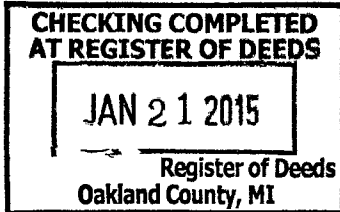


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OAKLAND COUNTY  
REGISTER OF DEEDS

2015 JAN 21 PM 3:59

15037  
LIBER 47807 PAGE 624  
\$88.00 MISC RECORDING  
\$4.00 REMONUMENTATION  
01/23/2015 03:16:20 P.M. RECEIPT# 10297  
PAID RECORDED - OAKLAND COUNTY  
LISA BROWN, CLERK/REGISTER OF DEEDS

Space above this line for recorder's use only



**RESTRICTIVE USE AGREEMENT**

Dated as of January 15, 2015

Between

**BUYER:**

**PONTIAC CENTRAL, LLC**

And

**TRUST:**

**REVITALIZING COMMUNITIES ENVIRONMENTAL RESPONSE TRUST**

Affecting Property Located at:  
**2000 Centerpoint Parkway  
Pontiac, Michigan**

*(Handwritten initials: dmp TS)*

## **RESTRICTIVE USE AGREEMENT**

THIS RESTRICTIVE USE AGREEMENT (this "**Agreement**") is made effective as of January \_\_\_\_\_, 2015 (the "**Effective Date**"), between **PONTIAC CENTRAL, LLC** a Delaware limited liability company, whose address is 11100 Santa Monica Boulevard, Suite 850, Los Angeles, CA 90025 ("**Buyer**"), and **REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE TRUST**, a trust formed under the laws of the State of New York, whose address is One Detroit Center, 500 Woodward Avenue, 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 December 8, 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 2000 Centerpoint Parkway in Pontiac, Michigan, as more particularly described on Exhibit A annexed hereto (the "**Property**"). IRG assigned its interest in the PSA to Buyer by that certain instrument dated January 12, 2015.

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 in order 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 as defined by MDEQ (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 on which the modifications are performed (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 RRCP, 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 USEPA, MDEQ, 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. In no event shall Owner be permitted to remove, alter or disturb certain slabs, or any portion thereof, or associated piping and tunnels, in areas to be identified in the RRCP approved by Buyer and the Trust. Other slabs may be identified in the Remediation and Redevelopment Coordination Plan which Owner may remove if Owner replaces such slabs with an equivalent impervious cover acceptable to the Trust and the applicable Agency.

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 obligation to avoid 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 on Owner's operation, use or development of the Property or the value thereof. 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 this Section 1.4 and subject to the terms and conditions hereof, Owner shall within 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 this Section 1.4 and Owner consents to such additional or modified restrictions, Owner shall within 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. If Owner fails to execute and deliver the required documentation within such 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.

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 Courts 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, 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 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 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  
One Detroit Center  
500 Woodward Avenue, Suite 1510  
Detroit, MI 48826  
Attn: Bruce Rasher, Redevelopment Manager  
Facsimile: 734.879.9537  
Email: brasher@racertrust.org

**And a Copy to:**

Revitalizing Auto Communities Environmental  
Response Trust  
One Detroit Center  
500 Woodward Avenue, Suite 1510

**With a Copy to:**

Revitalizing Auto Communities  
Environmental Response Trust  
One Detroit Center  
500 Woodward Avenue, Suite 1510  
Detroit, MI 48826  
Attn: Carl Garvey, Esq.  
General Counsel  
Facsimile: 734-480-1449  
Email: cgarvey@racertrust.org

**And a Copy to:**

Lowe, Fell & Skogg, LLC  
1099 18<sup>th</sup> Street, Suite 2950  
Denver, CO 80202

Detroit, MI 48826  
Attn: Grant Trigger, Cleanup Manager  
Facsimile: 248.594.4829  
Email: gtrigger@racertrust.org

Attention: David W. Fell, Esq.  
Facsimile: 212.223.4134  
Email: dfell@lflslaw.com

**If to Buyer:**

2000 Centerpoint – Pontiac Central, LLC  
12214 Lakewood Boulevard  
Downey, CA 90242  
Attn: Stuart Lichter  
Email: slichter@industrialrealtygroup.com  
Facsimile: \_\_\_\_\_

**And a Copy to:**

Fainsbert Mase & Snyder LLP  
11835 West Olympic Boulevard – Suite 1100  
Los Angeles, CA 90064  
Attn: Jerry A. Brown, Jr., Esq.  
Email: jbrown@fmbssl.com  
Facsimile: \_\_\_\_\_

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

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

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

(m) **"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 hereto as Exhibit B.

(n) **"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](http://www.racertrust.org/About_TRUST/Settlement_Agreement).

