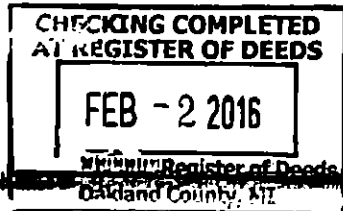


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OAKLAND COUNTY
REGISTER OF DEEDS

LIBER 49039 PAGE 572
\$43.00 MISC RECORDING
\$4.00 REMONUMENTATION
02/05/2016 02:29:39 PM RECEIPT# 13621
PAID RECORDED - Oakland County, MI
Lisa Brown, Clerk/Register of Deeds

2016 FEB -2 PM 3: 12



DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference Number: RC-OWMRP-111-15-014

This Declaration of Restrictive Covenant (Restrictive Covenant) is made to protect public health, safety, welfare and the environment pursuant to the provisions of Part 111, Hazardous Waste Management, Michigan Compiled Laws (MCL) 324.11101, *et seq.* (Part 111) and 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.*, and 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.*

This Restrictive Covenant is made on January 27, 2016, by RACER Properties LLC, the Grantor, an entity wholly owned by the Revitalizing Auto Communities Environmental Response Trust (Trust) and the current fee title holder of the Property, the address of which is 500 Woodward Street, Suite 2650, Detroit, MI 48226 for the benefit of the Grantee, State of Michigan, Department of Environment Quality (MDEQ), the address of which is 525 West Allegan Street, P.O. Box 30473, Lansing, MI 48909-7926.

This Restrictive Covenant is made to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination that may be present at the Property located at Joslyn Rd. and Fourth St., Pontiac, Oakland County, MI 48340; Tax Identification Number 14-16-326-027 legally described in Exhibit 1 and depicted in Exhibit 2 (Property or Site). Recording of this Restrictive Covenant is designed to restrict exposures to groundwater on the Property, and require any future work, or other activities on the Property by or for the Owner, to be conducted in conformance with; i) applicable MDEQ soil relocation requirements including but not limited to MCL 324.20120c and any related administrative rules and MDEQ guidance; and ii) applicable due care obligations under MCL 324.20107a and associated administrative rules and guidance, as well as the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER), 29 C.F.R. Part 1910.

OK - AN

The land and resource use restrictions contained in this Restrictive Covenant are based upon information available to the Trust at the time this document was recorded. Future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Parts 111 and 201 of NREPA; the discovery of environmental conditions 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, and welfare, and the environment. Additional restrictions may become necessary.

Based on the available information, the Property does not contain hazardous substances 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. Nonetheless, it is recommended 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 MDEQ, its respective successor entities, and those persons or entities acting on its behalf.

“Grantor” shall mean RACER Properties LLC, an entity wholly-owned by the Trust, 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.

“MDEQ” means the Michigan Department of Environmental Quality, 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) and the holder(s) of a life estate 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 the NREPA.

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

“Property” shall mean the property the legal description of which is set forth in Exhibit 1, and as depicted in Exhibit 2, Survey of Property.

“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).

“Site” shall have the same meaning as “Property.”

"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, shall have the same meaning in this document as in those statutes and rules as on the date this Restrictive Covenant is made.

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 Owner by the following entities: (1) Grantor, if it is no longer Owner; (2) MDEQ; and (3) USEPA.

1. Land Use Prohibitions. The Owner shall prohibit all uses of the Property that are not compatible with or are inconsistent with the exposure assumptions for the nonresidential cleanup criteria established pursuant to MCL 324.20120a(1)(b) of NREPA. Uses that are compatible with the nonresidential cleanup criteria are generally described in Exhibit 3 (Description of Allowable Uses).

Part 201 cleanup criteria for land use based response activities are located in the Government Documents Section of the State of Michigan Library, MCL 324.20101 *et seq.* effective December 27, 2012.

2. Activities Prohibited. Owner shall prohibit activities on the Property that may result in exposures to hazardous substances above the nonresidential land use cleanup criteria. These prohibited activities include:
 - a. *No drinking water wells* may be installed or used on the Property.
 - b. *No groundwater extraction wells* may be installed or used on the Property, except for wells and devices that are part of an USEPA or MDEQ approved response activity, and for short-term dewatering for construction purposes, provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable environmental laws and does not cause or result in a new release, exacerbation of any pre-existing environmental condition, or any other violation of environmental laws.
 - c. *The Owner shall not remove, disturb or damage any monitoring wells (if present)* on the Property without USEPA or MDEQ approval
 - d. *No contaminated soils (if present)* may be relocated on the Property except as provided for under Part 201, Section 20120c, MCL 324.20120c.

