# DECLARATION OF RESTRICTIVE COVENANT FOR A RESTRICTED NONRESIDENTIAL REMEDIAL ACTION

EGLE Reference No: RC-RRD-201-24-005

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Washtenaw 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 South Industrial Highway, Ann Arbor, Washtenaw County, Michigan and legally described in Exhibit 2 (Legal Description of Property) attached hereto (Property). The "Survey of Property and Limits of Land or Resource Use Restrictions," attached as Exhibit 3, provides a legal description and a scaled drawing of those portions of the Property that are subject to land use or resource use restrictions specified in this Restrictive Covenant.

The Property is associated with City of Ann Arbor – Utilities Department-field services site ID 81000927 for which response activities were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. EGLE recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the due care requirements of Section 20107a of the NREPA.

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

# **Definitions**

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

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

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

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

#### Summary of Response Activities and Environmental Contamination

Hazardous substances including heating oil compounds (including but not limited to benzene, toluene, ethylbenzene, xylenes, 2-Methylnaphthalene, naphthalene, and phenanthrene) were released from an orphan underground heating oil storage tank system at City of Ann Arbor – Utilities Dept-field services, resulting in contamination of the Property. The orphan underground heating oil storage tank system was excavated June 10, 2021. Soil and groundwater contamination remains present at a level which does not allow unrestricted use of the Property. Public health will be protected by prohibiting the use of the property for residential land uses; prohibiting the use of groundwater for ingestion or irrigation purposes; prohibiting the construction of structures unless engineering controls are incorporated; and requiring property characterization and disposal of impacted soils, if soils are to be disturbed.

The potential presence of residual Light Nonaqueous-Phase Liquid (LNAPL), including heating oil, were characterized and assessed, and will remain in place at the Property. The LNAPL exists below the ground surface at a depth of four feet and is located within the "Restricted Area" described in Exhibit 3 (Survey of Property and Limits of Land or Resource Use Restrictions). The location of the horizontal and vertical extent of the LNAPL is described in Exhibit 4. The restrictions provided for in this Restrictive Covenant serve to prevent unacceptable exposure to hazardous substances as a result of the conditions created by the presence of the LNAPL soil and/or groundwater contaminant concentrations that exceed the unrestricted residential criteria under Section 20120a(1)(a) of NREPA. The following hazardous substances are present in the soil and/or groundwater at the Property at concentrations that have the potential to volatilize into indoor air above levels that are considered protective of human health, safety, and welfare. Naphthalene has the potential to volatilize into indoor air at levels above what is considered protective. At this time of the recording of the Restrictive Covenant, soil vapors analytical can be located in the Closure Report for the site.

#### NOW THEREFORE,

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

The City of Ann Arbor, 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) Land Use in the "Restricted Area" shown as ("Area A") in Exhibit 2:

The Owner shall prohibit all land uses that do not satisfy the nonresidential cleanup criteria on the portions of the Property as Area A or "Restricted Area", described in Exhibit 3. The nonresidential criteria are applicable to industrial, commercial, office or retail nonresidential land use categories with potential exposure to adult workers during a business day and potential intermittent exposures of adults and children who are customers, patrons, or visitors to the establishments during a portion of the business day. If the nonresidential land use allows for routine exposures to children, the land use does not satisfy the nonresidential cleanup criteria. Residential land uses do not satisfy the nonresidential cleanup criteria. Residential land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments where people live and sleep for significant periods of time.

The City of Ann Arbor Unified Development Code classifies this property as Public Land District (PL). The following uses allowed under the PL zoning code designation are prohibited:

- Adult foster care,
- · Assisted living,
- Multi-family dwelling,
- Single family dwelling,
- Townhouse
- Two-family dwelling
- Hospital

Such permitted residential uses are restricted from the property. Cleanup criteria for land use based response activities are located in the Government Documents Section of the State of Michigan Library.

- (2) The Owner shall prohibit the construction and use of wells or other devices on the "Restricted Area" of 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.
- (3) The Owner shall prohibit construction of any subsurface structure intended for occupancy (i.e. basements) within the "Restricted Area".
- (4) The Owner shall prohibit construction of new structures of modifications of the existing building in the portion of the site designated as "Area A" the "Restricted Area" on the survey map included in Exhibit 3, 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.
- b. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located within the portions of the Property designated in Exhibit 2 as the "Restricted Area" Area A 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, this Restrictive Covenant shall continue in effect until it is determined that the hazardous substances in the "Restricted Area" no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to hazardous substances may result in the need to perform additional response activities by those parties responsible for performing response activity at the Property or to comply with Section 20107a of the NREPA.
- 3. <u>Enforcement of Restrictive Covenant</u>. The State of Michigan, through EGLE, and the City of Ann Arbor, Utilities Department 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,

We, Christopher Taylor, Mayor, ar City of Ann Arbor, the current and Restrictive Covenant to be execute	legal a	uthorized Owner of the Prop	erty, have c	
	CITY	OF ANN ARBOR		
	Ву:	Christopher Taylor		
	Its:	Mayor		
	Ву:	Jacqueline Beaudry		
		City Clerk		
This instrument was acknowledged Taylor, Mayor of the City of Ann A Arbor, a Michigan municipal corpora	rbor, ar			
			, Notary	Public
		County of	, Michig	gan
		My Commission Expires:		

Prepared by: Gerard DeBusschere Atlas Technical Consultants

When recorded return to: Gerard DeBusschere Atlas Technical Consultants 46555 Humboldt Drive, STE 100 Novi, MI 48377

# **CONSENT OF OWNER**

We, Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk, both representative of the City of Ann Arbor, the current and legal authorized Owner of the Property, do hereby consent to the recording of this Restrictive Covenant and do hereby authorize Atlas Technical, to file this Declaration of Restrictive Covenant with the Washtenaw County Register of Deeds for recording.

