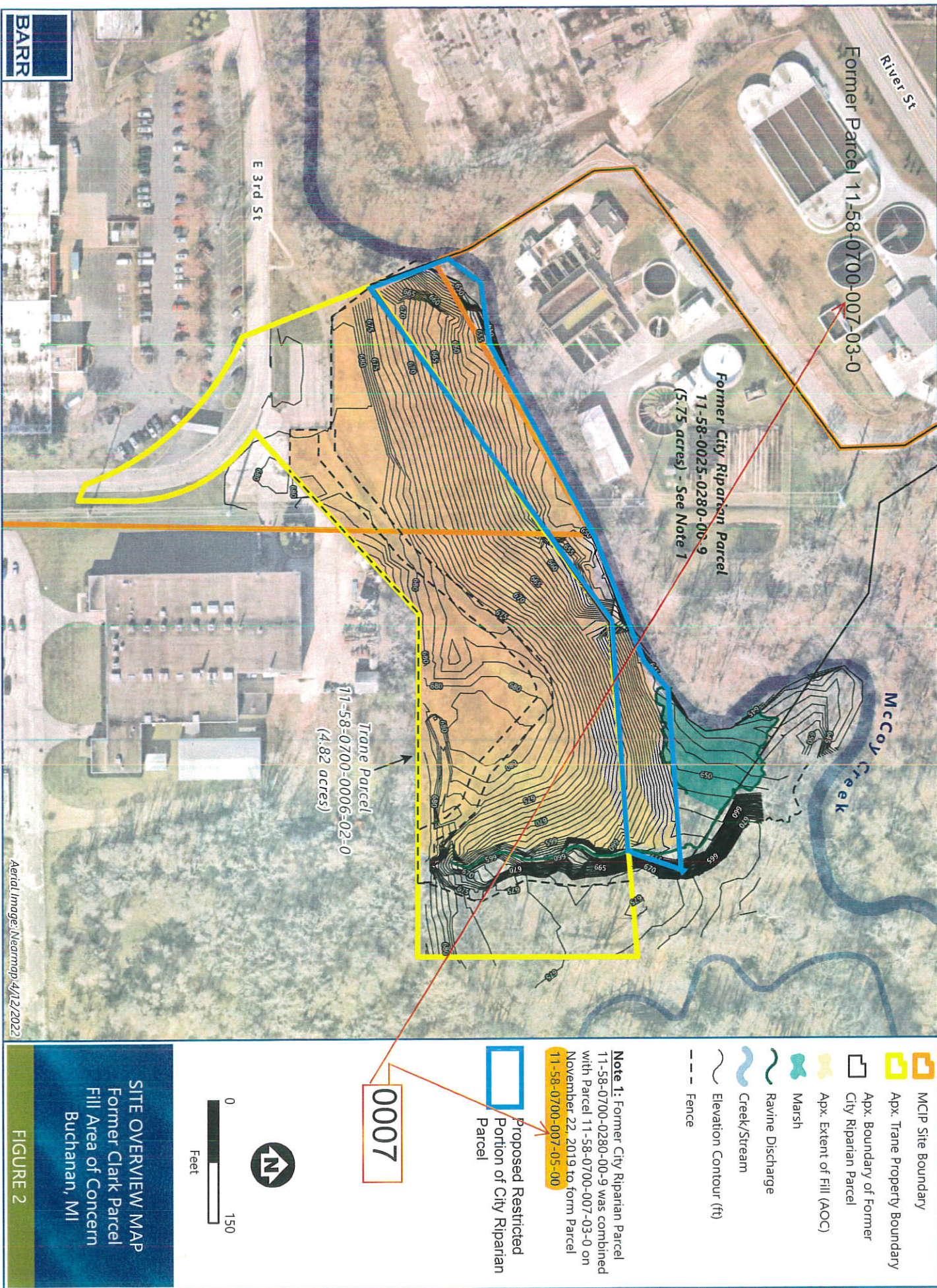


Attachment A





Aerial Image: Neotrip 4/12/2022

SITE OVERVIEW MAP
Former Clark Parcel
Fill Area of Concern
Buchanan, MI

FIGURE 2

Attachment B



SEP - 08' 03 (MON) 17:00

BITTNER, HYRNS, LASATA, RIEMLAND

TEL: 1 983 5858

P. 002

FIRST AMENDMENT TO THIRD STREET PARCEL SIDE AGREEMENT

WHEREAS, Clark Equipment Company ("Clark") and the City of Buchanan (the "City") entered into the Third Street Parcel Side Agreement ("Side Agreement").

WHEREAS, the Agreement specifies that paragraphs C, D, E, F, and G of the Agreement will be null and void if the Michigan Department of Environmental Quality ("MDEQ") does not accept Clark's Remedial Action Plan ("RAP") providing for restricted access to McCoy Creek through the use of fencing.

WHEREAS, the MDEQ did not accept Clark's RAP providing for restricted access to McCoy Creek through the use of fencing.

