly 1193 feet, more or less, along the Westerly edge of said Pond; thence S01*37'29"W, 30.4 feet, more or less, to Intermediate Traverse Point B [said point being the following six courses from Intermediate Traverse Point A: (1) S26°51'37"E, 341.89 feet; (2) S69°56'16"E, 221.07 feet; (3) S20°09'06"W, 132.69 feet; (4) S31°39'21"W, 190.69 feet; (5) S04°35'26"W, 332.13 feet; (6) S88°40'36"E, 56.27 feet]; thence continuing S01°37'29"W, 70.00 feet to the Point of Beginning. Contains 21.63 acres, more or less within the traversed area and a total of 22.8 acres, more or less. Subject to the right of way for Willoughby Road. Also subject to any easements or restrictions of use or record.

	1	Engineers
		& Surveyors

3135 Pine Tree Road, Suite D, Lansing, MI 48911 Ph 517-393-2902 • Fx 517-393-2608

X X = FENCE	FIELD WORK BY	
= DISTANCE NOT TO SCALE	DRAWN BY	JML
R = RECORDED / M = MEASURED O = SET IRON & CAP #47969	CHECKED BY	DKR
• = FOUND CORNER AS INDICATED	PROJECT NO.	1508
DATE ALIGHST 25 2020	SHEET NO.	2 OF 2

EXHIBIT 2 LIMITS OF LAND OR RESOURCE USE RESTRICTIONS

PARCEL MAP PROPERTY DESCRIPTION: SEE PAGE 2 CENTER SCALE: SECTION 11 REPLAT NO. 1 THREE LAKES T3N, R2W SITE CONDOMINIUM INGHAM COUNTY NORTH-SOUTH 1/4 -LINE, SECTION 11 L.6, P.314, I.C.R. CONDOMINIUM PLAN NO. 140 LIBER 2728, PAGE 1109 NORTH LINE, SE 1/4, SW 1/4, SEC. 11 (AS MONUMENTED) 8 (*) 30 S88'30'08"E 1355.63' UNIT UNIT S88"11"56"E 256.29 296.86 1058.77 POND NORTH LINE, SW 1/4, SE 1/4, SEC. 11 (AS MONUMENTED) E GREEN DR UNIT 9 JACKSON (AS MONUMENTED) N88'40'36"W 1.38'26"W 1322.84' (PLATTED) S01'37'29"W 1322.65' (M) 135 UNIT 8 & LANSING RAILROAD . PLAN INTERMEDIATE-TRAVERSE APPLE RIDGE ESTATES COUNTY CONDOMINIUM P LIBER 2597, PAGE 495 Ξ INIT 7 SEC. ₹ 'NIT 6 INTERMEDIATE 贤 _ ₹ INIT 5 WILLOUGHBY ESTATES II, LLC S. 21.63 AC± NIT 4 (WITHIN TRAVERSE) POND INGHAM 22.8 AC± (TOTAL) EAST N04'35'26"E ___332.13'___ UNIT 3 UNIT 2 -50' ROAD R.O.W. INTERMEDIATE TRAVERSE PT. B UNIT1359.32' 1358.99' 430.00' SOUTH LINE, SECTION 117 N88'40'36"W 2718.30' (M) S 1/4 COR. SECTION 11 N88'40'36"W 1788.99 P.O.B. SE COR. T3N, R2W WILLOUGHBY ROAD L.14, P.254, I.C.R. SECTION 11 T3N,R2W (VARIABLE WIDTH PUBLIC R.O.W.) L.13, P.119, I.C.R. P.O.C.

LINE TABLE

<u> </u>	har too	
NUMBER	DIRECTION	DISTANCE
L1	N01°37'29"E	70.00'
L2	N88 ° 40'36"W	40'+/-
L3	N88°40'36"W	56.27'
L4	N31*39'21"E	190.69'
L5	N20°09'06"E	132.69
L6	S42*55'10"W	52.80'

