

**DECLARATION OF RESTRICTIVE COVENANT
TSCA ISSUES**

Facility MID Number: *MID 980 587 893*

This Declaration of Restrictive Covenant (Restrictive Covenant) is made to protect public health, safety, or welfare, or the environment pursuant to the provisions of Part 111, Hazardous Waste Management, Michigan Compiled Laws (MCL) 324.11101, *et seq.* (Part 111); the applicable Sections of Part 201, Environmental Remediation, MCL 324.20101, *et seq.* (Part 201) of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.101, *et seq.*; the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*; and the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* (TSCA), and the administrative rules promulgated pursuant to these statutes.

This Restrictive Covenant is made on July 23, 2024 by Yankee Air Force, Incorporated, d/b/a Michigan Flight Museum, (f/k/a Yankee Air Museum) (MFM) the Grantor, the current fee title holder of the Property, such Property legally described in Exhibit 1 and depicted in Exhibit 2, the location of which is located at 1 Liberator Way, Ypsilanti, MI in the Townships of Ypsilanti and Van Buren, Washtenaw and Wayne Counties, respectively, State of Michigan ("Property" or "Site"), for the benefit of the Grantee, State of Michigan, Department of Environment, Great Lakes and Energy (EGLE), the address of which is 525 West Allegan Street, P.O. Box 30473, Lansing, MI 48909-7973.

This Restrictive Covenant has been prepared and recorded to prevent damage to or disturbance of any component of the constructed remedy/corrective measures, to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination, and to provide notification of polychlorinated biphenyls ("PCB") Remediation Waste present at the Property. Recording of this Restrictive Covenant is designed to prevent damage or disturbance to below grade electrical substations that have been covered, enclosed or sealed in place to contain potential migration or contact with PCB wastes; to restrict future use of the areas where PCB Remediation Wastes have been disposed of on the Property to industrial (non-residential) land use; and to require any future work in areas where PCB Remediation Wastes have been disposed

of on the Property by or for the Owner, be conducted in conformance with TSCA, and all other relevant state and federal laws.

The land and resource use restrictions contained in this Restrictive Covenant are based upon information available to EGLE and the USEPA at the time this document was recorded. Future changes in the environmental condition of the Property or changes in the PCB cleanup criteria developed; the discovery of additional PCB Remediation Wastes or PCB Bulk Product Wastes at the Property that were not known at the time this document was recorded; or use of the Property in a manner inconsistent with the restrictions described herein – each may result in this Restrictive Covenant not being protective of public health, safety, or welfare, or the environment. Additional restrictions may become necessary. Information pertaining to environmental conditions of the Property and Response Activities undertaken at the Property is on file with EGLE, Remediation and Redevelopment Division and USEPA, Region 5.

Based on the results of Site investigations, the Property contains hazardous substances in soil and groundwater in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of NREPA, 1994 PA 451, as amended and above TSCA levels per 40 CFR Part 761.3.

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 requirements of Section 20107a of NREPA.

Definitions

“Grantee” shall mean EGLE and USEPA, their respective successor entities, and those persons or entities acting on their behalf.

“Grantor” shall mean Yankee Air Force, Incorporated, a Michigan non-profit corporation (d/b/a Michigan Flight Museum (MFM)), the current title holder of the Property at the time this Restrictive Covenant was executed, or any future title holder of the Property or some relevant sub-portion of the Property.

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

“NREPA” shall mean the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*

“Owner” means at any given time the then-current fee title holder(s) of the Property or any portion thereof, including the fee title holder’s lessees and those persons or entities authorized to act on its behalf.

“Part 111” shall mean Part 111, Hazardous Waste Management, of NREPA, in effect at the time of the recording of this restrictive covenant.

“Part 201” shall mean Part 201, Environmental Remediation, of NREPA.

“PCB Remediation Waste” shall mean waste containing PCBs as the result of a spill, release or other unauthorized disposal as defined in 40 CFR 761.3 and where cleanup and disposal options are described in 40 CFR 761.61.

“TSCA” shall mean the Toxic Substances Control Act, as amended, 15 U.S.C. §2601 *et seq.*. Specifically, the TSCA PCB regulations at 40 CFR 761.

“TSCA Restricted Area” shall mean that portion of the site as described in the TSCA deed restricted area in Exhibit 3.

“Settlement Agreement” shall mean the Environmental Response Trust Consent Decree and 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).

“Trust” shall mean the Revitalizing Auto Communities Environmental Response Trust, a trust formed under the laws of the State of New York, the Sole Beneficiary of which is the United States of America.

“USEPA” shall mean the United States Environmental Protection Agency, its successor entities, and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 3, Definitions, of NREPA, Part 111, Part 201, or the Part 111 and Part 201 Administrative Rules, or TSCA and 40 CFR Part 761, shall have the same meaning in this document as in those statutes and rules as on the date this Restrictive Covenant is made.

Summary of Response Activity/Corrective Measures

The original Willow Run Powertrain Plant (of which the Property covered by this Amended Restrictive Covenant is a portion of) was originally developed in the 1940's as a bomber production plant. Over its long history (through 2010), the plant was used for various manufacturing operations. Environmental investigations at the Site have included the review of historical information and investigation of potential areas of impacts based on historical operations and overall plant coverage. A significant portion of the area beneath the former plant building footprint is impacted with Light Non-aqueous Phase Liquid (LNAPL) (~40 acres of the 80 acre slab). The LNAPL body is stable/non-migrating and mostly consists of unrecoverable residual oils including cutting oils, transmission fluids and lubricating oils. There are some localized areas of elevated levels of chlorinated volatile organic compounds in soils and/or groundwater south of the former plant building that were identified during investigations. Contaminants are present above drinking water and GSI criteria in groundwater in various areas of the site. As a corrective

measure, groundwater collection and treatment system designed to mitigate potential offsite migration of impacted groundwater has been proposed.

The majority of the primary manufacturing plant was demolished beginning in the fall of 2013 with completion in the spring of 2015. As the demolition work was being completed a previously unknown below grade former electrical power distribution system was discovered throughout the Site. Subsequent investigations and field surveys have determined that portions of this system contain historical power cables containing PCBs at <50 ppm, which were sampled and determined not to be TSCA regulated PCB Bulk Product Wastes, and former underground substations impacted with PCBs that were determined to be PCB Remediation Wastes and are TSCA regulated (See Exhibit 3).

