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John J. Gleason T20140010230
Genesee County Register MAIL

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DECLARATION OF RESTRICTIVE COVENANT

DEQ Reference No: RC-RD-201-13-042

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Genesee 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 northwest of the intersection of South Saginaw Street and Atherton Road, parcel number 41-19-454-014, known as the Great Lakes Tech Center (GLTC) Land in the City of Flint, Genesee County, Michigan, DEQ Facility ID: 25000683, and legally described in Exhibit 1 attached hereto ("Property") and illustrated in Figure E-1.

Response activities were implemented to address environmental contamination at the Property pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The response activities that were implemented to address environmental contamination are fully described in the Interim Remedial Action (IRA) Technical Memorandum prepared by O'Brien & Gere Engineers, Inc. (O'Brien & Gere) dated March 2011, and were conducted in accordance with the IRA Work Plan dated October 2010 prepared by O'Brien & Gere. The Michigan Department of Environmental Quality (DEQ) approved the IRA Work Plan on November 17, 2010, pursuant to Part 201 of NREPA.

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

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

The restrictions contained in this Restrictive Covenant are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the

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nonresidential cleanup criteria under Section 20120a(1)(b) of 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.

Exhibit 2 provides a survey (Figures E-2A, E-2B, and E-2C) of the Property that is subject to the land use or resource use restrictions specified herein.

Definitions

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

"DEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then current title holder of the Property or any portion thereof. The current Owner of the Property is RACER Properties LLC, the wholly-owned subsidiary of Revitalizing Auto Communities Environmental Response Trust ("Trust") (RACER Properties and the Trust are collectively referred to herein as "RACER"). RACER was established and assumed the rights, title, and interest of Motors Liquidation Company in and to the Property pursuant to an Environmental Response Trust Consent Decree and Settlement Agreement ("Settlement Agreement") entered by the U.S. Bankruptcy Court for the Southern District of New York on March 29, 2011, in the case of *In re Motors Liquidation Company*, etc. et al, Debtors, Case No. 09-50026 (REG), among the Debtors, the United States of America, certain states including the State of Michigan, the Saint Regis Mohawk Tribe, and EPLET, LLC, (not individually but solely in its representative capacity as Administrative Trustee of the Trust).

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

Summary of Response Activities

Subsurface soil and groundwater investigations at the Property indicated Substances of Potential Concern (SOPCs), identified as constituents that were detected above the DEQ Nonresidential Drinking Water (NRDW) protection criteria, present in subsurface soil include: benzene, 1,3 dichlorobenzene, ethylbenzene, methylene chloride, toluene, xylenes, arsenic, barium, and lead. Groundwater SOPCs, identified as constituents that were detected above the DEQ NRDW criteria, include: benzene, ethylbenzene, 4-methyl-2-pentanone, toluene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, vinyl chloride, xylenes, barium, and lead.

An Interim Remedial Action (IRA) was conducted at the Property in December 2010 to remove lead impacted soils, which were outside of the facility's perimeter fence in the OBG-219 soil boring area and posed a direct contact risk, and to remove volatile organic compound (VOC) impacted soils in the OBG-228 soil boring area that exceeded the generic soil saturation (C_{sat}) concentrations. The IRA activities were conducted in accordance with the procedures described in the DEQ approved IRA Work Plan (O'Brien & Gere, 2010). The IRA activities and findings are presented in the IRA Technical Memorandum (O'Brien & Gere, 2011) included as Appendix

B to the No Further Action (NFA) Report (O'Brien & Gere, 2011), which also documents the soil verification of remediation (SVR) monitoring that was implemented during the IRA activities.

A Property access restriction, consisting of a chain-link fence, forms a perimeter boundary around the Property to keep the public from unacceptable exposures through direct contact. Furthermore, concrete, gravel and/or asphalt cover a majority of the Property and provide additional protection for exposure to impacted soil. In addition, except for four locations (S-31, SB-107, SB-120 and OBG-227 or areas around these locations) that exhibit shallow (< 3 feet deep) impacted soils above the direct contact criteria (and are covered with either concrete or asphalt), the remaining samples containing impacted soils above the direct contact criteria were located at depths of greater than 3 feet; further reducing the risk to exposure.