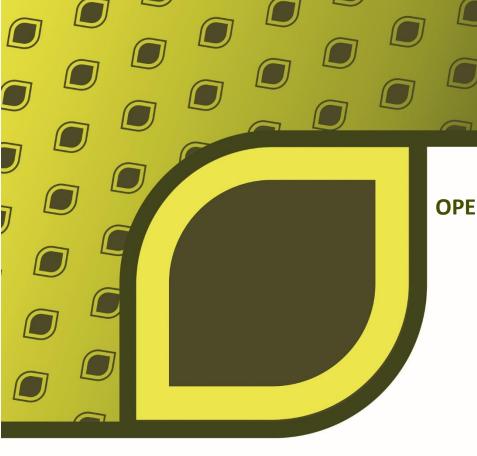
NUMBER	DIRECTION	DISTANCE
L7	N65°40'43"W	101.07
L8	N31°47'37"W	29.12'
L9	N19*30'47"W	76.85'
L10	NO7°34'46"W	62.27'
L11	N18*05'10"E	74.18'
L12	N38°12'53"E	41.19'

		Engineers
	٦	& Surveyors

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X X = FENCE	FIELD WORK BY	-)
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= FOUND CORNER AS INDICATED	PROJECT NO.	1508
AUGUST 25, 2020	SHEET NO.	1 OF 2

ATTACHMENT C - OPERATION, MAINTENANCE, AND OVERSIGHT PLAN



OPERATION & MAINTENANCE PLAN FOR DIRECT CONTACT BARRIER

Willoughby Estates 4194 E.Willoughby Road Holt, Michigan 48842

July 20, 2020

PREPARED FOR:

Willoughby Estates II, LLC Attn: Mr. Steve Calverley 4184 Willoughby Road Holt, Michigan 48842

PREPARED BY:

Triterra 1305 S. Washington Avenue, Suite 102 Lansing, Michigan 48910 517.702.0470

Project No. 20-2447



Operations & Maintenance Plan for Direct Contact Barrier

Willoughby Estates | 4194 E. Willoughby Road, Holt, Michigan 48842 July 20, 2020



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2.3 Potential Operating Problems	
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3.1 Inspection Log	
3.2 Emergency Reporting	

FIGURE

Figure 1: O&M Inspection Areas

APPENDIX

Appendix 1: Direct Contact Barrier Inspection Log Appendix 2: Direct Contact Barrier Photo Log

Appendix 3: O&M Plan Cost Table

Operations & Maintenance Plan for Direct Contact Barrier

Willoughby Estates | 4194 E. Willoughby Road, Holt, Michigan 48842 July 20, 2020



1.0 INTRODUCTION

This Operation and Maintenance (O&M) Plan documents the necessary inspection and maintenance for the direct contact barrier constructed at 4194 E. Willoughby Road, Holt, Michigan (hereinafter referred to as the Property).

The Property was formerly a mining facility/gravel pit and/or a concrete production facility from 1950 to 2006. The Property was developed into a residential complex in 2016 known as Willoughby Estates and associated with the address 4194 E. Willoughby Road. The current Property parcel ID is 33-25-05-11-451-002 and associated with the address 4184 E. Willoughby Road. For purposes of this O&M Plan, the Property is referred to as 4194 E. Willoughby Road.

The Property contains a 3,208 square foot and 1,128 square foot clubhouse, thirteen commercial multiple residences varying from 1,526 to 40,584 square feet, two 6,336 square feet town houses, eighteen single family residences varying from 1,264 square feet to 1,394 square feet, a 584 square foot commercial utility light building and a single maintenance shed. There is also a pool, hot tub and a small park located behind the main clubhouse. Two small dog parks are also present on the northern end of the property. The remaining portion of the property is mainly comprised of asphalt parking, landscaped areas, and green spaces.

Following construction of the existing buildings, the Property surface was capped with at least six inches of topsoil with grass cover or pavement (drives, sidewalks, etc.). The caps were purposeful barriers to prevent direct contact with contaminated soil. This O&M plan establishes a minimum level of effort necessary to ensure that capped barriers remain operating as an effective means to prevent the potential for direct contact and runoff of contaminated soils.

2.0 INSPECTION SCHEDULES AND PROCEDURES

2.1 Routine Maintenance Schedule

Routine inspection and maintenance of the direct contact barrier must be completed to ensure that the integrity of the barrier is operating at optimum performance. In general, the components utilized as part of the barrier require minimal maintenance. The entire Property is subject to this O&M Plan. The prescribed inspection and maintenance schedule will include completing the following:

- Visual inspection of all green spaces, landscaped areas, and hard surfacing (both interior and exterior) for any penetrations or missing sections of caps, or cracks (>1/8-inch wide and 3" long);
- Visual inspections of the barrier area be completed and recorded on the Direct Contact Barrier Inspection Log included in Appendix 1. Any maintenance or repairs will be implemented as needed based on the visual inspections.
- Measurements of the barrier stratum or the surface elevations surveyed in four approximate locations and recorded on the Direct Contact Barrier Inspection Log. The barrier/topsoil thickness/stratum must be equal to or greater than 6-inches from surface elevation to depth below grade, and the surface elevations must be maintained. The four approximate locations and corresponding surface elevations are recorded on Figure 1.