NOW THEREFORE,

Declaration of Land Use or Resource Use Restrictions

Grantor as current fee title holder of the Property, hereby declares and covenants that the Property shall be subject to those restrictions on use described below, and intends that said restrictions and covenants shall run with the land, and may be enforced in perpetuity against the Grantor and future Owners by the following entities: (1) the Trust; (2) EGLE; and (3) USEPA.

1. Land Use Prohibitions. The TSCA Restricted Area has been used for disposal of PCB Remediation Waste and the Owner shall prohibit all uses of the Property not in accordance with industrial (non-residential) use. The Owner is required to apply to USEPA at 77 West Jackson, Chicago, IL 60604, for approval to change this Land Use restriction, due to the risk based approval under 40 CFR 761.61(c).
2. Notification of PCB Remediation Waste. This provision provides the notification required by the risk based approval under 40 CFR Part 761.61(c) (See Exhibit 5) that PCB Remediation Waste is present in the TSCA Restricted Area. The definition and limits of the TSCA Restricted Area and the features included within the TSCA Restricted Area shall be as defined and approved by USEPA or modified as approved by USEPA. The PCB Remediation Waste is present at:
 - a. The former below grade electrical substations and equipment rooms located a minimum of 8 inches beneath the surface of the original concrete floor as depicted on Exhibits 4a, 4b, and 4c at unknown concentrations. The former below grade electrical substations and equipment rooms have been filled with flowable fill/concrete to entomb the PCB contamination remaining on the concrete, preventing any future exposure. The cap/cover is the ceiling of the former substation room located at elevations 716.3 amsl (substation J), and 715.6 amsl (substations K&N). The concrete and fill materials below these elevations within the former below grade substations (entombing the substations) must be maintained in perpetuity per risk based approval under 40 CFR Part 761.61(c) and the provisions of this Restrictive Covenant.

3. Activities Prohibited. Owner shall prohibit activities in the TSCA Restricted Area that may damage or disturb any component of the constructed remedy or that may result in exposures to hazardous substances above the nonresidential cleanup criteria. These prohibited activities include:
 - a. Activities that interfere with, disrupt, damage, disturb or cause removal of the ceiling of former substation room (cap/cover) located at an elevation of 716.3 amsl (substation J), and 715.6 amsl (substations K&N); the flowable fill/concrete in the former substation rooms and/or entombed concrete (walls/floor of the former substation). If these activities occur, the Owner shall notify USEPA Regional PCB Coordinator immediately. Contact information is provided in Paragraph 8.
4. Contaminated Soil Management. The Owner shall manage contaminated soils, media and/or debris and all other soils located on the Property in accordance with the requirements of Part 111 and RCRA Subtitle C, the administrative rules promulgated pursuant to Part 111 and RCRA, TSCA (40 CFR 761), and all other relevant state and federal laws, including but not limited to MCL 324.20120c; this provision regarding contaminated soil management also applies in the event that the Owner elects to remove any slabs, pavement, or other impervious surface on the Property.
5. Compliance with this Restrictive Covenant and Applicable Due Care Obligations/Health and Safety Requirement. The Owner will at all times comply with the conditions and restrictions of this Restrictive Covenant and the applicable due care obligations under Section 20107a of NREPA and CERCLA, 42 U.S.C. § 9601 *et seq.* Owner agrees to maintain records of its applicable due care activities to the extent required by Section 20107a, and make copies of any such records available upon reasonable request from Grantor or the EGLE. The Owner shall follow and require that all contractors follow appropriate Health and Safety requirements for all intrusive excavation activities performed at the Property.
6. Access. The Owner shall grant to EGLE and USEPA, and the Trust the right to enter the TSCA Restricted Area at the Property at reasonable times for the purpose of determining and monitoring compliance with this Restrictive Covenant, including the right to take samples, inspect the operation of corrective measures, and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with TSCA and other applicable federal laws and regulations. The Owner may also grant access to the EGLE and USEPA to other parts of the Property not described in Exhibit 3 if such access is necessary and appropriate to monitor compliance with this Restrictive Covenant and will not interfere in any material respect with the development of the Property or ongoing business operations and activities of the Owner or any tenant on the Property. Where a request for access includes accessing areas where proprietary activities and operations are occurring, both the Owner and any affected tenant must consent to the request, which

consent may not be unreasonably withheld, conditioned or delayed. Nothing herein shall be construed as limiting or restricting, in any manner, the Trust's, EGLE's and USEPA's access rights under any Environmental Easement Agreement recorded subsequent hereto.

7. Transfer of Interest. The Grantor and any Owner shall provide notice to EGLE, USEPA, and the Trust at the addresses provided in Paragraph 8 of the Grantor's or Owner's intent to transfer any interest in the Property, or any portion thereof, 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 Grantor or any Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and the applicable provisions of Section 20116 of the NREPA. Grantor and any Owner shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT DATED _____ [month, day, year], AND RECORDED WITH THE _____ COUNTY REGISTER OF DEEDS, LIBER _____, PAGE _____.

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.

8. Approvals; Notices Any approval that is required to be made by, or obtained from, the Trust will not be unreasonably withheld by the Trust. If a dispute over any such approval occurs, the USEPA or EGLE shall make the final approval decision. Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Restrictive Covenant shall be made in writing and shall: include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant; include the Michigan Facility Identification Number: MID 980 587 893 and EGLE Reference Numbers: RC--OWMRP-111; and be served either personally, or sent via first class mail, postage prepaid or email, as follows:

For EGLE:

Remediation and Redevelopment Division Chief
Michigan Department of Environment, Great Lakes and Energy
P.O. Box 30426
Lansing, MI 48909-7926

and

Hazardous Waste Section Chief
Office of Materials Management Division
Michigan Department of Environment, Great Lakes and Energy

P.O. Box 30241
Lansing, MI 48909-7741

For USEPA:

Director
Land, Chemicals and Redevelopment Division (DR-8J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

with a copy to:

USEPA Regional PCB Coordinator
<https://www.epa.gov/pcbs/epa-regional-polychlorinated-biphenyl-pcb-programs#pcb%20coordinator>

Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

For MFM

President/CEO
47884 D Street
Belleville, MI 48112

For the Trust:

Michigan Cleanup Manager
RACER Trust
P O BOX 43859
Detroit, MI 48243

9. **Term.** This Restrictive Covenant shall run with the Property, and shall be binding on the Owner, and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control.
10. **Enforcement.** The Trust, EGLE and USEPA are entitled to enforce the restrictions and covenants of this Restrictive Covenant by specific performance or other legal action in a court of competent jurisdiction against Grantor or any subsequent Owners of the part of the Property that includes the TSCA Restricted Area. Grantor, on behalf of itself, and its successors in title, intends and agrees that EGLE and USEPA are entitled to enforce the restrictions and covenants in this Restrictive Covenant by specific performance or other legal action in a court of competent jurisdiction against Grantor, as Owner, and thereafter against subsequent Owners of the part of the Property that includes the TSCA Restricted

Area. All remedies available hereunder shall be in addition to any and all other remedies at law or equity.

11. Modification/Release/Rescission. Grantor or Owner may request in writing to EGLE, USEPA, and the Trust at the addresses provided in Paragraph 8, modifications to, or release or rescission of this Restrictive Covenant. This Restrictive Covenant may be modified, released or rescinded only with the written approval of EGLE and USEPA, and the Trust. Any approved modification to, or release or rescission of, this Restrictive Covenant shall be filed with the appropriate Registrar of Deeds by the Grantor or Owner and a certified copy of such modification or release or rescission returned to EGLE USEPA, and the Trust at the addresses provided in Paragraph 8.
12. Severability. If any provision of this Restrictive Covenant is held to be invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions of this Restrictive Covenant and all other provisions shall continue to remain in full force and effect.
13. Settlement Agreement and Law. Nothing herein shall be construed as altering or in any way affecting the liability or obligations of the Trust, RACER Properties LLC, and/or the Administrative Trustee under the Settlement Agreement or under applicable law.
14. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.
15. Compliance with this Restrictive Covenant and Applicable Due Care Obligations. The Owner shall at all times comply with the conditions and restrictions of this Declaration of Restrictive Covenant and the applicable Due Care obligations under Section 20107a of NREPA, MCLA 324.20107a, and under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601, *et seq.* Owner agrees to maintain records of its activities to the extent required by Section 20107a and make copies of any such records upon reasonable request from Grantor or EGLE or USEPA.
16. Miscellaneous.
 - a) Controlling Law. The interpretation and performance of this Restrictive Covenant shall be governed by the laws of the United States as to the obligations referred to in the Settlement Agreement and the laws and regulations of the State of Michigan for all other purposes hereunder (without reference to choice of laws principles thereof). The right to enforce the conditions and restrictions in this Restrictive Covenant are in addition to other rights and remedies that may be available, including, not limited to, administrative and judicial remedies under TSCA.
 - b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant shall be liberally construed to effect the purpose of this Restrictive Covenant, and the policy and purpose of TSCA. If any

provision of this Restrictive Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Restrictive Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

- c) Entire Agreement. This Restrictive Covenant and its attachments and appendices supersedes all prior discussions, negotiations, understandings, or agreements relating to the TSCA matters addressed herein, all of which are merged herein.

[signature page follows]

IN WITNESS WHEREOF, Yankee Air Force, Incorporated has caused this Restrictive Covenant, ~~RC-OWMRP 111~~, to be executed on this 17th day of July, 2024.
28

Yankee Air Force, Incorporated
a Michigan non-profit corporation
(dba Michigan Flight Museum)

By: [Signature]
Kevin Walsh
Its President/CEO

DISTRICT/STATE OF Michigan)
CITY/COUNTY OF Wayne) ss.

The foregoing instrument was acknowledged before me this 17 day of July, 2024, by Kevin Walsh, the President and Chief Executive Officer of Yankee Air Force, Incorporated, a Michigan non-profit corporation, on behalf of the corporation.

[Signature]
Notary Public Signature

Name of Notary Public Rebecca Folson
Notary Public, District/State of Wayne Michigan
City/County of Wayne
My Commission Expires: Oct 29 2029
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/Return to:
Dawda, Mann, Mulcahy & Sadler, PLC
Dawda Mann Building
39533 Woodward Avenue, Suite 200
Bloomfield Hills, Michigan 48304
Attn: Brian Considine

LIST OF EXHIBITS

Exhibit 1 Legal Description of Property
Exhibit 2 Survey of Property
Exhibit 3 TSCA Restricted Area
Exhibit 4a-c Substations J, K & N

Original drawings can be requested from the following:

GHD Services Inc.
26850 Haggerty Road
Farmington Hills, Michigan 48331

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

Real property in the Township of Ypsilanti, County of Washtenaw, State of Michigan, described as follows:

PT E 1/2 SEC 12, T. 3 S., R. 7 E., YPSILANTI TWP, WASHTENAW CO, MICHIGAN DESCRIBED COMM NE COR SEC 12 AND RUNNING TH S 01-27-26 W ALG THE E LI OF SD SEC 12, 33.00 FT TO THE NW COR OF SEC 7, T. 3 S., R. 8 E., VAN BUREN TWP, WAYNE CO, MICHIGAN; TH N 87-37-30 E, ALG THE N LI OF SD SEC 7, 33.07 FT; TH S 01-27-26 W, ALG A LI PARALLEL WITH THE LI COMM TO SD SECS 7 AND 12, 525.40 FT TO APT; TH N 89-58-35 W, CROSSING SD COMM SEC LINE, 1027.30 FT TO A PT IN THE INTERIOR OF SD SEC 12; TH S 00-01-25 W 892.33 FT TO APT; TH S 44-58-35 E 253.84 FT TO APT; TH S 89-58-35 E, 787.98 FT PT ON THE E LI OF SD SEC 12; TH S 01 27-26 W 574.39 FT TO THE POB; PRO TH FROM SD PT OF BEG, S 01-27-26 W, ALG THE E LI OF SD SEC 12, 477.35 FT TO THE E 1/4 COR OF SD SEC 12; TH S 00-02-43 W, ALG THE E LI OF SD SEC 12, 352.56 FT TO APT; TH S 89-42-46 W 141.66 FT TO APT; TH N, 40.00 FT TO APT; TH N 75-54-30 W 404.79 FT TO APT; TH W, 512.11 FT TO APT; TH N 00-02-00 E 418.67 FT TO APT; TH S 89-58-00 E 443.50 FT TO APT; TH N 45-02-00 E 69.30 FT TO APT; TH N 00-02-00 E 224.85 FT TO APT; TH S 89-58-00 E 565.84 FT TO THE POB.

