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FEBRUARY 13, 2014

KURT M. BRAUER, ESQ.

VIA EMAIL: kbrauer@wnj.com

RE: RACER Trust/Hemphill Road Industrial Land
ACCESS AGREEMENT

Dear Mr. Brauer:

Attached please find the executed ACCESS AGREEMENT. Please advise whether or not you need the original document.

I await your reply.

Very truly yours,


Kyle R. Riem

KRR/dmc

cc: Client [via email]

ACCESS AGREEMENT

This Access Agreement ("Agreement") is made between Scott and Kelly Smith (collectively, "Grantor"), and the Revitalizing Auto Communities Environmental Response Trust (the "Trust") together with RACER Properties LLC (collectively, "RACER"). Grantor and RACER may be referred to in this Agreement individually as "Party" and collectively as "Parties."

Grantor is the owner of property located on Hemphill Road (PID59-29-300-010) ("Property"), attached as **Exhibit 1**. The Property is adjacent to property owned by RACER, on which RACER is conducting certain Environmental Actions under the Settlement Agreement among the debtors in the GM bankruptcy, certain states, the Saint Regis Mohawk Tribe, and EPLET, LLC, Administrative Trustee of the Trust, notice of which was published in 75 Fed. Reg. 66,390 (Oct. 28, 2010), and a copy of which is available on the Trust's website at http://racertrust.org/About_RACER/Settlement_Agreement (the "Settlement Agreement"). Grantor is willing to grant access to the Property to RACER and its successors, assigns, employees, consultants, contractors, subcontractors, and other agents (collectively, "Representatives") to facilitate these legally required Environmental Actions, subject to the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **License:** Grantor grants to RACER and its Representatives a non-exclusive license to enter upon the Property solely to perform Permitted Activities, (as defined below). Nothing in this Agreement shall limit Grantor's rights to access (or provide others access) onto the Property.
2. **Permitted Activities:** RACER and its Representatives may access the Property to perform any and all investigative and remedial activities at or about the Property as required by the Michigan Department of Environmental Quality (MDEQ), or by applicable law, and for incidental related purposes. Permitted Activities shall include, but not be limited to: soil boring installation, monitoring well installation, and groundwater sampling of monitoring wells. Grantor agrees that MDEQ and its Representatives may access the Property for the purpose of overseeing or supervising Permitted Activities; subject to the provisions contained herein.
3. **Term:** This Agreement shall be effective on the date on which it is signed below by the latter of the two Parties ("the Effective Date"), and shall expire upon completion of the Permitted Activities or the passage of five years, whichever is sooner, except for provisions expressly designated in this Agreement as surviving the expiration date. Except as otherwise provided in this Agreement, RACER may terminate its rights and obligations by providing 10 days' notice to Grantor.
4. **Operations:** In completing the Permitted Activities:
 - a. RACER shall use all commercially reasonable efforts to avoid: (i) damage to the Property (and persons and personal property thereon); (ii) interference with Grantor's or any other party's operations at the Property; and (iii) limit to the fullest extent possible, access to the Property by any unauthorized persons.
 - b. Grantor shall use all commercially reasonable efforts to avoid interference with RACER's operations at the Property.
 - c. RACER shall: (i) comply with all applicable laws, reasonable written procedures established in advance by Grantor and the requirements of any insurance carriers insuring the Property or any interests therein that are communicated to RACER in writing in advance; and (ii) obtain all permits required for the Permitted Activities and promptly deliver copies to Grantor at Grantor's request.

- d. RACER shall repair any damage to the Property resulting from the Permitted Activities within 30 days of expiration of this Agreement, and shall leave the Property in substantially the same condition it was in prior to this Agreement.
- e. Any equipment installed on the Property by RACER shall remain RACER's personal property. RACER shall promptly remove its personal property from the Property after the termination of this Agreement.

5. Indemnification:

- a. RACER shall release, indemnify, defend, and hold Grantor harmless from and against claims, losses, damage, injuries, liabilities, fines and penalties (collectively, "Claims") [to the proportionate extent] arising from [negligence or willful misconduct in the performance of] the Permitted Activities conducted by RACER or its Representatives. Nothing herein shall limit the obligations of RACER and its Representatives to maintain insurance under paragraph 7 below, or affect Grantor's right and ability to recover under such insurance policies as an additional insured.
- b. Grantor shall indemnify, defend, and hold RACER and its Representatives harmless from and against all Claims arising out of: (i) the breach by Grantor of its obligations under this Agreement, or (ii) the negligence or willful misconduct of Grantor or any Representative thereof.
- c. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall an indemnifying party be liable to the other for: (i) consequential damages or lost income, value or profits or punitive or treble damages of any type or manner, even if foreseeable; and (ii) any Claim arising from the act or omission of the indemnified party.