Operations & Maintenance Plan for Direct Contact Barrier

Willoughby Estates | 4194 E. Willoughby Road, Holt, Michigan 48842 July 20, 2020



2.2 Parts Replacement Schedule

The barrier will only require replacement when the component is damaged. The damaged component(s) will be replaced with the same component (asphalt, concrete, clean topsoil, sand, etc.) or an engineer approved equal. Based on experience with similar direct contact barriers, the following components have the potential for periodic replacement/repair:

- Interior Cracks or penetrations to the floor slabs, unauthorized construction activities or any other activities that involve disturbing the condition of the floor slab.
- Exterior Penetrations and/or unauthorized construction activities or any other activities that involve breaking the hard surfacing and topsoil.

2.3 Potential Operating Problems

The barrier relatively simple and are typically durable and long lasting. However, if any activities impact the integrity of the barrier, repairs must be made within two weeks of discovery to prevent contact or migration of contaminated soils.

3.0 REPORTING REQUIREMENTS AND METHODS

3.1 Inspection Log

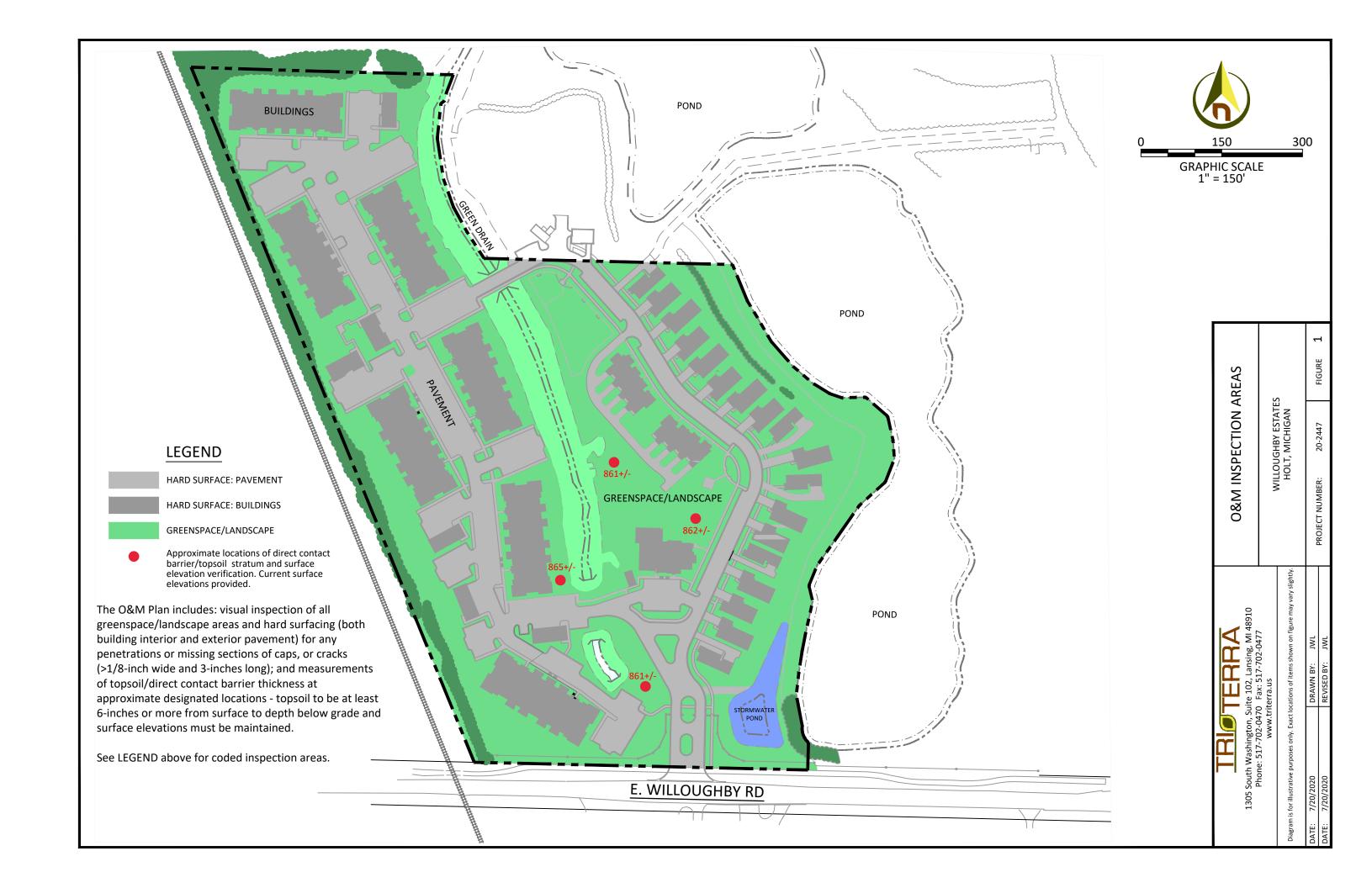
A Direct Contact Barrier Inspection Log (Appendix 1) and Direct Contact Barrier Photo Log (Appendix 2) shall be completed during each routine inspection to document any changes in barrier maintenance. Operational conditions and parameters will be recorded on the Barrier Inspection Log, along with the inspector's name and date. An Inspection Log will be completed during unanticipated malfunctions, and on regularly scheduled monthly inspections. All Inspection Logs will be stored for the duration of the barrier operation. The Inspection Log must include recorded topsoil stratum from surface elevation to depth below grade and/or surveyed elevations in four approximate designated areas on the Property (Figure 1).