NOW, THEREFORE, Clark and the City agree to amend paragraphs B, C, D, E, F and G of the Agreement as follows:

B. Mutuality. Deleted.

C. Easement. Clark shall grant the City an easement (at least ten feet in width) across the Clark Property for use as a pedestrian pathway connecting the McCoy Creek Industrial Park and Schirmer Park. The easement will be located in a place agreeable to both the City and Clark, and fencing may be provided by further agreement of the parties. The easement shall include a vehicle turnaround area at least twenty-five (25) feet in width. The easement will be granted to the City after Clark has evaluated and obtained necessary regulatory approvals (if any) for granting the easement. Clark agrees to use its best efforts to grant the City the easement within six months. Notwithstanding the foregoing,

Post-it® Fax Note	7671	Date	12-3	# of pages	4
To	Randy	From	Mike Hughes		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

SEP. -08 03 (MON) 17:00

BITR, HYRNS, LASATA, RIEMLAND

TEL: 1 983 5858

P. 003

the final location and design of the easement, and the timing of the grant of the easement, may be subject to MDEQ approval.

D. RAP Implementation. The City shall provide access to the Clark Property and allow Clark to perform the remedial activities necessary to implement the MDEQ-approved RAP. Such activities may include, but not be limited to, soil and sediment sampling, soil and sediment removal, and installation of exposure barriers which may include, but not be limited to, rip rap, geo-textile liner, erosion control, and landscaping. The City shall maintain any such exposure barriers at its sole expense.

E. Bridge. Clark shall provide to the City \$20,000 to be used by the City to install a bridge across McCoy Creek in the vicinity of Schirmer Park. Once payment to the City is made, the City shall construct and maintain the bridge at its sole expense.

F. Removal. Clark shall remove and properly dispose of, at its sole expense, the two existing iron catwalk bridges which currently traverse McCoy Creek in the vicinity of the Third Street Parcel and the roof and walls of the small building located at the bottom of the creek bank on the South side of McCoy Creek.

G. Recording of Land and Natural Resources Use Restrictions. The City shall execute and record land and natural resource use restrictions on the City Riparian Property that comply with the requirements set forth in paragraphs 1-5 of paragraph G of the original agreement which are hereby adopted by reference. Clark shall reimburse the City for the cost of recording the deed restriction.

SEP -08' 03 (MON) 17:00

BITTNER, HYRNS, LASATA, RIEMLAND

TEL: 1 983 5858

P. 004

The parties agree that the original "Side Agreement" in all other respects shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Third Street Parcel Side Agreement has been executed on the date indicated below by a duly authorized representative.

CLARK EQUIPMENT COMPANY

A subsidiary of Ingersoll-Rand Company

BY: _____

Name (print): _____

ITS: _____

DATED: ____ / ____ / ____

THE CITY OF BUCHANANBY: David P. Hagey

Name (print): David P. Hagey

ITS: Mayor

DATED: 09 / 08 / 03

SEP-12-2003 15:23

CLARK LAW DEPT

201 573 3448

P.04/04

09-09-03 TUE 14:30 FAX 010 534 3040

HORIZON ENVIRONMENTAL

Sep 09 03 02:17p

City of Buchanan

616-695-4330

0004

SEP-09 03 (MON) 17:00

BITTNER, HYANS, LASAPA, BICHLAND

TEL: 616 903 5034

P.04

The parties agree that the original "Side Agreement" in all other respects shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Third Street Bagel Side Agreement has been executed on the date indicated below by a duly authorized representative.

CLARK EQUIPMENT COMPANY
A subsidiary of Ingersoll Rand Company

BY: [Signature]

NAME (PRINT): Aaron Kleinbaum

ITS: Asst General Counsel

DATED: 9/12/03

THE CITY OF BUCHANAN

BY: [Signature]

NAME (PRINT): David P. Hagey

ITS: Mayor

DATED: 09/08/03

SECOND AMENDMENT TO THIRD STREET PARCEL SIDE AGREEMENT

WHEREAS, Clark Equipment Company ("Clark") and the City of Buchanan (the "City") entered into the Third Street Parcel Side Agreement (the "Agreement") attached hereto as Exhibit 1.

WHEREAS, the Agreement specifies that paragraphs C, D, E, F, and G of the Agreement will be null and void if the Michigan Department of Environmental Quality ("MDEQ") does not accept Clark's Remedial Action Plan ("RAP") providing for restricted access to McCoy Creek through the use of fencing.

WHEREAS, the MDEQ did not accept Clark's RAP providing for restricted access to McCoy Creek through the use of fencing.

WHEREAS, the City would like to proceed with construction of the pedestrian pathway connecting the McCoy Creek Industrial Park property with Schirmer Park.

NOW THEREFORE, Clark and the City agree to amend paragraphs C, D, E, F, and G of the Agreement as follows:

Except for the changes made herein, the Agreement shall remain unchanged and shall be in full force and effect.

Paragraph C of the Agreement regarding Clark's granting of an easement to the City shall be replaced with the revised paragraph that follows and Paragraph D of the Agreement regarding fencing along the banks of McCoy Creek shall be null and void, and shall be replaced by the revised paragraph D provided below.