6. LIMITATION OF LIABILITY

- a. **RACER'S OBLIGATIONS HEREUNDER SURVIVE TERMINATION OF THIS AGREEMENT, PROVIDED THAT ANY INDEMNIFICATION OR OTHER OBLIGATIONS OF RACER ARE LIMITED BY THE TERMS OF THE SETTLEMENT AGREEMENT, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY.**

7. Insurance:

- a. Prior to entering the Property to conduct Permitted Activities, RACER shall obtain, and throughout the Term maintain, insurance against all claims for personal injury (including death), and property damage, under a policy or policies of comprehensive general liability insurance with limits at least equal to \$1,000,000 per occurrence from a reputable company or companies licensed to do business in the State of Michigan.
- b. RACER and its Representatives shall obtain, and throughout the Term maintain, workers' compensation insurance to cover any employees engaged in the Permitted Activities.
- c. RACER contractors and consultants that perform Permitted Activities on the Property shall obtain, and throughout the Term maintain, umbrella or excess liability insurance and contractor's general, professional, and pollution liability insurance providing not less than \$25,000,000 in aggregate coverage from a reputable company or companies licensed to do business in the State of Michigan. These policies shall name Grantor as an additional insured, and shall be primary to RACER's policies.

- d. RACER shall provide Grantor with a minimum of thirty (30) days' notice of cancellation of any insurance maintained under this paragraph. All policies of insurance maintained under this section shall be endorsed to provide a waiver of subrogation as to Grantor and its Representatives. The coverage must provide for separation of insureds and must not include a cross suits exclusion. All such policies shall be primary to any other insurance coverage available to Grantor. RACER and its Representatives shall obtain and deliver to Grantor certificates of insurance evidencing the coverage required by this Section in advance of any access to the Property.
8. **Notice:** RACER, through its Representatives, will notify Grantor 24 hours before accessing the Property, except in the event of any emergency or where otherwise required by law. All notices required to be given pursuant to this Agreement shall be sent by certified or registered mail, or by an overnight courier (Federal Express or U.P.S.), along with an electronic mail copy to the following addresses:

To RACER:

David Favero
Deputy Cleanup Manager - Michigan
RACER Trust
500 Woodward Avenue, Suite 1510
Detroit, MI 48226
dfavero@racertrust.org

and

Carl Garvey
Acting General Counsel
RACER Trust
500 Woodward Avenue, Suite 1510
Detroit, MI 48226
cgarvey@racertrust.org

To Grantor:

Scott & Kelly Smith
9451 Shyre Circle
Davison, MI 48423
emeraldawn1989@yahoo.com

9. **Governing Law:** Any legal suit, action or proceeding arising out of or based upon this Agreement may be instituted in courts of the State of Michigan, except to the extent that the United States Bankruptcy Court for the Southern District of New York, Case No. 09-50026 (REG), has exclusive jurisdiction over claims brought under Paragraph 102 of the Settlement Agreement. Service of process, summons, notice or other document sent to the address in Paragraph 8 is effective service of process for any suit, action or other proceeding brought in courts of the State of Michigan or in the Bankruptcy Court.
10. **Entire Agreement:** The terms and conditions of this Agreement shall not be modified other than by a written agreement signed by both parties, all of which together with this Agreement and Exhibits (and the Settlement Agreement) constitute a fully executed agreement.
11. **Severability:** If any term of this Agreement is found to be unenforceable in any jurisdiction, then such term shall be enforced to the maximum extent permitted by law, rather than voided, and the remaining terms of this Agreement shall remain in full force and effect.

12. **Assignability:** Neither this Agreement, nor any rights hereunder, may be assigned, whether voluntarily or by operation of law, except in strict compliance with the provisions hereof.
13. **Cost of Enforcement:** In the event any declaratory or other legal or equitable action is instituted between Grantor and RACER in connection with this Agreement, then the prevailing party shall be entitled to receive from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees and costs.
14. **Survival:** The terms and conditions provided herein survive the termination of this Agreement.
15. **Environmental Report:** A copy of all information, studies, and reports compiled by RACER with respect to the Property shall be provided to Grantor upon RACER's completion of the same.

The Parties or their duly authorized representatives hereby represent and warrant that each has the requisite authority to execute this Agreement and has done so on the date specified below.

GRANTOR:

Scott & Kelly Smith

By: Kelly Smith
Kelly Smith, Property Owner

2-12-14
Date

By: Scott Smith
Scott Smith, Property Owner

2-12-14
Date

RACER:

By: _____
David Favero
Deputy Cleanup Manager - Michigan

Date

**EXHIBIT 2
SCOPE OF WORK**

- Installation of up to 10 soil borings at the southwest area of Grantor's property as shown in Exhibit 1.
- Installation of up to 10 monitoring wells at the southwest area of Grantor's property as shown in Exhibit 1.
- Monitoring well sampling and other testing.