NOW THEREFORE,

1. Declaration of Land Use or Resource Use Restrictions. The current Owner of the Property is RACER Properties LLC, the wholly-owned subsidiary of Revitalizing Auto Communities Environmental Response Trust ("Trust") (RACER Properties and the Trust are collectively referred to herein as "RACER"), hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. Prohibited Land Uses: The Owner shall prohibit uses of the Property that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 20120a(1)(b) of NREPA. Uses that are compatible with nonresidential cleanup criteria are generally described in Exhibit 3 (Allowable Uses). Cleanup criteria for land-use based response activities are located in the Government Documents Section of the State of Michigan Library.

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

(a) Any activity that could damage the perimeter fence thereby allowing uncontrolled access to the area within the perimeter fence shown on Figure E-2C in Exhibit 2. The Property is suitable for access as long as proper health and safety procedures are followed during site activities. The perimeter fence will be repaired within 30 days of discovery of defects that would allow uncontrolled access to the Property.

(b) Any excavation or other intrusive activity that could expose subsurface impacted soils or groundwater in the area within the perimeter fence shown on Figure E-2C in Exhibit 2, except during short-term construction or repair projects or for the purpose of further treating or remediating the subject contamination, and such short-term or remediation activities shall include the use of engineering controls to prevent the infiltration of water into the contaminated soil until the surface condition is repaired or replaced so that it provides at least an equivalent degree of protection as the original surface condition within 30 days of the completion of the work. Furthermore, the soils exposed by any such activities shall be managed in accordance with the requirements of section 20120c of NREPA and other applicable state and federal laws. The Property is suitable for construction of nonresidential (*i.e.*, industrial/commercial) buildings as long as proper health and safety procedures are followed during excavation activities, any excavated soils are managed in accordance with the requirements of section 20120c of NREPA and other applicable state and federal laws, and capping of the areas outside of any buildings is

completed (in lieu of the existing perimeter fence) and is consistent with preventing direct contact with any remaining impacted soils.

(c) Any construction of wells or other devices to extract groundwater for consumption, irrigation, dewatering, or any other use, except for wells and devices that are part of a DEQ-approved response activity.

(d) 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.

c. Prohibited Activities to Ensure the Effectiveness and Integrity of the Response Activity. The Owner shall prohibit activities on the Property that may interfere with any element of the response activities, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the response activities implemented at the Property. These prohibited activities include uncontrolled excavation or other activities which may potentially expose the subsurface soil, and compromising the integrity of the chain-link fence.

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

e. Soil Vapor Management. The Owner shall not build or occupy any building on the property without first completing one of the following: Option 1) Evaluate and determine, with DEQ concurrence, the absence of an unacceptable vapor intrusion risk to human health in any existing or newly constructed site buildings, or Option 2) Install, operate and maintain a vapor barrier and/or mitigation system designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into any building at concentrations greater than applicable criteria. Continued operation and maintenance of the vapor barrier and/or mitigation system is necessary until it is determined that it is no longer necessary consistent with Option 1 above. This prohibition does not apply to short-term occupancy of a building for purposes of construction, renovation, repair, or other short-term activities as long as adequate health and safety precautions are employed during these activities, and they are performed in compliance with Section 20107a of NREPA.

If Option 2 above is selected, the Owner shall install and thereafter maintain a vapor barrier and/or install and thereafter operate and maintain a vapor intrusion mitigation system in accordance with applicable standards and criteria at the time, for the purpose of mitigating the potentially impacted soil vapor below any human-occupied building constructed on the property after the date of this Restrictive Covenant until DEQ makes a determination that a vapor barrier or mitigation system is no longer necessary.

2. Access for DEQ. The Owner grants to DEQ and other governmental agencies and their respective designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the response activities, including the

right to take samples, inspect the operation of the response activities and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201.

3. Conveyance of Property Interest. The Owner shall provide notice to DEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the applicable provisions of Section 20116 of NREPA. The notice required to be made to the DEQ under this Paragraph shall be made to: Chief, Remediation Division, Michigan DEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, DEQ Reference Number RC-RD-201-13-042. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

4. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the DEQ or its successor determines that hazardous substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. This Restrictive Covenant may only be modified or rescinded with the written approval of the DEQ and RACER.