C. Easement. Clark shall grant the City an easement covering three different portions of the Clark Property as described below:

1) Easement No. 1 will be for use as a pedestrian pathway connecting the McCoy Creek Industrial Park property and Schirmer Park. The easement shall be at least ten feet wide and shall include a vehicle turnaround area at least twenty-five (25) feet wide. The approximate

locations of the easement are identified on the attached map as Path 1 and Path 2, however the final locations shall be in a place agreeable to both the City and Clark. The City shall cover the pathway with asphalt pavement and install a six-foot chain link fence on both sides of the pathway. The cost of the installed fence for Path 1 shall be at Clark's sole expense. The cost of paving Paths 1 and 2, the cost of installing the fence for Path 2, and the cost of maintaining the paved pathway and fence for Paths 1 and 2 shall be at the City's sole expense.

2) Easement No. 2 is the area on the western side of the attached map identified as Parking/Landscaping and it is to be used as a parking area. The City shall cover the area entirely with either pavement or a 6-inch thick layer of compacted MDOT A-22 gravel or a 24 to 30-inch layer of landscaped clean fill or a combination thereof and the City shall maintain it in that condition at its sole expense. Clark reserves the right to alter the nature of the cover in that area at its sole discretion and expense, and the City agrees to maintain the covered area.

3) Easement No. 3 is the area on the eastern side of the attached map, just east of the Storm Drain Ditch, and identified as the Park Area. It is to be used as a recreational park area.

For each of the three easement areas, the City agrees to comply with the terms of the Due Care Plan to be prepared by Clark, as well as any modifications or additions to a Due Care Plan that Clark may request consistent with MDEQ requirements.

D. Response Activity Implementation. The City shall provide access to Clark, its successors, assigns, employees, contractors and to representatives of the MDEQ to those portions of the McCoy Creek Industrial Park ("MCIP") property owned by the City and to the property adjacent to the Clark property and McCoy Creek owned by the City (collectively the "City Property") and allow Clark to perform the remedial activities required by the MDEQ, including but not necessarily limited to a RAP. Such activities may include, but not be limited to, soil and sediment sampling, soil and sediment removal, and installation of exposure barriers which may include, but not be limited to, rip rap, geo-textile liner, erosion control, landscaping, and fencing. The City shall maintain any such exposure barriers at its sole expense and shall comply with the terms of any Due Care Plan that Clark may request for the City Property consistent with MDEQ requirements. To the extent the City acquires MCIP property from other property owners, through tax reversion or other means, the City agrees to impose deed restrictions consistent with

an industrial use on such property and comply with any Due Care Plan that Clark may request consistent with MDEQ requirements.

IN WITNESS WHEREOF, this First Amendment to the Third Street Parcel Side Agreement has been executed on the date indicated below by a duly authorized representative.

CLARK EQUIPMENT COMPANY
a subsidiary of Ingersoll-Rand Company

By: _____
Name (print):

Its: _____

Dated: ____/____/____

THE CITY OF BUCHANAN

By: _____
Name (print):

Its: _____

Dated: ____/____/____

THIRD STREET PARCEL SIDE AGREEMENT

This Third Street Parcel Side Agreement ("Side Agreement") is made by and between Clark Equipment Company, a subsidiary of Ingersoll-Rand Company ("Clark") and the City of Buchanan, Michigan (the "City"). Clark and the City are the "Parties." This Side Agreement provides specifications for certain elements of the Environmental Agreement to be entered into between the Parties regarding the City's Third Street Parcel (the "Environmental Agreement"). The Environmental Agreement is attached as Exhibit 1. Exhibit 2 provides technical specifications for some of the improvements contemplated in this Side Agreement.

In acknowledgment of the mutual promises stated in this Side Agreement, which the Parties each state are good and valuable consideration, the Parties agree and covenant as stated below.

A. Definitions. In this Side Agreement:

1. "Third Street Parcel" means the real property located in Buchanan, Michigan, known as the Third Street Parcel, described as set forth in Exhibit 3.
2. "Clark Property" means Parcel Number 11-58-0700-0006-02, which is the real property located in Buchanan, Michigan, currently owned by Clark, and immediately East of the McCoy Creek Industrial Park and South of McCoy Creek.
3. "City Riparian Property" means Parcel Number 11-58-0700-0280-00, which is the riparian real property located in Buchanan, Michigan, currently owned by the City, and immediately East of the McCoy Creek

Industrial Park and immediately South of and adjacent to McCoy Creek.

The Clark Property and City Riparian Property are depicted in Exhibit 4.

4. "Part 201" means Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.*, as amended.
5. "Hazardous Substances" has the meaning stated in Part 201, at MCL 324.20101(t).
6. "MDEQ" means the Michigan Department of Environmental Quality.