Part of Tax Parcel No. K-11-12-100-005

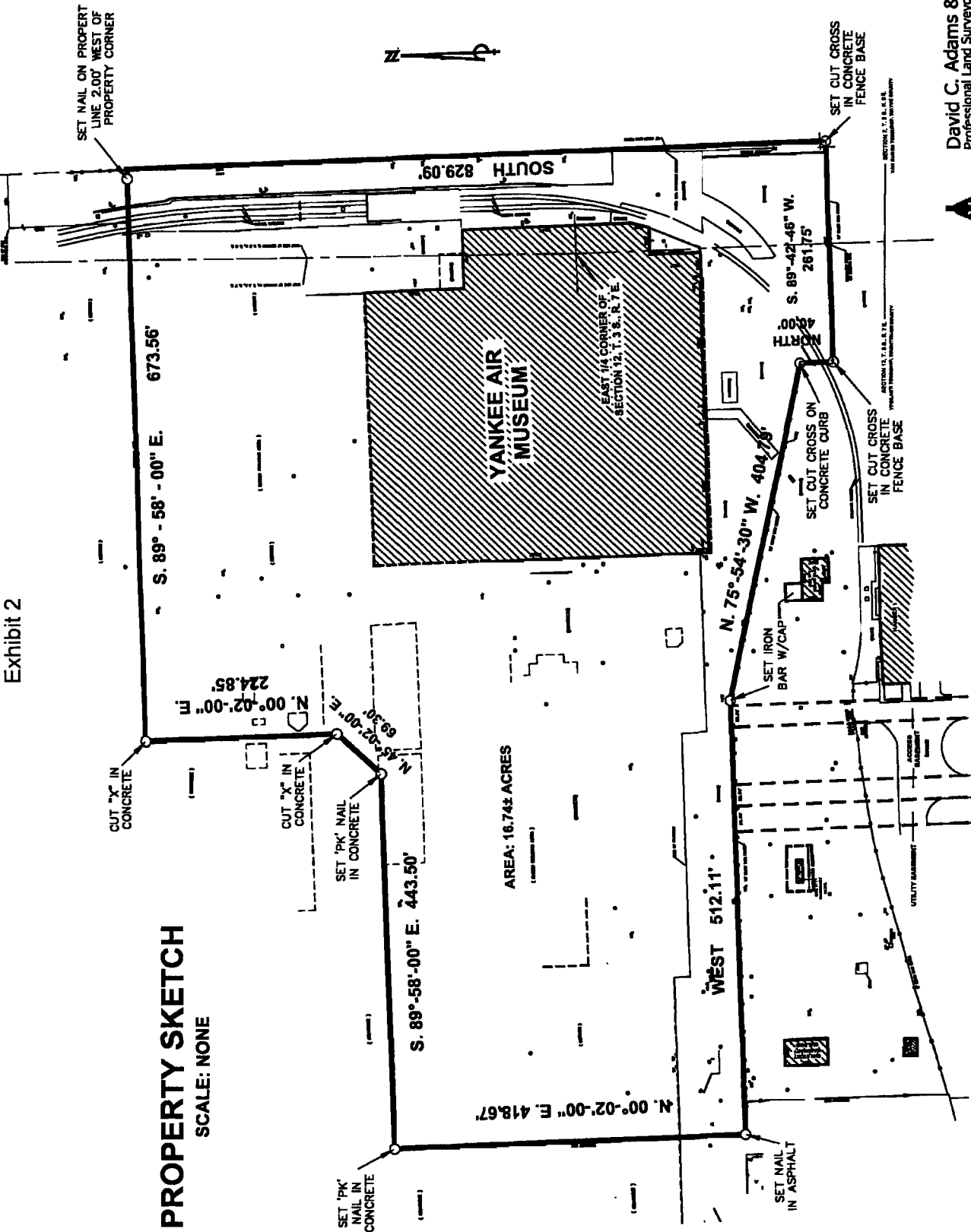
and

Real property in the Township of Van Buren, County of Wayne, State of Michigan, described as follows:

PART OF THE WEST 1/2 OF SECTION 7, T. 3 S., R. 8 E., VAN BUREN TOWNSHIP, WAYNE COUNTY, MICHIGAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE WEST 1/4 CORNER OF SECTION 7, T. 3 S., R. 8 E., VAN BUREN TOWNSHIP, WAYNE COUNTY, MICHIGAN AND PROCEEDING THENCE FROM SAID POINT OF BEGINNING NORTH 01 DEGREE 27 MINUTES 26 SECONDS EAST, ALONG THE WEST LINE OF SAID SECTION 7, A DISTANCE OF 477.35 FEET TO A POINT; THENCE SOUTH 89 DEGREES 58 MINUTES 00 SECONDS EAST A DISTANCE OF 107.72 FEET TO A POINT; THENCE DUE SOUTH A DISTANCE OF 829.09 FEET TO A POINT; THENCE SOUTH 89 DEGREES 42 MINUTES 46 SECONDS WEST A DISTANCE OF 120.09 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 7; THENCE NORTH 00 DEGREES 02 MINUTES 43 SECONDS EAST A DISTANCE OF 352.56 FEET TO THE POINT OF BEGINNING.