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

6. Limitation on RACER's Liability. RACER's and the Trustee's liability is limited by the terms and conditions of the Settlement Agreement, which are incorporated herein by reference.

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

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

9. Notification to Potentially Interested Parties. There are no easement holders on the Property; however, the City of Flint has sewers that cross the Property and Consumers Energy has a transformer on the southwest corner of the Property. Therefore notification of this Restrictive Covenant has been provided to the City of Flint and Consumers Energy prior to filing of the Restrictive Covenant. An example notification letter is included in Exhibit 4.

IN WITNESS WHEREOF, RACER Properties LLC has caused this Restrictive Covenant, RC-RD-201-13-042, to be executed on this 23rd day of January, 2014.

RACER PROPERTIES LLC

By: EPLET, LLC, a Delaware limited liability company, acting solely in its representative capacity as Non-Member Manager

By: Elliott P. Laws
Elliott P. Laws, not individually, but acting solely in his representative capacity as Managing Member of EPLET, LLC

STATE OF MICHIGAN
COUNTY OF Wayne

The foregoing instrument was acknowledged before me this 23rd day of January 2014 [date] by Elliott P. Laws, not individually, but acting solely in his capacity as Managing Member of EPLET, LLC, a Delaware limited liability company acting solely in its representative capacity as Non-Member Manager of RACER Properties LLC, a Delaware limited liability company, and in its capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust, a New York trust, on behalf of said limited liability company and said trust.

TRACIE L. NICHOLS
Notary Public, State of Michigan
County of Oakland
My Commission Expires 03-19-2017
Acting in the County of Wayne

Tracie J. Nichols
Notary Public Signature
Name of Notary Public Tracie L. Nichols
Notary Public, State of Michigan
County of Oakland
My Commission Expires: 3/19/17
Acting in the County of Wayne

This document is exempt from state and county transfer taxes pursuant MCL 207.505(a) and MCL 207.526(a).]

Prepared by and when recorded return to:

David Favero
RACER Trust Deputy Cleanup Manager – Michigan
500 Woodward Avenue, Suite 1510
Detroit, Michigan 48226

EXHIBIT 1

LEGAL DECIPTION OF PROPERTY

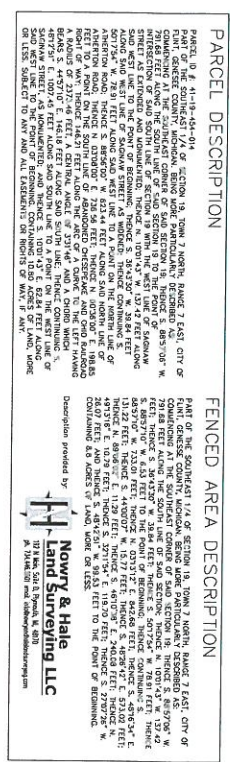
The Property is identified as parcel number 41-19-454-014 in the City of Flint, Genesee County, Michigan. The following legal description was provided by Nowry & Hale Land Surveying LLC, and is also displayed on the attached Site Features/Utility Map (Figure E-1).

PARCEL DESCRIPTION

Part of the southeast ¼ of Section 19, Township 7 North, Range 7 East, City of Flint, Genesee County, Michigan. Being more particularly described as: commencing at the southeast corner of said Section 19; thence S. 88°57'06" W. 791.68 feet along the south line of said Section 19 to the point of intersection of said south line of Section 19 with the west line of Saginaw Street as extended and monumented; thence N. 10°01' 43" W. 137.42 feet along said west line to the point of beginning; thence S. 36°43'30" W. 39.84 feet along said west line of Saginaw Street as widened; thence continuing S. 50°17'54" W. 78.91 feet along said west line to a point on the north line of Atherton Road; thence S. 88°56'00" W. 823.44 feet along said north line of Atherton Road; thence N. 03°08'00" E. 736.56 feet; thence N. 00°36'00" E. 198.85 feet to a point on the south line of abandoned Chesapeake and Ohio Railroad right of way; thence 146.21 feet along the arc of a curve to the left having a radius of 2373.46 feet, a central angle of 3°31'46" and a chord which bears S. 44°57'10" E. 146.18 feet along said south line; thence continuing S. 48°12'51" E. 1007.45 feet along said south line to a point on the west line of Saginaw Street, as monumented; and thence S. 10°01'43" E. 62.84 feet along said west line to the point of beginning. Containing 10.80 acres of land, more or less. Subject to any and all easements or rights of way, if any.