B. Mutuality. The Parties acknowledge that MDEQ approval of a Remedial Action Plan ("RAP") for the McCoy Creek Industrial Park Site which restricts access to McCoy Creek through the use of fencing is a material fact upon which the Parties rely in entering into this Agreement. Accordingly, performance of the provisions of Paragraphs C, D, E, F and G of this Agreement and Paragraph C of the Environmental Agreement is mutually contingent on Clark receiving approval from the MDEQ of a RAP which provides for restricted access to McCoy Creek through the use of fencing. If the MDEQ does not accept such a RAP, then the provisions of paragraphs C, D, E, F and G of this Agreement and Paragraph C of the Environmental Agreement shall become null and void, and neither the City nor Clark will be required to perform its obligations under those Paragraphs.

C. Easement. Subject to the provisions of Paragraph B, Clark shall grant the City an easement (at least ten feet in width) across the Clark Property for use as a pedestrian pathway connecting the McCoy Creek Industrial Park and Schirmer Park. The easement will be located in a place agreeable to both the City and Clark, and fencing may be provided on both sides of the easement. The easement shall include a vehicle turnaround area at least twenty-five (25) feet in width. Installation of the fencing (if necessary) shall be at Clark's sole expense, while

maintenance of the fence shall be at the City's sole expense. The easement will be granted to the City only after Clark has evaluated the easement property for possible environmental or other issues and obtained necessary regulatory approvals (if any) for granting the easement. Clark agrees to use its best efforts to grant the City the easement within six months of MDEQ approval of the RAP. Notwithstanding the foregoing, the final location and design of the easement, and the timing of the grant of the easement, may be subject to MDEQ approval.

D. Fencing. Subject to the provisions of Paragraph B, Clark shall install fencing and signage along the banks of McCoy Creek on the Third Street Parcel. Such fencing shall be installed at Clark's sole expense in accordance with the specifications provided in Exhibit 2, and shall be maintained at the City's sole expense.

E. Bridge. Subject to the provisions of Paragraph B, Clark shall provide to the City \$20,000 to be used by the City to install a bridge across McCoy Creek in the vicinity of Schirmer Park. Once payment to the City is made, the City shall construct and maintain the bridge at its sole expense.

F. Removal. Subject to the provisions of Paragraph B, Clark shall remove and properly dispose of, at its sole expense, the two existing iron catwalk bridges which currently traverse McCoy Creek in the vicinity of the Third Street Parcel and the roof and walls of the small building located at the bottom of the creek bank on the South side of McCoy Creek.

G. Recording of Land and Natural Resources Use Restrictions. Subject to the provisions of Paragraph B, the City shall execute and record land and natural resource use restrictions on the City Riparian Property that comply with the following requirements upon MDEQ's approval of the Remedial Action Plan ("RAP") and upon Clark's written commitment

to comply with all steps to be undertaken by Clark pursuant to the RAP. Clark shall reimburse the City for the cost of recording the deed restriction.

1. The City Riparian Property shall be designated as Recreational, as that term is used in section 20120a of Part 201. Access to the City Riparian Parcel shall be restricted by use of fencing or otherwise, as approved by MDEQ. In the event the MDEQ develops criteria for recreational uses, then the City Riparian Property shall be used only for purposes not inconsistent with such revised or superceding document(s) which result in equivalent or reduced exposure to hazardous substances by persons on the City Riparian Property.
2. Wells shall not be installed on the City Riparian Property for extracting groundwater for potable or domestic uses. This provision does not prohibit installation of wells for: environmental study, monitoring, or remediation; dewatering of excavations; non-contact cooling water or processing in commercial or industrial activities; groundwater heat pumps; or installation of wells for emergency purposes, provided that the installation and operation of such wells is in compliance with applicable federal, state and local laws and regulations.
3. Any future work performed on the City Riparian Property which involves the excavation of soils shall be done in accordance with a Due Care Plan consistent with an approved RAP. The Due Care Plan shall be prepared by Clark and will outline the precautions to be taken for excavation in each area.

4. Any soil excavated at the City Riparian Property shall be handled in accordance with applicable local, state, and federal requirements.
Excavated soil shall be sampled, analyzed for hazardous substances, and disposed of at a location off of the City Riparian Property or, if on the City Riparian Property, in compliance with Part 201, at MCL 324.20101 et seq.
5. Any areas on the Property where the MDEQ approved Remedial Action Plan ("RAP") for the site requires exposure barriers to address exceedances of the applicable generic direct contact criteria shall remain covered with an exposure barrier of landscaping or pavement as specified in the RAP. Access to the City Riparian Property in the immediate vicinity of McCoy Creek, including its southern bank, shall be restricted with fencing acceptable to MDEQ. For those areas of the City Riparian Property where cover or fencing is required but not already in place, Clark shall provide such cover or fencing, and Clark shall maintain the cover and the City shall maintain the fencing. If the City disturbs the cover for any reason, including, but not limited to, utility work, then the City shall restore the cover to its original condition or take other action that is equally protective.

H. Access. Upon request by Clark, the City will provide access as is reasonably necessary to Clark to perform the tasks set forth in this Agreement.

I. Parties' Acknowledgment. The Parties acknowledge that they have had the opportunity to review this Side Agreement, to discuss it thoroughly with counsel of their choice, that they fully understand its terms and agree and consent to be bound by it.