Part of Tax Parcel No. 83-025-99-0003-701

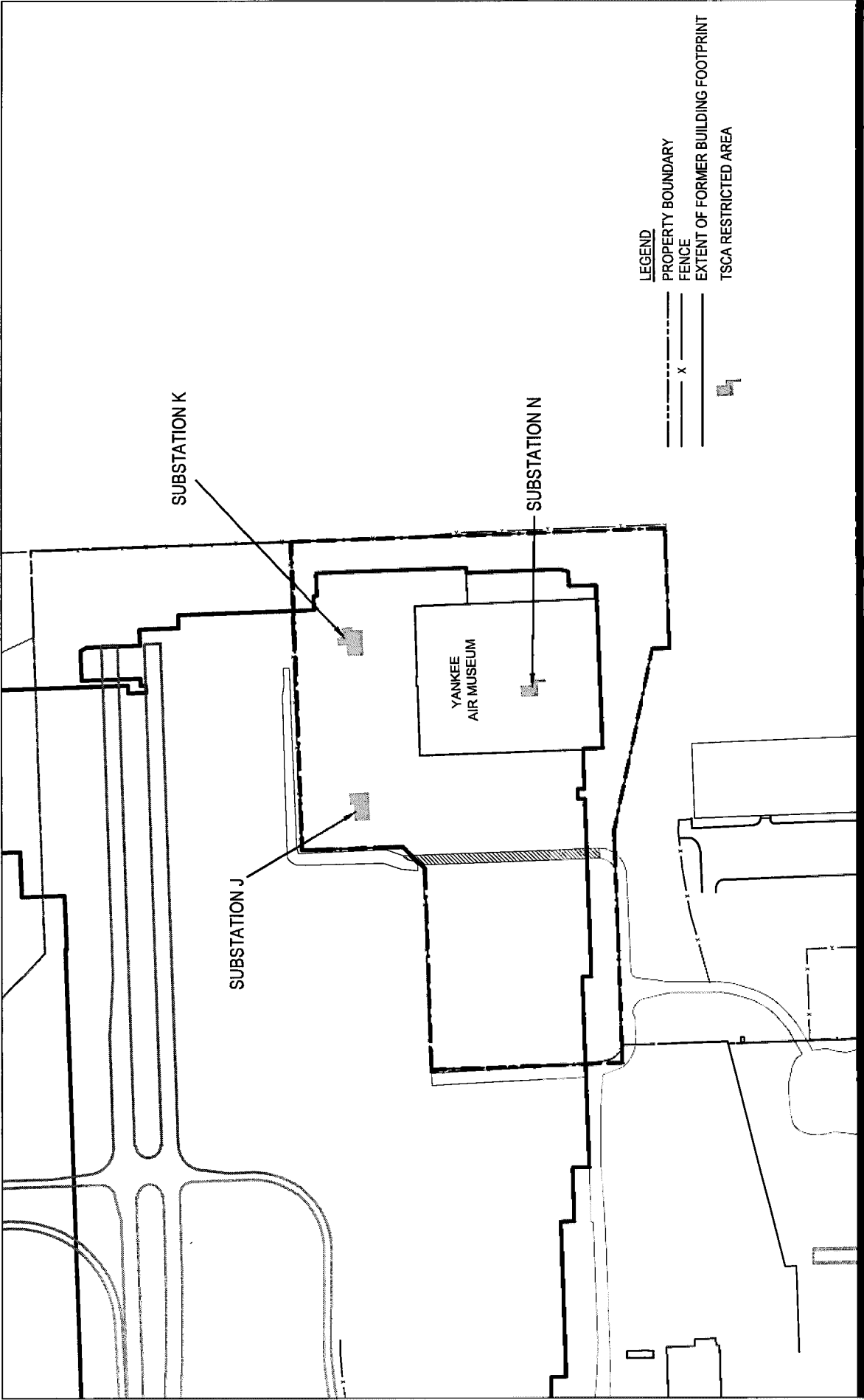
Exhibit 2



David C. Adams & Son
Professional Land Surveyors, Inc.
25617 Five Mile Road
Detroit, Michigan 48228
Tel: 313-438-1222
Fax: 313-438-9438
www.DCAsurvey.com

