

RESTRICTIVE USE AGREEMENT

Dated as of November 13th, 2014

Between

BUYER:

ASHLEY CAPTIAL, LLC,

a Michigan limited liability company

And

TRUST:

REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE TRUST

Affecting Property Located at:

13000 ECKLES ROAD

**CITY OF LIVONIA
COUNTY OF WAYNE
STATE OF MICHIGAN
PPN# 46-118-99-0001-001**

RACER Ref # 13020 AND 11040

RESTRICTIVE USE AGREEMENT

THIS RESTRICTIVE USE AGREEMENT (this "**Agreement**") is made effective as of November 13, 2014 (the "**Effective Date**"), between **ASHLEY CAPITAL, LLC**, a Michigan limited liability company, whose address is 2575 S. Haggerty Road, Suite 500, Canton, MI 48188 ("**Buyer**"), and **REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE TRUST**, a trust formed under the laws of the State of New York, whose address is 500 Woodward Ave, Suite 1510, Detroit, MI 48226 ("**Trust**"). Certain initially capitalized terms not otherwise defined in the body of this Agreement are defined in Section 3 below.

RECITALS

A. RACER Properties LLC, an Affiliate of the Trust ("Seller") and Buyer entered into that certain Purchase and Sale Agreement dated as of November 13, 2014 (as modified, amended, restated, supplemented and/or assigned, the "PSA"), pursuant to which Buyer has purchased from Seller certain real property and improvements located at 12950 and 13000 Eckles Road, Livonia, Michigan, and having ENFOS Ref. Nos. 11040 and 13020, and being more particularly described on Exhibit A annexed hereto (the "Property").

B. Pursuant to that certain Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Second Amended Joint Chapter 11 Plan, dated March 29, 2011, and all documents issued relating thereto, including the Settlement Agreement, issued by United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Documents"), Seller and its successors and assigns are obligated to conduct certain Environmental Actions relating to those areas of the Property as may be required thereunder, or otherwise to comply with Environmental Laws and the requirements of the Michigan Department of Environmental Quality ("MDEQ") or any other governmental agency or authority, in each case having jurisdiction over the Property (each, an "Agency"), including without limitation, the United States Environmental Protection Agency ("USEPA").

C. This Agreement is a condition to the closing of the transfer of the Property pursuant to the PSA (the "Closing") and is made in furtherance of the Settlement Agreement to protect the public health, safety and welfare, and the environment, and is intended to be contemporaneously recorded with the transfer of the Property in the appropriate real estate records in the county in which the Property is located.

NOW THEREFORE, for the purposes set forth above and in consideration of the recitals and mutual promises herein contained, Buyer and the Trust, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, hereby agree as follows:

SECTION 1. RESTRICTIONS AND LIMITATIONS ON USE.

1.1. Intended Use. The Property may be used only for nonresidential uses that are compatible with the nonresidential cleanup criteria category referenced in MCL §324.20120a(1)(b) and the nonresidential land uses generally described in the Description of Allowable Uses attached to the Declaration of Restrictive Covenant (the "**Intended Use**") and for no other purpose. Any modifications required at, in, on, or below the Property to accommodate such Intended Use, are the sole obligation of Buyer or the then-fee title holder of the Property, or any portion thereof or interest therein (in any case, the "**Owner**") and shall be conducted at such Owner's sole expense. Nothing contained in this Agreement shall restrict or prohibit the development of the Property for any Intended Use, or the construction or installation of improvements thereon in connection therewith (including,

without limitation, commercial buildings, driveways, roads, parking areas and/or utilities) (the "**Development Activities**"), so long as and on condition that any such Development Activities do not violate this Agreement, the Remediation and Redevelopment Coordination Plan ("**RRCP**"), the Environmental Easement Agreement or any Environmental Laws.

1.2. Markers. The Trust shall obtain Owner's prior written consent to the placement of any permanent markers on the Property, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, any markers required by Law or any applicable Agency shall be placed in accordance with the specific requirements thereof. Upon granting such consent, Owner shall not remove, cover, obscure or otherwise alter or interfere with the permanent markers placed on the Property, if required by the MDEQ, USEPA or any other Agency, or otherwise in connection with the performance of any other Environmental Actions. To the extent required by any Agency, Owner shall keep vegetation and other materials clear of the permanent markers to assure that the markers are readily visible.