J. Final and Complete Agreement. This Agreement is final. This Agreement is not to be construed as an admission of liability. Further, the Parties agree that this document contains the entire agreement between the Parties regarding the subject matter of this Agreement.

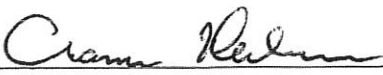
K. Effective Date. This Agreement is effective on the first date that it has been signed by a person representing each Party.

L. Persons Bound. This Agreement binds Clark, the City, and their successors and assigns.

M. Signers' Representation. Each person signing this Agreement on behalf of a Party represents that he or she is authorized to bind that Party to this Agreement.

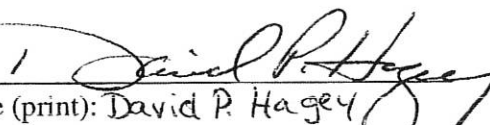
IN WITNESS WHEREOF, this instrument has been executed on the date indicated below by a
duly authorized representative.

CLARK EQUIPMENT COMPANY
a subsidiary of Ingersoll-Rand Company

By 
Name (print): Aaron Kleinbaum, P.E.
Director of Environmental Safety & Health
Its And Assistant General Counsel

Dated: 11 / 20 / 01

THE CITY OF BUCHANAN.

By 
Name (print): David P. Hagey
Its Mayor

Dated: 11 / 12 / 01

Exhibit 1
Environmental Agreement

ENVIRONMENTAL AGREEMENT – THIRD STREET PARCEL

This Environmental Agreement is made by and between Clark Equipment Company, a subsidiary of Ingersoll-Rand Company ("Clark") and the City of Buchanan, Michigan (the "City"). Clark and the City are the "Parties."

In acknowledgment of the mutual promises stated in this Environmental Agreement, which the Parties each state are good and valuable consideration, the Parties agree and covenant as stated below.

A. Definitions. In this Environmental Agreement:

1. "Property" means the real and personal property and fixtures located in Buchanan Michigan, known as a portion of the Third Street Parcel, the Clark Park Parcel, and portions of Lot 2, described as set forth in Exhibit 1.
2. "Part 201" means Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.*, as amended.
3. "Hazardous Substances" has the meaning stated in Part 201, at MCL 324.20101(t).

B. Access. Upon request by Clark, the City will provide access as is reasonably necessary to Clark to perform the tasks set forth in this Agreement.

C. Recording of Land and Natural Resources Use Restrictions. The City shall execute and record land and natural resource use restrictions that comply with the following requirements upon MDEQ's approval of the Remedial Action Plan ("RAP") and upon Clark's written commitment to comply with all steps to be

undertaken by Clark pursuant to the RAP. Clark shall reimburse the City for the cost of recording the deed restriction.

1. The Property shall be used only for purposes described as Recreational in section 20120a of Part 201. Examples of permitted recreational uses include, but are not limited to, walking, sitting, parking, picnics, playgrounds, athletic activities, and participation in recreational or sporting events. Examples of activities which would not be permitted include, but are not limited to, industrial activities, commercial activities, day cares or schools, hospitals, and convalescent or nursing homes. Examples of recreational activities which would not be permitted include those which would involve access to the fenced area of McCoy Creek or its banks (e.g., fishing, wading, or crossing the Creek) or any activities on the Property which would disturb landscaping or pavement (e.g., digging). Exhibit 2, Delineation of Land Use Categories, provides a map of the various parcels within the McCoy Creek Industrial Park Site. Notwithstanding the forgoing, utility work, landscaping work, and installation of signs is permissible as long as it is done pursuant to Paragraph C(3) of this Agreement. The City shall maintain landscaping on the flat portions of the Property that are not restricted by fencing.
2. Wells shall not be installed on the Property for extracting groundwater for potable or domestic uses. This provision does not prohibit installation of wells for: environmental study, monitoring, or remediation; dewatering of excavations; non-contact cooling water or processing in commercial or

industrial activities; groundwater heat pumps; or installation of wells for emergency purposes, provided that the installation and operation of such wells is in compliance with applicable federal, state and local laws and regulations.

3. Any future work performed at the site which involves the excavation of soils shall be done in accordance with a Due Care Plan consistent with the RAP. The Due Care Plan shall be prepared by Clark and will outline the precautions to be taken for excavation in each area.
4. Any soil excavated at the Property shall be handled in accordance with applicable local, state, and federal requirements. Excavated soil shall be sampled, analyzed for hazardous substances, and disposed of at a location off of the Property or, if on Property, in compliance with Part 201, at MCL 324.20101 et seq.
5. Any and all areas on the flat portion of the Property south of McCoy Creek (i.e., those areas south of, and not in the immediate vicinity of, McCoy Creek), and any other areas deemed necessary by MDEQ, shall remain covered with an exposure barrier of landscaping or pavement acceptable to MDEQ. Additionally, the area of oil stained soils on the north bank of McCoy Creek south of building 32 shall be addressed with a cover or sheet piling, as deemed necessary by MDEQ. Access to the Property in the immediate vicinity of McCoy Creek, including its northern and southern banks, shall be restricted with fencing acceptable to MDEQ. For those areas of the Property where cover or sheet piling is required but not

already in place, Clark shall provide such cover or sheet piling. If the City disturbs the cover or sheet piling for any reason, including, but not limited to, utility work, then the City shall restore the cover or sheet piling to its original condition or take other action that is equally protective.