*[SIGNATURES ON PAGES FOLLOWING]*




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

**THE TRUST:**

Dated as of January 15, 2015

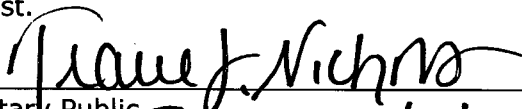
**REVITALIZING AUTO COMMUNITIES  
ENVIRONMENTAL RESPONSE TRUST**

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

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

STATE OF MICHIGAN )  
 ) SS.  
COUNTY OF WAYNE )

The foregoing instrument was acknowledged before me this 12 day of January, 2015, by Elliott P. Laws, not individually, but acting solely in his capacity as Managing Member of EPLET, LLC, a Delaware limited liability company, acting solely in its capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust, a New York trust, acting solely in its capacity as Sole Member of RACER Properties LLC, a Delaware limited liability company, on behalf of said limited liability companies and said trust.

  
Notary Public  
Print Name: Tracie L. Nichols  
Acting in the County of Wayne, Michigan  
My commission expires: 3/19/17

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

**TAX PARCEL NUMBERS: 19-03-126-008**

**WHEN RECORDED MAIL TO:**

Delivered by  
Lowe, Fell & Skogg, LLC  
1099 18<sup>th</sup> Street, Suite 2950  
Denver, CO 80202  
Attention: David W. Fell, Esq.

WHEN RECORDED  
RETURN TO

Title Source Inc.  
662 Woodward Avenue  
Detroit, MI 48226

59766247 S.S.  
**COMMERCIAL**

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

**BUYER:**

**PONTIAC CENTRAL, LLC**

Dated as of January 9, 2015

By: 

Name: STUART LICHTER

Title: PRESIDENT

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of [\_\_\_\_], 201\_, before me a Notary Public for the State and county aforesaid, personally appeared [**Insert Name of Signatory**], who acknowledged himself to be the [**Insert title of Signatory**] of \_\_\_\_\_, and that he, being authorized to do so, executed the foregoing Environmental Easement Agreement for the purposes therein contained by signing the name of said entity by [him][her]self as such [officer][authorized signatory].

WITNESS my hand and seal the day and year aforesaid.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

)  
)  
)

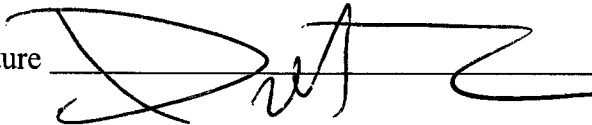
ss.

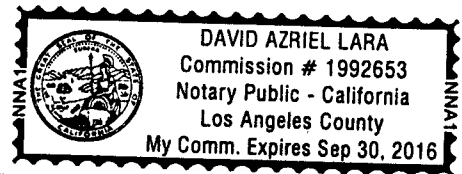
On January 9<sup>th</sup> 2015, before me, David Azriel Lara, Notary Public, personally appeared Stuart Lichter, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

 (Seal)



**Exhibit A**

**LEGAL DESCRIPTION OF PROPERTY**

Tax Id Number(s): 19-03-126-008

Land Situated in the City of Pontiac in the County of Oakland in the State of MI

That part of Lot 5, "Assessor's Plat No. 110", as recorded in Liber 52, Page 46 of Plats, Oakland County Records, described as follows:

Beginning at a point on the North line of said Section 3, which is North 87 degrees 23 minutes 0 seconds West, 49.70 feet, from the North 1/4 corner of said Section 3; thence South 02 degrees 36 minutes 47 seconds West, 1,125.94 feet; thence on a curve to the left, having a radius of 810.00 feet, with a chord bearing and distance of South 13 degrees 41 minutes 13 seconds East, 454.68 feet; thence South 29 degrees 59 minutes 13 seconds East, 135.67 feet; thence South 60 degrees 00 minutes 47 seconds West, 498.29 feet; thence on a curve to the left, having a radius of 347.00 feet, with a chord bearing and distance of South 41 degrees 09 minutes 50 seconds West, 224.22 feet; thence South 18 degrees 13 minutes 45 seconds West, 175.45 feet; thence South 22 degrees 18 minutes 53 seconds West, 347.12 feet; thence on a curve to the right, having a radius of 269.50 feet, with a chord bearing and distance of South 80 degrees 01 minute 02 seconds West, 455.61 feet; thence North 42 degrees 16 minutes 49 seconds West, 408.58 feet; thence on a curve to the right, having a radius of 269.50 feet, with a chord bearing and distance of North 19 degrees 50 minutes 14 seconds West, 205.77 feet; thence North 02 degrees 36 minutes 20 seconds East, 2,236.04 feet to the North line of Section 3; thence South 87 degrees 23 minutes 00 seconds East along said North line, 1,334.96 to the point of beginning.

RC-OWMRP-11-15-002

EXHIBIT B

## DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference No.: RC-WHMD-111-15-???

Facility MID Number: MID005356902

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 15, 2015 by RACER Properties LLC, the Grantor, whose address is 500 Woodward Avenue, Suite 1510, Detroit, Michigan 48226, and the current fee title holder of the Property, formerly owned by General Motors Corporation (GM Corp.), such Property legally described in Exhibit 1 and depicted in Exhibit 2, the address of which is 2000 Centerpoint Parkway, Pontiac, Michigan, 48341, Tax Identification Number 63-64-19-03-126-008, for the benefit of the Grantee, the State of Michigan, Department of Environment Quality (MDEQ), 525 West Allegan Street, P.O. Box 30473, Lansing, Michigan 48909-7926.