- e. *Owner shall not "treat", "store", "dispose", or release any Hazardous Substances, on, at, or below the Property, in a manner that would require a permit under RCRA, 42 U.S.C. §§ 6901 et seq. or Part 111 of NREPA, except pursuant to a plan, permit, or license approved in writing by USEPA or MDEQ, pursuant to those statutory authorities.*
- f. *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.*
- g. *The Owner shall not build or occupy any building on the Property without first completing one of the following: Option 1) Demonstrate to the satisfaction of the USEPA or MDEQ, the absence of an unacceptable vapor intrusion risk to human health in any existing or newly constructed buildings at the Property; or Option 2) With concurrence from the USEPA or MDEQ, 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. This prohibition does not apply to short-term occupancy of a building solely 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 MCL 324.20107a of NREPA. Such short-term activities and short-term occupancy would not be expected to exceed six months in duration. The USEPA or MDEQ must be informed if the activities or occupancy are expected to exceed six months.*

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, for the purpose of mitigating the potential intrusion of soil vapor below any human-occupied building constructed on the property after the date of this Restrictive Covenant until it is determined by USEPA or MDEQ that a vapor barrier or mitigation system is no longer necessary in accordance with Option 1, above.

- h. *The Owner shall manage contaminated soils (if present), media and/or debris (if present) and all other soils located on the Property whether encountered on the surface or during below grade work in accordance with the requirements of Part 111 and RCRA Subtitle C, the administrative rules promulgated pursuant to Part 111 and RCRA, and all other relevant state and federal laws, including but not limited to MCL 324.20120c; this provision regarding contaminated soil/media/debris management also applies in the event that the Owner elects to remove any slabs, pavement, or other impervious surface on the Property.*

3. Access. The Owner shall grant to the Trust, MDEQ, and USEPA the right to enter 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 RCRA, Parts 111 and 201, and other applicable federal laws and regulations.
4. Transfer of Interest. The Grantor shall provide notice to the Trust, USEPA, and MDEQ at the addresses provided in Paragraph 5 of the Grantor'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 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 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 OAKLAND 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.

5. Notices. 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; include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant; include the MDEQ Reference Number: RC-OWMRP-111-15-014; and shall be served either personally, or sent via first class mail, postage prepaid, as follows:

For USEPA:

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

with a copy to:

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

For MDEQ:

Hazardous Waste Section Chief
Office of Waste Management and Radiological Protection
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, MI 48909-7741

For Grantor:

RACER Properties LLC
Atten: Michigan Clean-up Manager
500 Woodward Avenue, Suite 2650
Detroit, MI 48226

6. Term. This Restrictive Covenant shall run with the Property, and shall be binding on 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. This Restrictive Covenant may only be modified or rescinded with the written approval of the USEPA or MDEQ.
7. Enforcement. Grantor and/or the Trust is 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 subsequent Owners of all or part of the Property. Grantor, on behalf of itself, and its successors in title, intends and agrees that MDEQ 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 all or part of the Property. All remedies available hereunder shall be in addition to any and all other remedies at law or equity.
8. Third Party Beneficiary. Grantor, on behalf of itself and its successors, and assigns, hereby agrees that the United States, acting by and through USEPA, its successors and assigns shall be a third party beneficiary (Third Party Beneficiary) of all the benefits and rights set out in the restrictions, covenants, easements, exceptions, notifications, conditions and agreements herein, and that the Third Party Beneficiary shall have the right to enforce the restrictions described herein as if it was a party hereto. No other rights in third parties are intended by this Restrictive Covenant, and no other person or entity shall have any rights or authorities hereunder to enforce these restrictions, terms, conditions or obligations beyond Grantor, MDEQ, their successors, assigns, and the Third Party Beneficiary.
9. USEPA Entry and Access. Nothing in this Restrictive Covenant shall limit or otherwise affect USEPA's right of entry and access, or authority to undertake actions under RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA,

42 U.S.C. §§ 9601 *et seq.*) or under the National Contingency Plan (40 C.F.R. Part 300), and any successor statutory provisions, or other state or federal law. Grantor consents to officers, employees, contractors, and authorized representatives of USEPA entering and having continued access to this Property for the purposes described in Paragraph 3 (Access) of this Restrictive Covenant.

10. Modification/ Release/Rescission. Grantor or Owner may request in writing to USEPA or MDEQ and the Trust, at the addresses provided in Paragraph 5, 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 USEPA or MDEQ 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 shall be returned to MDEQ, USEPA, and the Trust at the addresses provided Paragraph 5.
11. 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.
12. Limitation on Liability. The Trust's, RACER Properties LLC's and the Administrative Trustee's liability under this Restrictive Covenant is limited by the terms and conditions of the Settlement Agreement, which are incorporated herein by reference.
13. 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.
14. 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, but not limited to, administrative and judicial remedies under CERCLA or Part 201 of the NREPA.
 - b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant shall be liberally construed to affect the purpose of this Restrictive Covenant, and the policy and purpose of RCRA and the land use restrictions and prospective use limitations required by Part 201. 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 matters addressed herein, all of which are merged herein.

[signature page follows]

IN WITNESS WHEREOF, RACER Properties LLC has caused this Restrictive Covenant, MDEQ Reference Number: RC-OWMRP-111-15-014, to be executed on this 27th day of January, 2016.