1.3. Building Slabs. If Owner elects to remove any slabs, pavement or other impervious surface on the Property, Owner shall be responsible for any and all obligations under environmental laws arising from any such removal, alteration or disturbance, whether or not caused by, arising from or related to, an environmental condition.

1.4. Future Restrictions.

1.4.1. Environmental Actions have been, or may be, undertaken, and may continue to be conducted, on or at the Property from and after the Closing. In connection with any such Environmental Actions, Buyer hereby acknowledges that the Trust may request Owner to record hereafter certain additional restrictions relating to the Environmental Actions and/or the use of the Property. Owner and the Trust shall, subject to the terms of this Agreement, cooperate in good faith in negotiating mutually-acceptable restrictions recognizing: the Trust's objective of avoiding expansion of the Trust's obligations with respect to Environmental Actions, Owner's objective of maximizing the use and value of the Property, and such requirements or recommendations of any governmental authority of agency of any kind ("**Governmental Authority**"). In connection therewith, and subject to the conditions set forth below, Owner shall: (a) with respect to any restrictions required by Environmental Law, the Settlement Agreement or any Agency, promptly after such request, acknowledge and agree to such restrictions and thereafter take every required action to properly record such Restrictions; and (b) with respect to any other restrictions reasonably requested by the Trust in order to implement the Settlement Agreement or any Environmental Law or Agency requirement, have the right to consent to such restrictions, which consent shall not be unreasonably withheld, delayed or conditioned. Any restrictions the Trust requests to impose on the Property after Closing pursuant to subparagraph (b) above shall not have a Material Adverse Effect. In all cases, the Trust shall provide Owner with: (i) prior notice of any meeting or other procedure established by any Agency in connection with determining whether or not such restrictions are necessary or appropriate, and the opportunity to consult in good faith with the Trust in connection therewith and; (ii) information and reasonable updates with respect to such procedures and determination; and (iii) and the opportunity, individually, and together with any or all appropriate Agencies in connection therewith, to participate in such procedures and determinations, to the extent permitted by such Agencies.

1.4.2. In furtherance of Section 1.4.1(a) and subject to the terms and conditions hereof, Owner shall within thirty (30) days execute, deliver and record, any and all documentation prepared by the Trust and approved by any applicable Agency, and required in order to effectuate and/or impose such additional restrictions or modifications.

In the event that the Trust requests that a new or modified restriction be recorded pursuant to Section 1.4.1(b) and Owner consents to such additional or modified restrictions, Owner shall within thirty (30) days execute, deliver and record, any and all documentation prepared by the Trust and acceptable to any applicable Agency and otherwise reasonable and consistent with this Agreement to effectuate and/or impose such additional restrictions or modifications.

1.4.3. In the event Buyer intends to transfer title to the Property to a third party that it is not an Affiliate of the Buyer, then, prior to such transfer, Buyer shall record an amendment, and/or any other appropriate documentation, to this Agreement that amends Section 1.4.2, above, by adding the following language at the end of said section: "If Owner fails to execute and deliver the required documentation within such thirty (30) day or other applicable period, then Owner irrevocably appoints the Trust as attorney-in-fact for Owner with full power and authority to execute, deliver and record, in the name of Owner, any such documentation, which appointment is coupled with an interest, and is irrevocable." The Seller and/or Trust shall be entitled to an award of all out-of-pocket costs and expenses, including attorneys fees, incurred by the Seller and/or Trust in connection with enforcing this Section 1.4.3 by way of legal proceedings or otherwise.

1.5. Any and all restrictions set forth herein or added to the Property pursuant to Section 1.4 above shall be deemed to be covenants, conditions and restrictions running with the land, affirmatively enforceable against and binding upon Buyer and all Persons who shall succeed to any interest, directly or indirectly, in any portion of the Property and/or any and improvements thereon and appurtenances thereto, whether by sale, lease, sublease, license or any other transfer, assignment, conveyance, pledge, condemnation, succession upon default or foreclosure or by operation of law (collectively, "**Buyer's Successors**"), including all successive Owners, and shall continue to be easements, servitudes, charges and encumbrances appertaining to and upon, and covenants benefiting, binding and running with, the land, buildings and improvements now or later existing upon or within the Property.