LEGAL DESCRIPTION OF FENCED IN AREA

Part of the southeast ¼ of Section 19, Township 7 North, Range 7 East, City of Flint, Genesee County, Michigan. Being more particularly described as: Commencing at the southeast corner of said Section 19; thence S. 88°57'06" W. 791.68 feet along the south line of said Section 19; thence N. 10°01'43" W. 137.42 feet; thence S. 36°43'30" W. 39.84 feet; thence S. 50°17'54" W. 78.91 feet; thence S. 88°57'10" W. 6.53 feet to the point of beginning; thence continuing S. 88°57'10" W. 733.01 feet; thence N. 03°13'12" E. 842.68 feet; thence S. 48°16'34" E. 131.22 feet; thence S. 44°00'07" W. 15.77 feet; thence S. 48°26'42" E. 573.02 feet; thence N. 89°06'02" E. 11.29 feet; thence S. 46°10'38" E. 240.08 feet; thence N. 49°13'16" E. 10.79 feet; thence S. 32°11'54" E. 119.70 feet; thence S. 27°07'26" W. 26.07 feet; and thence S. 48°42'51" W. 99.53 feet to the point of beginning. Containing 8.8 acres of land, more or less.



- [illegible]

15388-48632.005
JANUARY 2013

EXHIBIT 2

SURVEY OF THE PROPERTY

The attached Figures E-2A and 2B provide a legal survey of the Property. The attached Figure E-2C provides a legal survey of the area within the perimeter fence.

CERTIFICATE OF SURVEY



SEE ATTACHED SHEET 4



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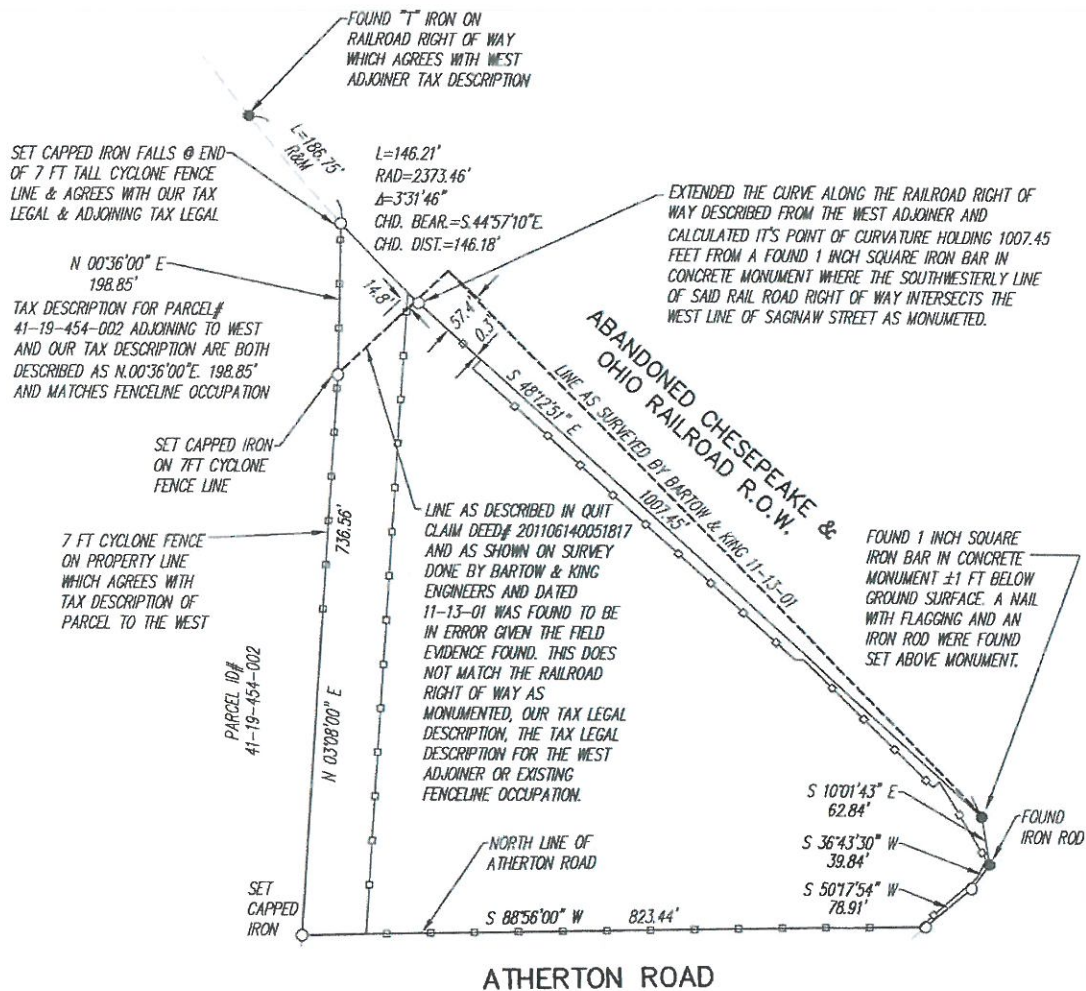
**Nowry & Hale
Land Surveying LLC**