ADAMS & SON
PROFESSIONAL SURVEYORS

Exhibit 3



FORMER POWERTRAIN PLANT
YPSILANTI, MICHIGAN

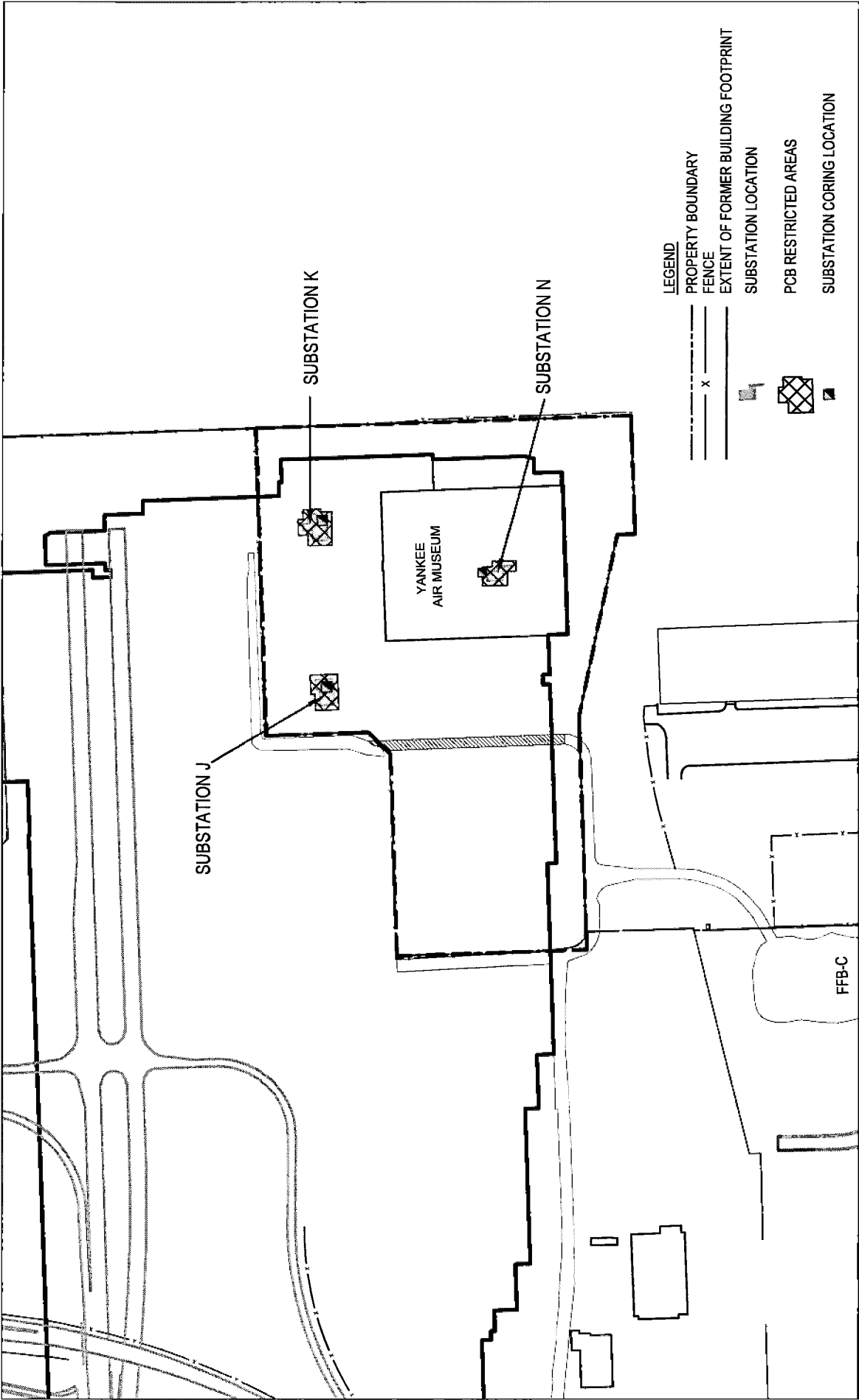
GHD

Project No. 11223073
Date January 2023

TSCA RESTRICTED AREAS
PCB RESTRICTIVE COVENANT

Page 14 of 18

Exhibit 4a



NOTE: CURRENT HORIZONTAL DATUM: SPCS MI SOUTH NAD 83 INTERNATIONAL FEET.