D. Parties' Acknowledgment. The Parties acknowledge that they have had the opportunity to review this Environmental Agreement, to discuss it thoroughly with counsel of their choice, that they fully understand its terms and agree and consent to be bound by it.

E. Final and Complete Agreement. This Agreement is final. This Agreement is not to be construed as an admission of liability. Further, the Parties agree that this document contains the entire agreement between the Parties regarding the subject matter of this Agreement.

F. Effective Date. This Environmental Agreement is effective on the first date that it has been signed by a person representing each Party.

G. Persons Bound. This Environmental Agreement binds Clark, the City, and their successors and assigns.

H. Signers' Representation. Each person signing this Environmental Agreement on behalf of a Party represents that he or she is authorized to bind that Party to this Environmental Agreement.

IN WITNESS WHEREOF, this instrument has been executed on the date indicated below by a
duly authorized representative.

CLARK EQUIPMENT COMPANY
a subsidiary of Ingersoll-Rand Company

By _____
Name (print):

Its _____

Dated: ____/____/____

THE CITY OF BUCHANAN.

By 1 David P. Hagen
Name (print): David P. Hagen
Its Mayor

Dated: 11 / 12 / 01

Exhibit 1
City of Buchanan (Recreational Parcel) Property Description

McCoy Creek Parcel:

LAND SITUATED IN THE CITY OF BUCHANAN, COUNTY OF BERRIEN, STATE OF MICHIGAN
AND IS DESCRIBED AS FOLLOWS:

FROM THE SOUTH QUARTER CORNER OF SECTION 25, TOWN 7 SOUTH, RANGE 18 WEST,
MEASURE
NORTH 00°10'00" WEST, 333.00 FEET; THENCE MEASURE NORTH 89°50' WEST, 100.00 FEET;
THENCE MEASURE SOUTH 00°10'00" EAST, 300.00 FEET TO THE NORTH LINE OF FRONT
STREET;
THENCE MEASURE NORTH 89°50' WEST, ALONG THE NORTH LINE OF FRONT STREET, 104.60
FEET;
THENCE MEASURE NORTH 00°10'00" WEST, 300.00 FEET;
THENCE MEASURE NORTH 89°50' WEST, 500.00 FEET;
THENCE MEASURE SOUTH 00°34'00" WEST, 299.87 FEET (PREVIOUSLY DESCRIBED AS SOUTH
00°10'00" WEST, 300.00 FEET);
THENCE MEASURE SOUTH 89°59'00" WEST, 65.67 FEET (PREVIOUSLY DESCRIBED AS NORTH
89°50'00" WEST, 67.70 FEET);
THENCE MEASURE NORTH 00°11'29" EAST, 299.82 FEET (PREVIOUSLY DESCRIBED AS NORTH
00°10'00" EAST, 299.71 FEET);
THENCE MEASURE NORTH 00°10'31" WEST, 665.09 FEET (PREVIOUSLY DESCRIBED AS NORTH
00°10'05" WEST, 664.80 FEET)
TO A CURVE TO THE LEFT; THENCE MEASURE ALONG SAID CURVE, 445.94 FEET, SAID CURVE
HAS A RADIUS OF 272.50 FEET AND
A CHORD WHICH BEARS NORTH 47°03'00" WEST, 397.79 FEET (PREVIOUSLY DESCRIBED AS
NORTH 47°02'52" WEST, 397.82 FEET)
THENCE MEASURE NORTH 57°00'13" WEST, 24.65 FEET;
THENCE MEASURE NORTH 89°46'52" WEST, 237.98 FEET (PREVIOUSLY DESCRIBED AS NORTH
89°46'25" WEST, 237.99 FEET);
THENCE MEASURE SOUTH 76°24'06" WEST, 175.40 FEET (PREVIOUSLY DESCRIBED AS SOUTH
76°20'21" WEST, 175.11 FEET);
THENCE MEASURE SOUTH 59°05'04" WEST, 232.22 FEET (PREVIOUSLY DESCRIBED AS SOUTH
59°08'36" WEST, 232.45 FEET);
THENCE MEASURE SOUTH 73°17'05" WEST, 306.18 FEET;
THENCE MEASURE SOUTH 55°06'49" WEST, 359.01 FEET (PREVIOUSLY DESCRIBED AS SOUTH
54°51'47" WEST, 358.10 FEET);
THENCE MEASURE SOUTH 29°18'02" WEST, 147.85 FEET (PREVIOUSLY DESCRIBED AS SOUTH
30°00'00" WEST, 148.00 FEET);
THENCE MEASURE SOUTH 69°31'30" WEST, 66.50 FEET;
THENCE MEASURE SOUTH 89°47'43" WEST, 194.54 FEET (PREVIOUSLY DESCRIBED AS NORTH
90°00'00" WEST, 193.26 FEET);
THENCE MEASURE NORTH 00°29'28" EAST, 66.00 FEET (PREVIOUSLY DESCRIBED AS NORTH
00°24'00" EAST, 66.00 FEET);
THENCE NORTH 89°47'43" EAST, 186.11 FEET (PREVIOUSLY DESCRIBED AS NORTH 90°00'00"
EAST, 186.02 FEET);
TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED;
THENCE NORTH 05°01'17" EAST, 81.61 FEET (PREVIOUSLY DESCRIBED AS NORTH 05°00'00"
EAST, 81.61 FEET);
THENCE NORTH 21°57'14" EAST, 88.79 FEET (PREVIOUSLY DESCRIBED AS NORTH 21°57'50"
EAST, 88.55 FEET);
THENCE NORTH 47°54'16" EAST, 232.11 FEET (PREVIOUSLY DESCRIBED AS NORTH 47°53'16"
EAST, 232.04 FEET);
THENCE NORTH 68°46'32" EAST, 412.72 FEET (PREVIOUSLY DESCRIBED AS NORTH 68°47'38"