1.6. **Waiver of Jury Trial.** EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT OR ITS AFFILIATES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY CLAIM ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE TRUST ACCEPTING THIS AGREEMENT.

SECTION 2. GENERAL TERMS.

2.1. **Governing Law.** The Laws of the State in which the Property is located shall govern the validity, construction, enforcement and interpretation of this Agreement; provided, however, that the Bankruptcy Court shall retain jurisdiction over any and all disputes arising under, or otherwise relating, to the construction and enforcement of the Bankruptcy Documents, and the transactions contemplated thereunder and governed thereby. Each Party hereby consents to the jurisdiction and venue of any Federal District Court and State Court located in the county in which the Property is located, and waives personal service of any and all process upon it, consents to service of process by registered mail directed to each Party at the address for notices herein, and acknowledges that service so made shall be deemed to be completed upon actual delivery thereof (whether accepted or refused).

2.2. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto concerning its subject matter, and supersedes and replaces all

prior agreements and understandings between Buyer and the Trust with respect to the Trust's access to the Property, except to the extent the PSA survives Closing.

2.3. Paragraph Headings. The paragraph headings appearing herein are for the convenience of the parties hereto and are not to be used or construed so as to modify the terms and conditions of this Agreement in any fashion.

2.4. Successors, Assigns, etc. This Agreement shall inure to the benefit of, and be binding upon, and enforceable by, the respective successors and assigns of the parties hereto.

2.5. No Beneficiaries. Except as otherwise expressly provided in this Agreement, Buyer and the Trust do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third Person (express or implied) hereunder, under the PSA or any other document executed by the parties hereto in connection with the PSA (the "**Transaction Documents**") or under any Bankruptcy Document, and neither Owner nor any third Person shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit hereunder, under any Transaction Document or under any Bankruptcy Document by reason of any provision of this Agreement. Notwithstanding the foregoing or anything to the contrary set forth elsewhere in this Agreement, either the MDEQ or USEPA (whichever is serving as the lead Agency) is intended to be a third party beneficiary of this Agreement, and be entitled to enforce those terms of this Agreement which the Trust is entitled to enforce.

2.6. Notice. All notices, requests, consents, approvals or demands herein provided to be given or made, or which may be given or made by either Party to the other hereunder (collectively, the "**Notices**"), shall be given or made only in writing and shall be deemed to have been duly given: (a) when delivered personally at the address set forth below, or if delivery is rejected then when delivery was attempted; or (b) on the 1st Business Day after the date sent when sent via reputable overnight courier, properly addressed, prepaid and delivered to such courier's office during its business hours, otherwise, it shall be effective the next Business Day; (c) on the date sent via facsimile or electronic mail transmission, if sent prior to 5:30 PM (Eastern Standard Time) on a Business Day, and if a hard copy is deposited either with an overnight courier for next Business Day delivery, or in the United States mail within twenty-four hours (24) after the facsimile or electronic mail is transmitted; or (d) three (3) Business Days after the time the same is deposited in the United States mail, properly addressed and first class postage prepaid, return receipt requested. The proper address to which all Notices may be given or made by either Party shall be the address set forth at the end of this Section, or to such other address or to such other person as any Party shall designate by Notice given to the other Party in accordance with this Section. The attorneys for either Party may, but shall not be required to, deliver any notice pursuant to this Agreement on behalf of their respective clients.

If to The Trust:

Revitalizing Auto Communities Environmental
Response Trust
500 Woodward Ave, Suite 1510
Detroit, MI 48226
Attn: Bruce Rasher, Redevelopment Manager
Facsimile: 734.879.9537
Email: brasher@racertrust.org

With a Copy to:

Revitalizing Auto Communities
Environmental Response Trust
500 Woodward Ave, Suite 1510
Detroit, MI 48226
Attn: Carl Garvey, General Counsel
Facsimile: 734.879.9537
Email: cgarvey@racertrust.org

And a Copy to:

Revitalizing Auto Communities Environmental

And a Copy to:

Dawda, Mann, Mulcahy & Sadler, PLC

Response Trust
500 Woodward Ave, Suite 1510
Detroit, MI 48226
Attn: Grant Trigger, Cleanup Manager
Facsimile: 734.879.9537
Email: gtrigger@racertrust.org