**CITY OF ANN ARBOR** 

By:	Christopher Taylor Mayor
	Jacqueline Beaudry City Clerk
This instrument was acknowledged before r	me on, 2024 by Christophe d Jacqueline Beaudry, City Clerk of the City of Ani
	, Notary Public County of, Michigan Acting in County of My Commission Expires:

#### **LEGAL DESCRIPTION OF "PROPERTY" and "RESTRICTED AREA"**

#### **LEGAL DESCRIPTION (09-12-04-200-013):**

LAND IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN DESCRIBED AS:

LOT 21 OF FRISNGER INDUSTRIAL SUBDIVISION BEING PART OF THE NORTHWEST ¼ OF SECTION 4, TOWN 03 SOUTH, RANGE 06 EAST AS RECORDED IN LIBER 15 OF PLATS, PAGES 25 AND 26, WASHTENAW COUNTY RECORDS. ALSO BEGINNING AT THE NORTHWEST CORNER OF LOT 21; THENCE S23°27'30"E, 415.8 FEET, THENCE S87°54'00"W, 300 FEET; THENCE N23°27'30"W, 415.8 FEET; THENCE N87°55'00"E, 300 FEET TO THE POINT OF BEGINNING.

# THE "RESTRICTED AREA" IS AREA "A" shown on Exhibit 3, described as follows:

LAND IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN BEING DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 21; THENCE S25°45'00"E, 48.98 FEET; THENCE S63°50'56"W, 133.41 FEET; THENCE N02°34'06"E, 99.27 FEET; THENCE N87°55'00"E, 102.99' TO THE POINT OF BEGINNING.

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

The "Restricted Area" is "Area A" as shown on the following Exhibit 3:

# LEGAL DESCRIPTION (09-12-04-200-013)

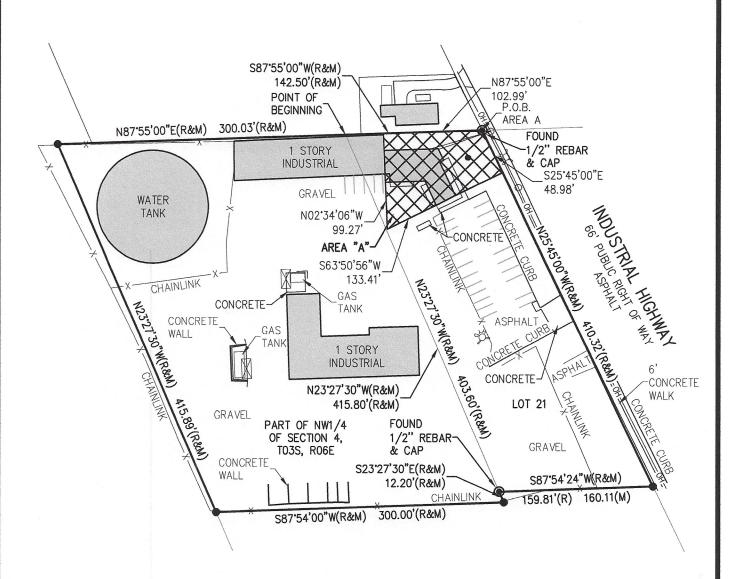
LAND IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN BEING DESCRIBED AS:

LOT 21 OF FRISINGER INDUSTRIAL SUBDIVISION BEING PART OF THE NORTHWEST 1/4 OF SECTION 4, TOWN 03 SOUTH, RANGE 06 EAST AS RECORDED IN LIBER 15 OF PLATS, PAGES 25 AND 26, WASHTENAW COUNTY RECORDS. ALSO BEGINNING AT THE NORTHWEST CORNER OF LOT 21; THENCE \$23"27"30"E, 415.8 FEET; THENCE \$87"54"00"W, 300 FEET; THENCE N23"27"30"W, 415.8 FEET; THENCE N87"55"00"E, 300 FEET TO POINT OF BEGINNING.

#### AREA "A"

LAND IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN BEING DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 21; THENCE S25'45'00"E, 48.98 FEET; THENCE S63'50'56"W, 133.41 FEET; THENCE N02'34'06"E, 99.27 FEET; THENCE N87'55'00"E 102.99' TO THE POINT OF BEGINNING.





# FOUND MONUMENT (AS NOTED) PROPERTY CORNER FIRE HYDRANT GAS PUMP UTILITY POLE ADJOINING BOUNDARY LINE EDGE OF ASPHALT BOUNDARY LINE BUILDING BUILDING OVERHANG EDGE OF CONCRETE CONCRETE CURB OVERHEAD UTILITY LINE FENCE (AS NOTED) PARKING STRIPE PLATTED SUBDIVISION - EDGE OF SIDEWALK - WALL (AS NOTED)

#### NOTE:

THE BASIS OF BEARING IS WEST LINE OF FRISINGER INDUSTRIAL SUBDIVISION AS RECORDED IN LIBER 15 OF PLATS, PAGES 25 AND 26, WASHTENAW COUNTY RECORDS.



# **EXHIBIT**

2000 S. Industrial Highway, Ann Arbor, MI

Client: L&R Constru	ction
Date: 10/11/2022	Project No: 3638-03
Drawn By: MEB	Revision No:
Scale: 1" = 100'	Page 1 of 1



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OFESSION

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