192 N Main, Suite D, Plymouth, MI, 48170
ph. 734.446.5501 email. info@owryandhaleandsurveying.com

DATE:	10/18/2012	CLIENT: O'BRIEN & GERE ENGINEERS INC. 37000 GRAND RIVER AVE., SUITE 260, FARMINGTON HILLS, MI 48335
PROJ. #	012-133	
DWG BY:	GAV	
CHKD BY:	MJN	
SCALE:	1" = 200'	
FB#-PG#	002-042	

CERTIFICATE OF SURVEY

DETAIL OF NORTHWEST AREA OF PROPERTY



LEGEND

PROPERTY LINE	———
SECTION LINE	———
EASEMENT LINE	———
PARCEL LINE	———
FENCE	—+—+—+—
FOUND IRON	●
SET IRON	○
SEC. COR.	⊕



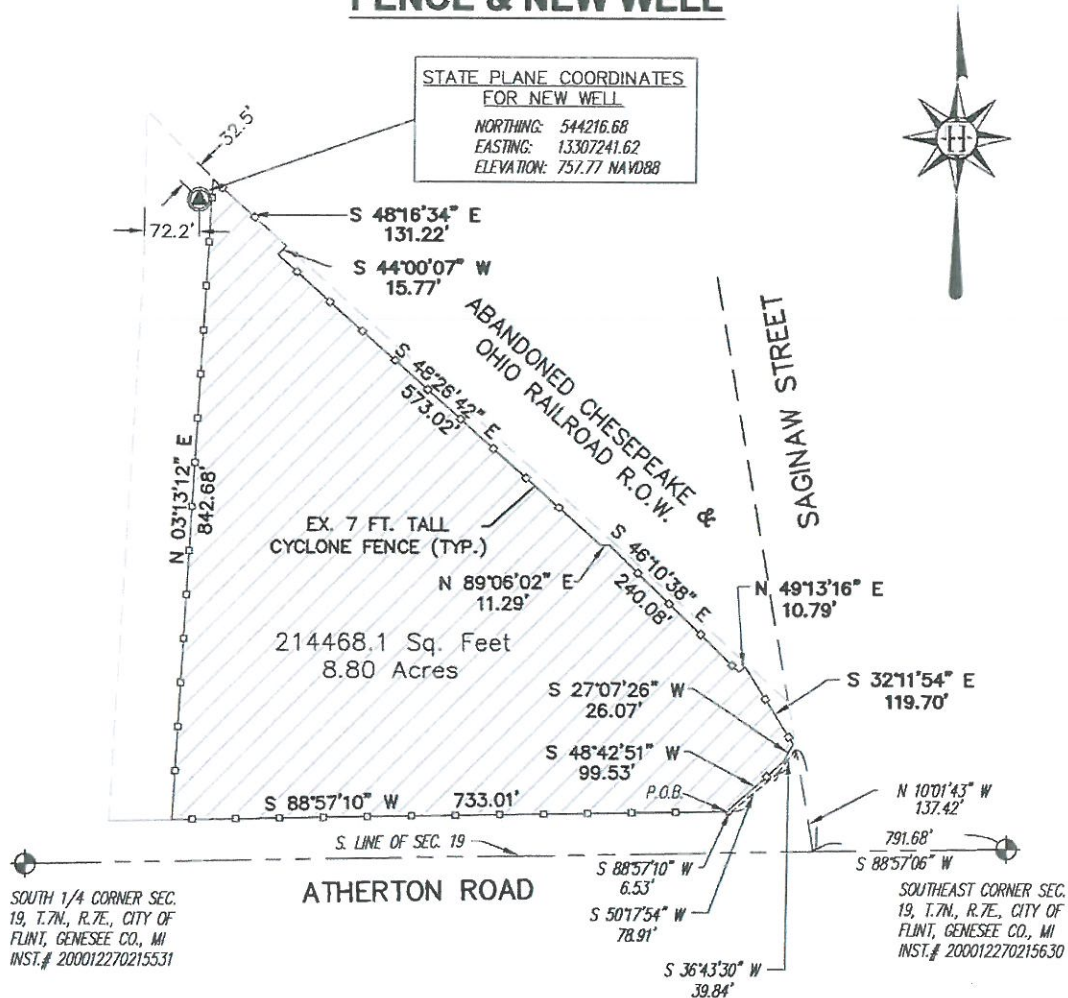
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DWG BY:	GAV	37000 GRAND RIVER AVE., SUITE
CHKD BY:	MJN	260, FARMINGTON HILLS, MI 48335
SCALE:	1"= 200'	
FB#-PG#	002-042	