FORMER POWERTRAIN PLANT
YPSILANTI, MICHIGAN

GHD

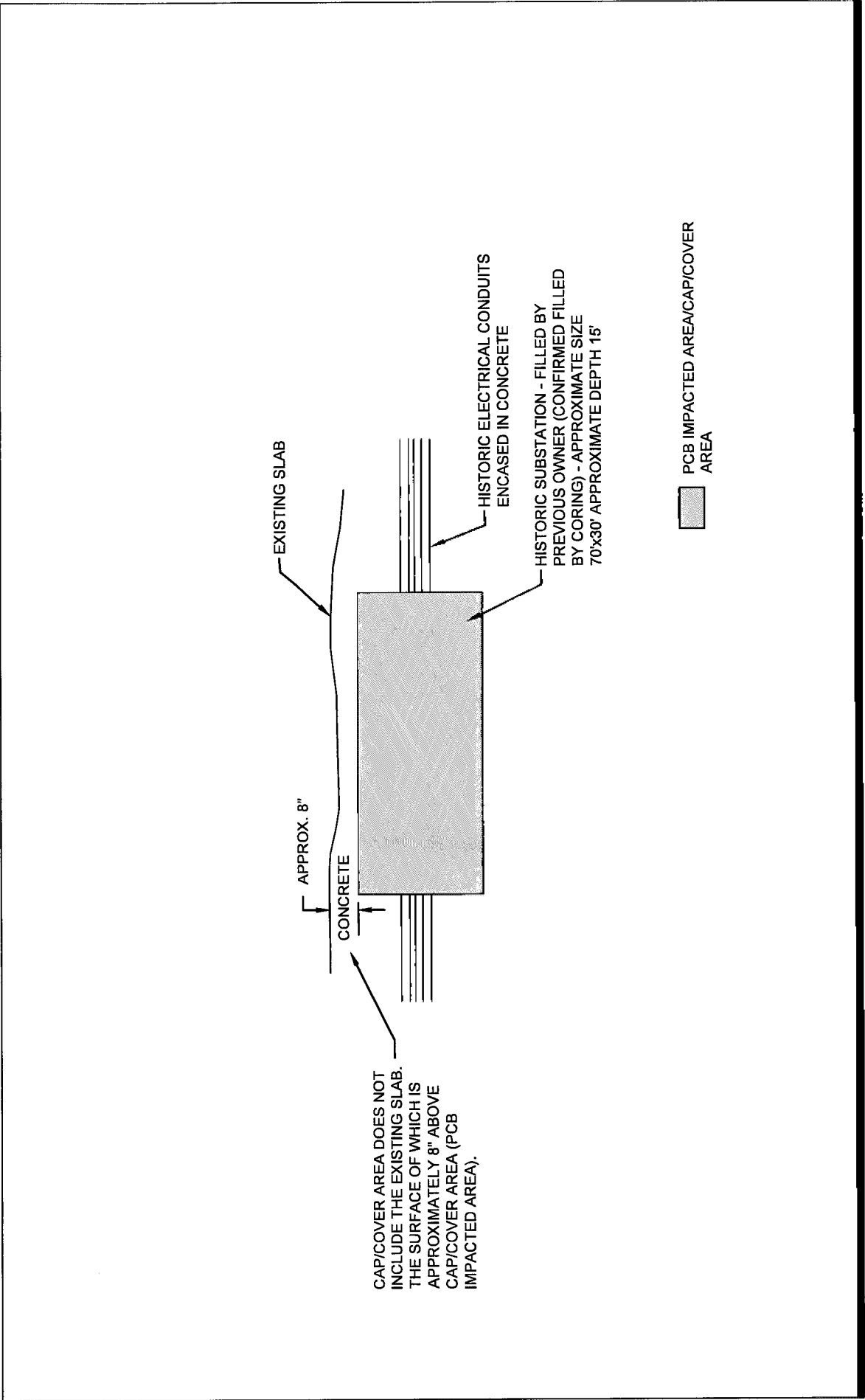
Project No. 11223073
Date January 2023

SUBSTATIONS J, K & N
RESTRICTED AREAS

PCB RESTRICTIVE COVENANT

EXHIBIT 4a

Exhibit 4b



Project No. 11223073
Date January 2023

FORMER POWERTRAIN PLANT
YPSILANTI, MICHIGAN

Substations J, K & N Cross Section
PCB Restrictive Covenant

N

0 5 10 ft
1" = 10 ft

Page 16 of 18

EXHIBIT 4b

Exhibit 4c

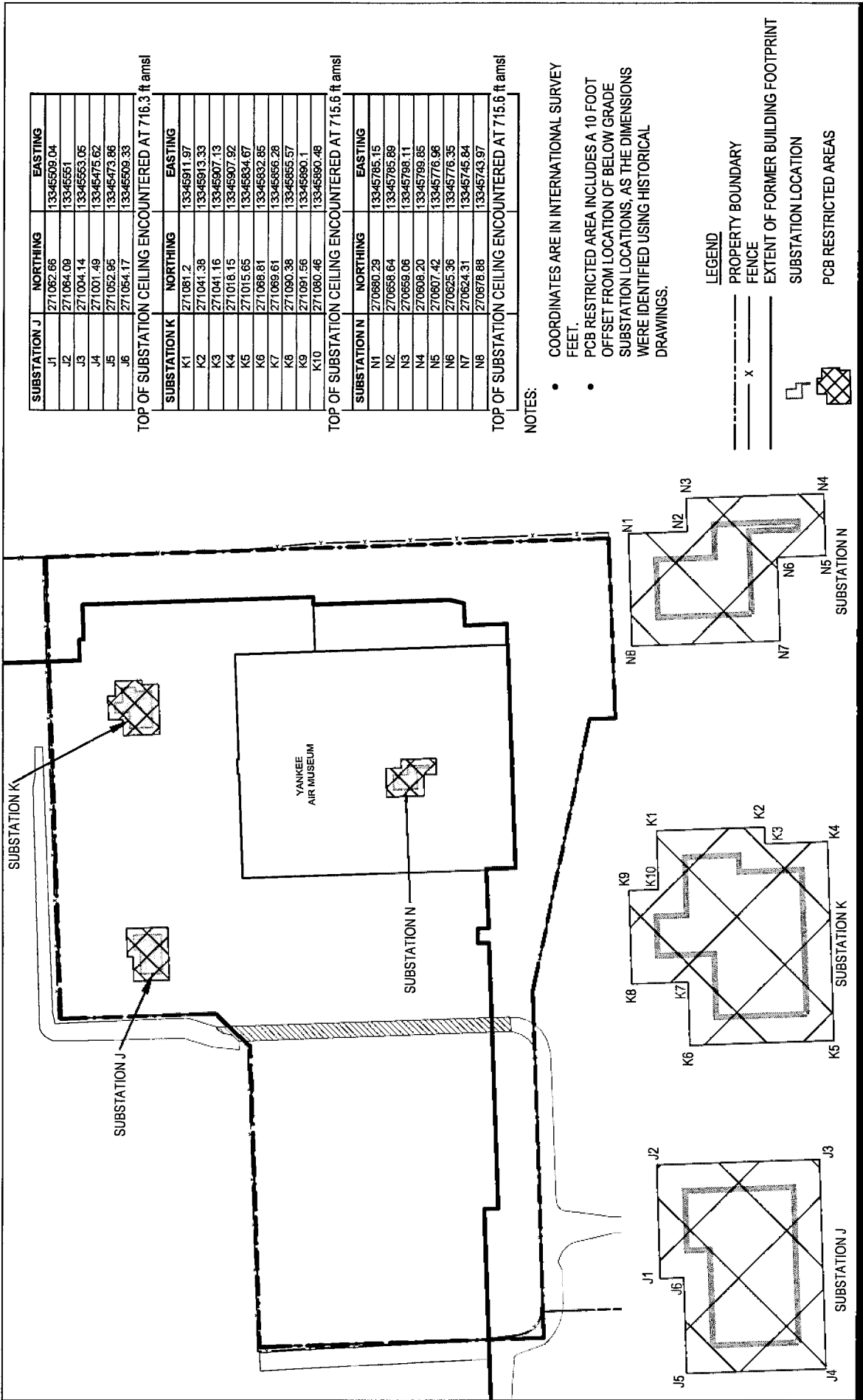


Exhibit 5

EPA Approval letter



REGION 5
CHICAGO, IL 60604

June 6, 2024

Mr. Grant Trigger
Michigan Cleanup Manager
RACER Trust
1505 Woodward Avenue, Suite 200
Detroit, Michigan 48226

Re: Risk Based Cleanup and Disposal Plan - Revised
Former Below Grade Substations
Former Willow Run Powertrain Facility
2930 Ecorse Road
Ypsilanti, Michigan
EPA ID#: MID 980 587 893

Dear Mr. Trigger:

I am writing on behalf of the U.S. Environmental Protection Agency, Region 5 (EPA) in response to the November 15, 2023 revised Risk Based Cleanup and Disposal Plan (Plan), submitted on your behalf by GHD, requesting approval, under 40 Code of Federal Regulations (CFR) §761.61(c), for the on-site disposal of residual polychlorinated biphenyl (PCB) remediation waste at the Former Willow Run Powertrain Facility property belonging to RACER Trust located at 2930 Ecorse Road in Ypsilanti, Michigan (Site). The Plan proposes closure of the former below grade electrical substations B, C, D, E, F, G, H, I, J, K and N (Substations) containing residual PCB contamination associated with the historical underground electrical network.

As you described in your letter, the Site was previously owned and operated by General Motors. The Plan indicates that:

1. PCB contaminated concrete present in substation A and the former Powerhouse basement was left in place and capped in accordance with EPA's February 12, 2015 40 CFR §761.61(a) approval.
2. Impacted concrete and wood block flooring was removed to less than or equal to 1 part per million (ppm) during the demolition of the former Powertrain Plant in accordance with 40 CFR §761.61(b) in 2014 including Substation M (Admin basement).

3. EPA approved the filling of former substations B, C, E and F with concrete on February 23, 1998 and substation D on December 28, 1998.