If to Buyer:

Ashley Capital, LLC
2575 S. Haggerty Road, Suite 500
Suite 500
Canton, MI 48188
Attn: Susan M. Harvey
Facsimile: 734.394.1925
Email: sharvey@ashleycapital.com

39533 Woodward Avenue, Suite 200
Bloomfield Hills, MI 48304
Attn: Edward C. Dawda
Facsimile: 248.642.8696
Email: edawda@dmms.com

And a Copy to:

Douglas G. McClure
Conlin, McKenney & Philbrick, P.C.
350 South Main Street, Suite 400
Ann Arbor, MI 48104
Facsimile: 734.761.9001
Email: mcclure@cmplaw.com

2.7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute a fully executed agreement, with the same effect and validity as a single, original agreement signed by all of the parties hereto. Signatures transmitted via facsimile or electronic mail transmission shall have the same validity and effect as original signatures.

SECTION 3. DEFINITIONS. The following defined terms shall have the meaning ascribed thereto below:

(a) **"Affiliate"** means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents and employees. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

(b) **"Bankruptcy Code"** means Title 11 of the United States Code, as amended and/or supplemented from time to time, together with any similar Law relating to bankruptcy, insolvency, reorganization, restructuring, winding up or composition or adjustment of a Person's debts.

(c) **"Baseline Environmental Assessment"** or **"BEA"** means a written report prepared in accordance with Parts 201 and/or 213 of Michigan's NREPA (as defined below), and the regulations promulgated thereunder, that confirms that the Premises is a "facility" and/or a "site" as those terms are defined in this Acts.

(d) **"Business Day"** means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in the State are authorized or required to be closed for all or any portion of the normal business hours of the day.

(e) **"Due Care Plan" (or "DCP")** or **"Documentation of Due Care Compliance"** means a written report documenting the Buyer's due care requirements of MCL 324.20107a and/or continuing obligations set forth in 42 U.S.C. sec 9601(40) related to its Intended Use of the Premises.

(f) **"Environmental Action"** means any response, removal, investigation, sampling, remediation, reclamation, closure, post-closure, corrective action, engineering controls, institutional controls, deed restrictions, oversight costs and OMM activities authorized or required under the Settlement Agreement or under any Law with respect to the Property.

(g) **"Environmental Laws"** means any and all Laws relating to pollution, noise and/or odor control, wetlands pollution, the protection or restoration of health, safety or the environment, natural resources, and/or the use, transportation, presence, storage, handling, disposal, discharge, recycling, treatment, generation, processing, labeling, production, release, contamination or disposal of threatened Release of Hazardous Substance, including, without limitation, the following: (a) the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; (b) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; (c) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; (d) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*; (e) the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; (f) the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; (g) OSHA, 29 U.S.C. 651 *et seq.*; (h) the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 *et seq.*; and (i) the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 *et seq.*; as in effect on the date hereof, and including the analogous Laws of the State (including but not limited to applicable provisions and of Michigan's Natural Resources and Environmental Protections Act, MCL 324.101 *et seq.* ("NREPA")) and applicable tribal or local Law counterparts, as any of the foregoing has been, and may be, reauthorized, amended, supplemented and/or replaced from time to time.

(h) **"Hazardous Substances"** means all materials, substances, and wastes, defined, designated, regulated or classified as hazardous, toxic or radioactive under Environmental Laws, whether by type or by quantity, and shall include but not be limited to petroleum or any derivative or by-product thereof and asbestos-containing materials.

(i) **"Laws"** means all applicable laws, statutes, ordinances, rules, regulations, codes, Permits, judgments, administrative or court orders, decrees, injunctions, technical or other standards, policies, determinations, writs, and other requirements of any Governmental Authority, having jurisdiction over the Property, or the use or operation thereof, together with any applicable Executive Order of the President of the United States and common law.

(j) **"Material Adverse Effect"** means any restriction or condition which would reasonably be expected to have a significant, negative effect, or which would otherwise reasonably be expected to have a material adverse effect, on the Property, or its use, development, or value, or on its occupants, or on an Owner's or occupant's ability to perform its obligations hereunder or ability to develop and use the Property for the Intended Use.