CERTIFICATE OF SURVEY

DETAIL OF PERIMETER FENCE & NEW WELL



LEGAL DESCRIPTION OF FENCED IN AREA

PART OF THE SOUTHEAST 1/4 OF SECTION 19, TOWN 7 NORTH, RANGE 7 EAST, CITY OF FLINT, GENESSEE COUNTY, MICHIGAN. BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 19; THENCE S. 88°57'06" W. 791.68 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE N. 10°01'43" W. 137.42 FEET; THENCE S. 36°43'30" W. 39.84 FEET; THENCE S. 50°17'54" W. 78.91 FEET; THENCE S. 88°57'10" W. 6.53 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S. 88°57'10" W. 733.01 FEET; THENCE N. 03°13'12" E. 842.68 FEET; THENCE S. 48°16'34" E. 131.22 FEET; THENCE S. 44°00'07" W. 15.77 FEET; THENCE S. 48°26'42" E. 573.02 FEET; THENCE N. 89°06'02" E. 11.29 FEET; THENCE S. 46°10'38" E. 240.08 FEET; THENCE N. 49°13'16" E. 10.79 FEET; THENCE S. 32°11'54" E. 119.70 FEET; THENCE S. 27°07'26" W. 26.07 FEET; AND THENCE S. 48°42'51" W. 99.53 FEET TO THE POINT OF BEGINNING. CONTAINING 8.8 ACRES OF LAND, MORE OR LESS.



**Nowry & Hale
Land Surveying LLC**

192 N Main, Suite D, Plymouth, MI, 48170
 ph. 734.446.5501 email. info@nowryandhalelandsurveying.com

DATE:	10-18-2012	CLIENT:
PROJ. #	012-133	O'BRIEN & GERE ENGINEERS INC. 37000 GRAND RIVER AVE., SUITE 260, FARMINGTON HILLS, MI 48335
DWG BY:	GAV	
CHKD BY:	MJN	
SCALE:	1" = 200'	
FB#-PG#	002-042	

EXHIBIT 3

DESCRIPTION OF ALLOWABLE USES

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

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

EXHIBIT 4

EXAMPLE NOTIFICATION LETTER

There are no official easement holders on the Property; however, the City of Flint does have sewers that cross the Property, and Consumers Energy does own a transformer on the southwest corner of the Property. Therefore notification of this Restrictive Covenant has been provided to the City of Flint and Consumers Energy prior to filing this Restrictive Covenant. A sample notification letter is provided on the following page.



December 19, 2013

The Honorable Dayne Walling, Mayor
City of Flint
City Hall
1101 S. Saginaw Street
Flint, Michigan 48502

RE: Notification of RACER Filing a Restrictive Covenant
Northwest of the Intersection of South Saginaw Street and Atherton Road

Dear Mr. Mayor;

The purpose of this letter is to notify the City of Flint that RACER intends to file, on or about January 31, 2014, a Restrictive Covenant (RC) on property at the above referenced address (Property) owned by RACER. The City of Flint is being provided with this notification because RACER understands that there are City of Flint sanitary and storm sewers located under a portion of the property (See Attachment 1). RACER is not aware of any formal easements for these sewers.