RACER PROPERTIES LLC, a Delaware limited liability company

By: Revitalizing Auto Communities Environmental Response Trust,
Sole Member of RACER Properties LLC

By: EPLET, LLC, acting solely in its representative capacity as
Administrative Trustee of Revitalizing Auto Communities
Environmental Response Trust

By: [Signature]
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 27th day of January, 2016, by ELLIOTT P. LAWS, as Managing Member of EPLET, LLC, acting solely in its representative capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust as Sole Member of RACER Properties LLC, a Delaware limited liability company, on behalf of the company.

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

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

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

Prepared by/Return to:
Carl Garvey, General Counsel
RACER Trust
500 Woodward Avenue, Suite 2650
Detroit, MI 48226

EXHIBIT 1

LEGAL DECEIPTION OF PROPERTY

All those tracts or parcels of land lying and being in the City of Pontiac, Oakland County, State of Michigan, and being more particularly described as follows:

Tax Parcel Identification Number: 14-16-326-027

Lots 107, 108 and 109, Highwood Subdivision, as recorded in Liber 21, Page 32 of Plats, Oakland County Records.

EXHIBIT 2
SURVEY OF PROPERTY

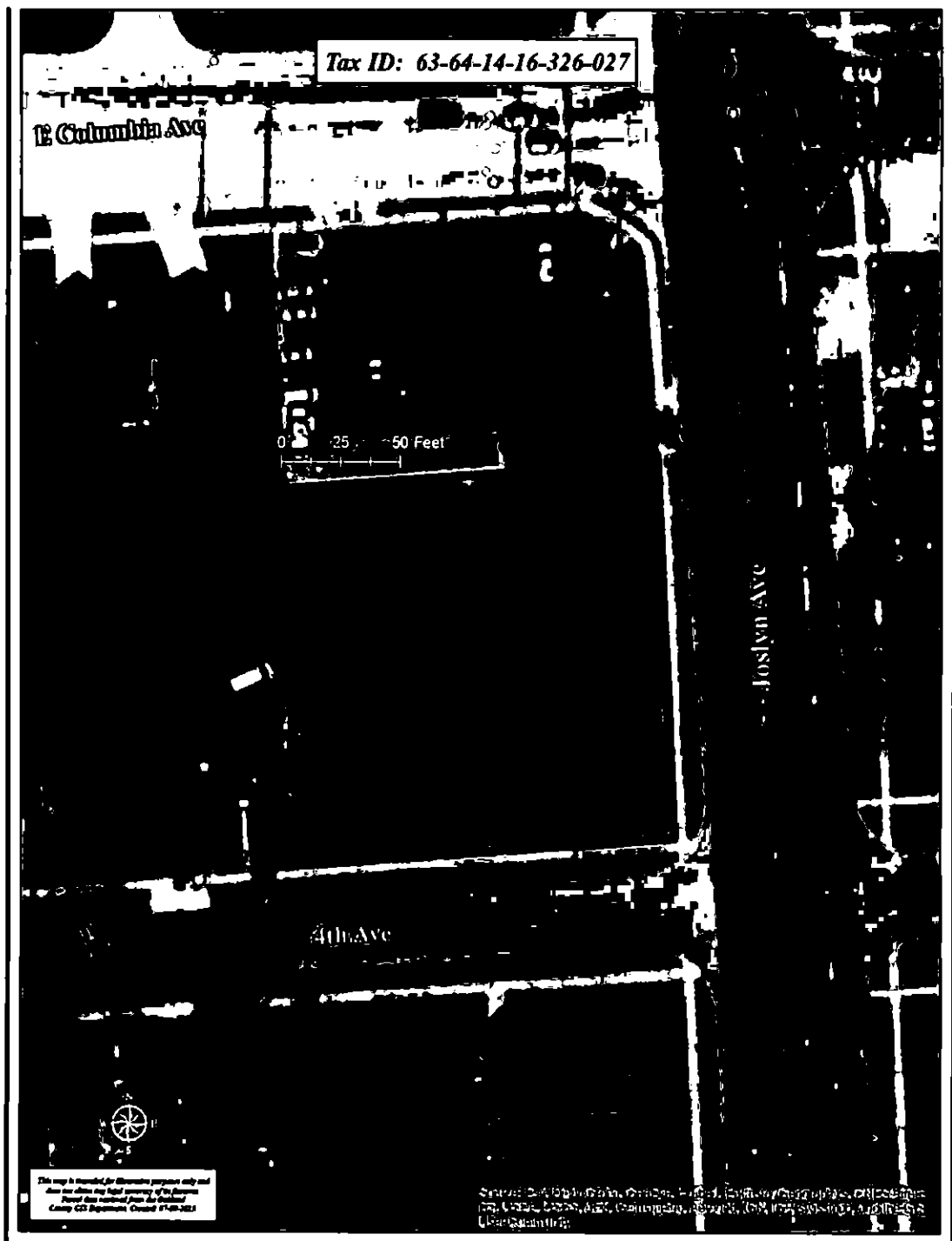


EXHIBIT 3**DESCRIPTION OF ALLOWABLE USES**

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 use is also restricted per the prohibitions contained in this restrictive covenant.