The Plan notes that the previous owner planned to pursue the same concrete filling approach for the remaining substations (G, H, I, J, K and N). Because RACER could not determine through review of available documentation that any of these substations were filled, a field effort to verify the filling was completed in 2016. The Plan notes that RACER cored through the concrete over the substation locations to verify their location and closure. At Substations B, C, E, F, G, H, I, J, K, and N, fill was encountered just below the vault ceiling, indicating closure of the substations had been performed by completely filling the substation room to entomb the impacted floor and/or walls. These coring activities also documented that between 7 and 14 inches of total concrete (former plant floor plus approximately 6 inches of substation ceiling) was present above the flow fill of each substation, further preventing any direct contact with the residual PCB impacted material remaining in the substation concrete floor and walls.

RACER requests on-site disposal under 40 CFR §761.61(c) for the remaining entombed substations (G, H, I, J, K and N). RACER notes that the Site is restricted to non-residential use and these PCB impacted substation areas will be included in a Declaration of Restrictive Covenant (DRC) which will require the fill material within the former substation and the concrete ceiling of the former Substations to be maintained in perpetuity, therefore eliminating the risk of contact with the residual PCB impacts.

Under 40 CFR §761.61(c), the EPA Regional Administrator may approve a risk-based method to sample, cleanup or dispose of PCB remediation waste if it is found that the method will not pose an unreasonable risk of injury to human health or the environment. The authority to grant such approvals in this regional office has been delegated to the Director of the Land, Chemicals and Redevelopment Division. Based on the information provided in your Plan, EPA finds that the use of an engineered barrier over the residual PCB remaining in the entombed substations (G, H, I, J, K and N) should effectively protect site users from unreasonable risk of direct exposure to these PCB impacted surfaces. EPA approves your request under 40 CFR §761.61(c) subject to the following conditions:

1. RACER shall submit an electronic copy of the recorded DRCs restricting the site non-residential uses to the EPA Regional PCB Coordinator within ten (10) calendar days of recording.
2. If at any time before, during or after the activities subject to this approval, RACER and any subsequent Owner of the Site possesses or is otherwise made aware of any information that PCBs at the Site may pose an unreasonable risk of injury to health or the environment, including, but not limited to any new discovery of PCBs at the Site, RACER and any subsequent Owner of the Site shall contact the EPA Regional PCB Coordinator in writing within twenty-four (24) hours for direction on any additional requirements.
3. RACER and any subsequent Owner of the Site is responsible for the actions of all officers, employees, agents, contractors, subcontractors, and others who are involved in activities conducted under this Approval. If at any time RACER and any subsequent Owner of the Site fails to comply with any provision of this Approval, it must report the information to the EPA

Regional PCB Coordinator in writing within twenty-four (24) hours of having or receiving the information.

4. This Approval does not: a) waive or compromise EPA's enforcement and regulatory authority; b) release RACER and any subsequent Owner of the Site from compliance with any applicable requirements of federal, state, or local law; or c) release you from liability for, or otherwise resolve, any violations of federal, state, or local law.
5. RACER and any subsequent Owner of the Site shall allow any authorized representative of the Administrator of EPA to inspect the Site, inspect records, and take samples as may be necessary to determine compliance with the PCB regulations and this Approval. Any refusal to allow such an inspection or any other access to the site, as authorized by Section 11 of the Toxic Substances and Control Act (TSCA), shall be grounds for revocation of this Approval.
6. RACER and all subsequent Owners of the Site are responsible for communicating the requirements of the Plan to employees, tenants, contractors, and subcontractors to the extent necessary to protect human health.
7. Any request for a proposed modification to the Plan must be submitted to the EPA Regional PCB Coordinator in writing for review and approval. Any proposed modification to the Plan or any departure from the conditions of this Approval without prior written authorization from EPA may result in revocation, suspension, or modification of the Approval, in addition to any other legal or equitable relief or remedy EPA may choose to pursue.
8. Any misrepresentation or omission of any material fact may result in EPA's revocation, suspension, or modification of the Approval. In addition, any person who makes false statements to the United States may also be subject to criminal sanctions found at 18 U.S.C. § 1001.
9. RACER and any subsequent Owner of the Site shall maintain the existing engineered barriers over the Substations. Repairs to the engineered barriers shall begin within 72 hours of discovery of any breaches which would impair the integrity of the engineered barriers. Any PCB impacted materials removed during repair or intrusive activities shall be disposed of off-Site in accordance with 40 CFR §761.61.
10. RACER and any subsequent Owner of the Site shall provide the EPA Regional PCB Coordinator with an annual certification in January of each calendar year that confirms the integrity of the engineered barriers over the Substations and that the DRC use restriction conditions remain valid.
11. If there is a planned change in Site use, changes to or removal of the engineered barriers, RACER and any subsequent Owner shall provide the EPA Regional PCB Coordinator with notice at least 30 calendar days prior to such a change.

12. RACER and any subsequent Owner of the Site shall provide the EPA Regional PCB Coordinator with notice at least 30 calendar days prior to sale or transfer of ownership of the Site. The conditions of this Approval, a copy of which will be included in the DRC, will apply to any successive owners of the Site.
13. No record, report, or communication required under this Approval shall qualify as a self-audit or voluntary disclosure under the EPA audit, self-disclosure, or penalty policies.

In addition, RACER, and all subsequent owners, must ensure continued compliance with all applicable provisions of TSCA, the federal PCB regulations, and the conditions of this Approval. Departures from the conditions of this Approval require EPA's prior written authorization. Further, this Approval does not relieve RACER and any subsequent Owner of the Site from compliance with any other federal, state, or local regulatory requirements and does not preclude EPA from initiating any enforcement action, including an action seeking civil penalties, suspension or termination of the Approval for any violation, or requiring additional cleanup if RACER and any subsequent Owner of the Site fails to abide by this Approval.

If you have any additional questions, or wish to discuss this information, please feel free to contact Peter Ramanauskas of my staff at (312) 886-7890 or ramanauskas.peter@epa.gov.

Sincerely,

6/6/2024

X 

Edward Nam
Director
Signed by: EDWARD NAM

Edward Nam
Director
Land, Chemicals and Redevelopment Division

cc: Beth Landale, GHD Project Director
Mark Koller, USEPA ORC
Ashley Lesser, EGLE