A final draft of the complete RC is provided as Attachment 2 to this letter for your information. The purpose of the RC is to protect public health, safety, and welfare, and the environment by prohibiting activities that could result in unacceptable exposure to environmental contamination present at the Property. Specifically:

- 1) Uses of the property that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 20120a(1)(b) of the NREPA are prohibited.
- 2) Activities on the property that may result in exposures to hazardous substances at the Property are prohibited. These prohibited activities include:
 - a. Any activity that could damage the perimeter fence thereby allowing uncontrolled access within the areas shown on Figure E-2 in Exhibit 2. The Property is suitable for access as long as proper health and safety procedures are followed during site activities. The perimeter fence will be repaired within 30 days of discovery of defects that would allow uncontrolled access to the Property.
 - b. Any excavation or other intrusive activity that could expose subsurface impacted soils or groundwater in the area shown on Figure E-2 in Exhibit 2, except during short-term construction or repair projects or for the purpose

of further treating or remediating the subject contamination, and such short-term or remediation activities shall include the use of engineering controls to prevent the infiltration of water into the contaminated soil until the surface condition is repaired or replaced so that it provides at least an equivalent degree of protection as the original surface condition within 30 days of the completion of the work. Furthermore, the soils exposed by any such activities shall be managed in accordance with the requirements of section 20120c of NREPA and other applicable state and federal laws. The Property is suitable for construction of nonresidential (*i.e.*, industrial/commercial) buildings as long as proper health and safety procedures are followed during excavation activities, any excavated soils are managed in accordance with the requirements of section 20120c of NREPA and other applicable state and federal laws, and capping of the areas outside of any buildings is completed (in lieu of the existing perimeter fence) and is consistent with preventing direct contact with any remaining impacted soils.

- c. Any construction of wells or other devices to extract groundwater for consumption, irrigation, dewatering, or any other use, except for wells and devices that are part of a DEQ-approved response activity.
 - d. 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) Activities on the Property that may interfere with any element of the response activities, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the response activities implemented at the Property are prohibited. These prohibited activities include uncontrolled excavation or other activities which may potentially expose the subsurface soil, and compromise the integrity of the chain-link fence.
 - 4) Management of all contaminated soils, media and/or debris located on the property in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws is required.
 - 5) Construction of any building on the property is prohibited without first completing one of the following: Option 1) Evaluate and determine, with DEQ concurrence, the absence of an unacceptable vapor intrusion risk to human health in any existing or newly constructed site buildings, or Option 2) Install, operate and maintain a vapor barrier and/or mitigation system designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into any building at concentrations greater than applicable criteria. Continued operation and maintenance of the vapor barrier and/or mitigation system is necessary until it is determined that it is no longer necessary consistent with Option 1 above. This prohibition does not apply to short-term occupancy of a building for purposes of construction, renovation, repair, or other short-term activities as long as adequate health and safety precautions are employed during these activities, and they are performed in compliance with

Section 20107a of NREPA. If Option 2 above is selected, the Owner shall install and thereafter maintain a vapor barrier and/or install and thereafter operate and maintain a vapor intrusion mitigation system in accordance with applicable standards and criteria at the time, for the purpose of mitigating the potentially impacted soil vapor below any human-occupied building constructed on the property after the date of this Restrictive Covenant until DEQ makes a determination that a vapor barrier or mitigation system is no longer necessary.

- 6) DEQ and other governmental agencies and their respective designated representatives shall have the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the response activities, including the right to take samples, inspect the operation of the response activities and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201.

Please let us know if you have any questions or comments regarding this RC.

Sincerely,



David Favero
Deputy Cleanup Manager for Michigan
dfavero@racertrust.org
734.879.9525

- C: Howard Croft, City of Flint, Director of Infrastructure and Development
Jim Innes, MDEQ (via e-mail only)
Grant trigger, RACER (via e-mail only)
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Attachment 1 - Figure 1

Attachment 2 - Declaration of Restrictive Covenant