EAST, 412.51 FEET);
THENCE NORTH 64°34'44" EAST, 546.42 FEET (PREVIOUSLY DESCRIBED AS NORTH 64°30'53"
EAST, 545.60 FEET);
THENCE NORTH 80°06'34" EAST, 258.95 FEET;
THENCE NORTH 33°24'13" EAST, 109.50 FEET;
THENCE SOUTH 21°26'00" EAST, 126.00 FEET;
THENCE SOUTH 21°26'00" EAST, 130.75 FEET;
THENCE SOUTH 89°28'59" WEST, 228.68 FEET;
THENCE ALONG A CURVE TO THE LEFT 171.25 FEET, SAID CURVE HAS A RADIUS OF 795.00
FEET,
AND A CHORD WHICH BEARS SOUTH 83°18'44" WEST, 170.91 FEET;
THENCE SOUTH 77°08'29" WEST, 118.39 FEET;
THENCE ALONG A CURVE TO THE LEFT 124.49 FEET, SAID CURVE HAS A RADIUS OF 490.00
FEET,
AND A CHORD WHICH BEARS SOUTH 69°51'47" WEST, 124.15 FEET;
THENCE SOUTH 62°35'06" WEST, 119.59 FEET;
THENCE ALONG A CURVE TO THE RIGHT 149.09 FEET, SAID CURVE HAS A RADIUS OF 825.00
FEET,
AND A CHORD WHICH BEARS SOUTH 67°45'43" WEST, 148.88 FEET;
THENCE SOUTH 72°56'20" WEST, 111.28 FEET;
THENCE ALONG A CURVE TO THE LEFT 219.02 FEET, SAID CURVE HAS A RADIUS OF 690.00
FEET,
AND A CHORD WHICH BEARS SOUTH 63°50'43" WEST, 218.10 FEET;
THENCE SOUTH 54°45'07" WEST, 155.16 FEET;
THENCE ALONG A CURVE TO THE LEFT 218.09 FEET, SAID CURVE HAS A RADIUS OF 490.00
FEET,
AND A CHORD WHICH BEARS SOUTH 42°00'05" WEST, 216.29 FEET;
THENCE ALONG A CURVE TO THE RIGHT 66.59 FEET, SAID CURVE HAS A RADIUS OF 70.00
FEET,
AND A CHORD WHICH BEARS SOUTH 56°30'11" WEST, 64.11 FEET;
THENCE NORTH 04°49'02" EAST, 16.85 FEET;
TO THE POINT OF BEGINNING.

Clark Park Parcels:

Clark Park Parcel, Assessor's Plat No. 1 to the City of Buchanan, according to the plat thereof,
recorded December 19, 1983, in Volume 24 of Plats, Page 2, Berrien County Records.

Parcel A:

PART OF LOT 2, ASSESSOR'S PLAT NO. 1, CITY OF BUCHANAN, BERRIEN COUNTY, MICHIGAN
DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE N. 0° 24' E.,
ALONG THE EASTERLY LINE OF RED BUD TRAIL NORTH, 130.50 FEET; THENCE N. 82° 30' E.
140.00 FEET; THENCE S. 0° 24' W., 140.33 FEET TO THE NORTHERLY LINE OF FRONT STREET;
THENCE S. 86° 31' W., ALONG SAID NORTERLY LINE, 138.99 FEET TO THE POINT OF BEGINNING.