3.2 Emergency Reporting

Failure of a barrier or treatment area component must be reported to the emergency contact listed below as soon as possible.

Owner/Property Manager: Steve Calverley, Co-Owner (517) 333-9622







APPENDIX 1: DIRECT CONTACT BARRIER INSPECTION LOG

Willoughby Estates Direct Contact Barrier Inspection Log

DATE OF INSPECTION:	INSPECTION CONDUCTED BY:	

Item		Co	ndition			Recommended	Recommended Actions Completed	Date Recommended
item	Good	Fair	Poor	Yes	No	Actions/Notes	Recommended Actions Completed	Actions Completed
Interior								
Floor slab								
Building slab cracks observed greater than 1/2-inches wide and 3 inches long noted								
Other building slab damage observed								
Unauthorized renovations								
Exterior								
Asphalt or concrete								
Holes in topsoil/landscaping deeper than six inches in depth								
Topsoil/barrier stratum equal to or greater than 6-in from surface to below grade, and surface elevations maintained								
Unauthorized renovations								

Willoughby Estates Direct Contact Barrier Inspection Log

Item		Co	ndition			Recommended	Pasammandad Actions Completed	Date Recommended
item	Good	Fair	Poor	Yes	No	Actions/Notes	Recommended Actions Completed	Actions Completed
Other Items								
Has work/recommended actions been contracted?								
If answer above is <u>Yes</u> , please answ	er the fo	ollowin	g quest	ions				
Has contractor been approved by property owner/manager?								
Has contractor been provided the O&M Plan?								
Has direction from the property owner/manager been provided?								
Has contractor completed a Health and Safety Plan (HASP)?								
Has appropriate Hazardous Waste Operations and Emergency Response (HAZWOPER) training been confirmed?								



APPENDIX 2: DIRECT CONTACT BARRIER PHOTO LOG

Willoughby Estates Direct Contact Barrier Photo Log

Photo Log date:	-
Completed by:	-
Photo Description	
Photo Description:	

Page ______of____



APPENDIX 3: O&M PLAN COST TABLE

O&M Plan Cost Table

Willoughby Estates 4194 E. Willoughby Road Holt, Michigan

Work to Be Completed	Cost per Inspection Activity (Completed Monthly)	Annual Cost per Inspection Activity
Barrier Inspection	\$105.00	\$1,260.00
Repairs to Barrier (labor and materials)	\$102.50	\$1,230.00
Total Cost	\$207.50	\$2,490.00

^{*}Inspections will be performed by normal maintence staff, cost esimated on the rate of \$35 per/hour