(k) **"OMM"** means the operation, monitoring and maintenance activities required as a form of Environmental Action under the Settlement Agreement.

(l) **"Person"** means an individual, partnership, limited liability company, association, corporation or other entity.

(m) **"Pre-Existing Environmental Condition"** means any Environmental Condition existing as of the Effective Date for which Trust is obligated to perform Environmental Action under the PSA, the Settlement Agreement or any other Bankruptcy Document.

(n) **"Restrictive Covenant"** and/or **"Declaration of Restrictive Covenant"** means a recorded document that sets forth the Restrictions on the Premises and is based upon the Michigan Department of Environmental Quality's ("MDEQ") model Restrictive Covenant for Part 201 and/or Part 213, whichever is applicable, and is substantially in the form attached as an Exhibit to the PSA.

(o) **"Settlement Agreement"** means that certain Environmental Response Trust Consent Decree and Settlement Agreement among Motors Liquidation Corporation (f/k/a General Motors Corporation) and its affiliated debtors, the States and EPLET, LLC (not individually but solely in its representative capacity as Administrative Trustee of the "Environmental Response Trust" established thereby) that established the Trust, notice of which was published in the 75 Fed. Reg. 66390 (Oct. 28, 2010) and a copy of which is available on the Trust's website at http://www.racertrust.org/About_TRUST/Settlement_Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first written above.

BUYER:

ASHLEY CAPITAL, LLC

Dated as of November 13, 2014

By:

Susan M. Harvey
Name: Susan M. Harvey
Title: Senior Vice President

STATE OF MICHIGAN)
COUNTY OF Wayne) SS:

On the 13 day of November, 2014, before me a Notary Public for the State and county aforesaid, personally appeared Susan M. Harvey who acknowledged himself to be the Senior V.P. of Ashley Capital, LLC, an Illinois limited liability company, and that he, being authorized to do so, executed the foregoing Restrictive Use Agreement for the purposes therein contained by signing the name of said entity by himself as such authorized signatory.

WITNESS my hand and seal the day and year aforesaid.

Diane M. Witt

Print Name: Diane M. Witt
My commission expires: 12/15/20

DIANE M. WITT Notary Public, State of Michigan County of Wayne My Commission Expires Dec. 15, 2020 Acting in the County of <u>Wayne</u>

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

THE TRUST:

Dated as of November 17, 2014

**REVITALIZING AUTO COMMUNITIES
ENVIRONMENTAL RESPONSE TRUST**

By: EPLET, LLC, acting solely in its representative capacity as Administrative Trustee

By: Elliott P. Laws
ELLIOTT P. LAWS, not individually,
but acting solely in his capacity as
Managing Member

District
STATE OF Columbia)
City) SS:
COUNTY OF Washington)

On the 17th day of November, 2014 before me a Notary Public for the State and County aforesaid, personally appeared Elliott P. Laws, who acknowledged himself to be the Managing Member of EPLET, LLC, the Administrative Trustee of **REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE TRUST ("RACER")**, and that he, being authorized to do so, executed the foregoing Restrictive Use Agreement, not individually, but solely in his capacity as such Managing Member of EPLET, LLC, Administrative Trustee of Racer, for the purposes therein contained.

WITNESS my hand and seal the day and year aforesaid.

Myung H. Wang
Print Name: _____
My commission expires: _____

TAX PARCEL NUMBERS:

46-118-99-0001-001

46-118-99-0001-002

WHEN RECORDED MAIL TO:

Dawda, Mann, Mulcahy & Sadler, PLC
39533 Woodward Ave., Suite 200
Bloomfield Hills, MI 48304
Attn: Edward C. Dawda

Myung H. Wang
Notary Public, District of Columbia
My Commission Expires 6/14/2019

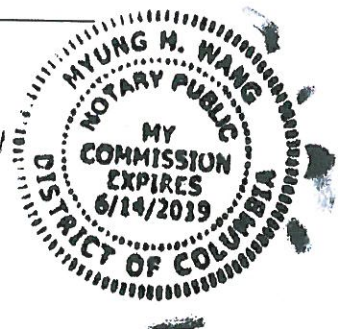


Exhibit A

LEGAL DESCRIPTION OF PROPERTY