New Parcel (to be transferred to the City from the DDA):

LAND SITUATED IN THE CITY OF BUCHANAN, COUNTY OF BERRIEN, STATE OF MICHIGAN
AND IS DESCRIBED AS FOLLOWS:

PART OF LOT 2, ASSESSOR'S PLAT NO. 1, CITY OF BUCHANAN, BERRIEN COUNTY, MICHIGAN
DESCRIBED AS: FROM THE SOUTHWEST CORNER OF SAID LOT 2, MEASURE NORTH 86°31'
EAST,

ALONG THE NORTHERLY LINE OF FRONT STREET, 138.99 FEET TO THE POINT OF BEGINNING
OF

THE LAND HEREIN DESCRIBED; THENCE NORTH 00°24' EAST, 140.33 FEET; THENCE
NORTH 45°30'40" EAST, 184.39 FEET; THENCE NORTH 25°00' WEST, 80.00 FEET TO THE
SOUTHERLY LINE OF DEWEY STREET; THENCE EAST, ALONG SAID SOUTHERLY LINE, 56.92
FEET;

THENCE NORTH 71°02'30" EAST, 66.00 FEET; THENCE EAST, 105.50 FEET TO THE EASTERLY
LINE

OF SAID LOT 2; THENCE SOUTH 9°51'30" EAST, ALONG SAID EASTERLY LINE, 349.76 FEET TO
THE NORTHERLY LINE OF FRONT STREET; THENCE NORTH 89°50' WEST, ALONG SAID
NORTHERLY

LINE, 241.30 FEET; THENCE SOUTH 0°24' WEST, 11.00 FEET; THENCE CONTINUING ALONG SAID
NORTHERLY LINE OF SAID FRONT STREET, SOUTH 86°31' WEST, 142.39 FEET TO THE POINT OF
BEGINNING.

Attachment C



**DECLARATION OF RESTRICTIVE COVENANT
FOR A RESTRICTED NONRESIDENTIAL REMEDIAL ACTION**

EGLE Reference No: (B)

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the **Berrien** 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 – River Street in the City of Buchanan, Berrien County, Michigan and legally described in Exhibit 1 (Parcel 11-58-0700-007-05-00) attached hereto (Property). The “Limits of Land or Resource Use Restrictions,” attached as Exhibit 2 (teal area in the attached map), 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 the **McCoy Creek Industrial Park Clark Parcel** 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 AACRS 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 benzene, toluene, naphthalene, acenaphthylene, benzo(a)pyrene, have been released and/or disposed on the Property from historical placement of foundry fill. Prior to the recording of this Restrictive Covenant, response activities have been undertaken to remove hazardous substances through source area removal. However, some hazardous substances remain present on the Property that require controls in the form of groundwater use restrictions, soil management restrictions, and building restrictions to prevent unacceptable exposure. An exposure barrier consisting of a 8 foot high fence has been placed around the historical fill as shown in Exhibit 2. In addition, arsenic concentrations remain present at the Property that exceeds the direct contact exposure pathway for residential use, but not recreational use.

NOW THEREFORE,

1. Declaration of Land Use or Resource Use Restrictions.

The City of Buchanan, 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) Land Use: The Owner shall prohibit all land uses that do not satisfy the nonresidential cleanup criteria on portions of the Property as described in Exhibit 2. 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.
- 2) The Owner shall prohibit the construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:
 - a) Wells and other devices constructed as part of a response activity for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of hazardous substances into the environment are permitted provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.
 - b) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.
- 3) The Owner shall prohibit the construction and/or use of any buildings or structures on the Property unless the Owner complies with one of the following:
 - a) The building or structure is an establishment used and classified for manufacturing use consistent with Section 31 – 33 – Manufacturing, of the North American Industry Classification System, United States, 2012, and the Owner complies with all of the provisions of Section 20120a(18) of the NREPA.
 - b) The Owner performs an evaluation of the potential for hazardous substances to volatilize into indoor air that demonstrates the protection of persons who may be present within any building or structure and complies with Section 20107a of the NREPA.
 - c) The Owner installs appropriate engineering controls on any building or structure designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the building or structure at concentrations greater than applicable criteria.
- 4) The 8 foot perimeter fence and 6-inch topsoil cover at the locations shown in Exhibit 2 serves to prevent exposures to contaminated soils at the Property. The

Owner shall prohibit removal or breaching of the fence and the excavation or other intrusive activity that could affect the integrity of the topsoil, 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 perimeter fence or topsoil cover, that could affect the integrity of the barrier, must be replaced with a fence and 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 fence and cover 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. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located within the portions of the Property designated in Exhibit 2 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 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. Enforcement of Restrictive Covenant. The State of Michigan, through EGLE, and Trane Technologies and the City of Buchanan may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

4. 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.

5. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

6. Additional Provisions. The provisions provided in the section below are not required for this restrictive covenant to be in compliance with Part 201 of the NREPA. These provisions were agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, EGLE may not enforce the Owner's obligations outlined in these provisions.

Access – A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.

IN WITNESS WHEREOF,

The City of Buchanan, the current and legal Owner of the Property, has caused this Restrictive Covenant to be executed on this **[enter day of the month]** day of **[enter month]**, **[enter year]**.

The City of Buchanan

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF **Michigan**
COUNTY OF **Berrien**

The foregoing instrument was acknowledged before me this [date] by [name of individual].

Notary Public Signature

Prepared by:
[Enter the name of the person preparing the document]

When recorded return to:

[Enter the address to return the document to once recorded with the Register of Deeds]

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 2

LIMITS OF LAND OR RESOURCE USE RESTRICTION