This Restrictive Covenant has been made to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination present at the Property. There is an existing Restrictive Covenant on the Property dated March 30, 2007 and filed with the Oakland County Register of Deeds on April 13, 2007 (2007 Restrictive Covenant), MDEQ Reference No. RC-WHMD-07-003, which includes certain land and resource use restrictions, soil management provisions, monitoring well coordination, and prohibition of installation of wells to extract groundwater for potable use.

Failure of the corrective measures to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the USEPA Response to Comments and Final Decision dated August 3, 2006 (USEPA Final Decision)); 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 accounted for in the USEPA Final Decision; or use of the Property in a manner inconsistent with the

restrictions described herein or in the 2007 Restrictive Covenant – each may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. Additional restrictions may become necessary.

#### Summary of Corrective Measures

In 1998, GM Corp. began RCRA Corrective Action activities at its Pontiac Centerpoint Campus (PCC), USEPA Site Identification No. MID005356902, under an Administrative Order on Consent with USEPA. The Property was a portion of PCC and generally consists of a portion of Area of Interest (AOI) #50 (DUCO Stores Fuel Line Study Area), AOI #16 (Former Building 29 Tank Farm Area) and AOI #25 (Former Plating Department). On April 28, 2006, GM Corp. submitted to USEPA a Corrective Measures Proposal (CMP) that proposed Final Corrective Measures at the Property. The CMP described and documented the investigations, corrective action activities and proposed controls for contamination remaining at the Property. USEPA reviewed GM Corp's CMP, inspected the Property, and issued a Final Decision on August 3, 2006 approving the corrective measures for the Property. As documented in the USEPA Final Decision, the final corrective measures at the Property include:

- Institutional controls to prohibit use of shallow groundwater for potable use and to restrict land use for any purpose other than commercial/industrial (i.e. non-residential)

On March 31, 2011, the Revitalizing Auto Communities Environmental Response Trust (Trust), took title to the Property, and subsequently conveyed it to RACER Properties LLC, an entity wholly owned by the Trust. The Trust was established and assumed the rights, title, and interest of Motors Liquidation Company (as successor to GM Corp.) in and to the Property pursuant to an Environmental Response Trust Consent Decree and Settlement Agreement ("Settlement Agreement") entered by the U.S. Bankruptcy Court for the Southern District of New York on March 29, 2011, in the case of *In re Motors Liquidation Company*, etc. et al., Debtors, Case No. 09-50026 (REG), among the Debtors, the United States of America, certain states including the State of Michigan, the Saint Regis Mohawk Tribe, and EPLET, LLC (not individually but solely in its representative capacity as Administrative Trustee of the Trust).

Based on the existing information from the investigations conducted at the Property, constituents detected at AOI #50 included benzene. The Non-Residential Soil Volatilization to Indoor Air Inhalation criteria for benzene was exceeded in soil at one location at AOI #50 and this location is illustrated in Exhibit 3.

Soil and groundwater contamination remain at levels that do not allow unrestricted use of the Property. Public health will be protected by limiting the use of the Property to non-residential (Exhibit 4), and prohibiting the use of groundwater. Restricting the Property to uses consistent with the exposure assumptions identified above will allow the use to be protective of the public health, safety, and welfare, and the environment.

#### 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 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 Michigan 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 the fee title holder's behalf.

"Part 201" shall mean Part 201, Environmental Remediation, of NREPA.

"Property" shall mean the property legally described in Exhibit 1.

"USEPA" means 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 and Resource Use Restrictions**

The 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, in addition to the restrictions in the 2007 Restrictive Covenant, 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) the Grantor, if it is no longer owner; (2) MDEQ; or (3) USEPA.

1. **Land Use Prohibitions.** The Owner shall prohibit all uses of the Property that are not compatible with the non-residential land use category under MCL 324.20120a(1)(b) and generally described in the Description of Allowable Uses, attached hereto as Exhibit 4.

Part 201 cleanup criteria for land use-based response activities are located in the Government Documents Section of the State of Michigan Library, MCL 324.201201 *et*

seq. effective December 31, 2013, and Michigan Administrative Code (MAC) Rule (R) 299.5701 – R 299.5727, effective December 31, 2013.

2. Activities Prohibited. The Owner shall prohibit activities on the Property that may result in exposures above the non-residential land use category. 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 MDEQ- or USEPA-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. No excavation and transport of any saturated soils from the Property may be completed without MDEQ or USEPA approval.
  - d. No contaminated soils may be relocated on the Property except as provided for under Part 201, Section 20120c, MCL 324.20120c.
  - e. 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.
3. 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, 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.
4. Soil Vapor Management. The Owner acknowledges the presence of limited pre-existing environmental information that indicates the potential for a limited indoor air and vapor intrusion issue for the Property. Owner shall conduct all necessary actions to fulfill all appropriate regulatory actions to manage soil vapor issues for the Property, including fulfilling possible requirements of USEPA and MDEQ.
5. Access. The Owner shall grant to 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 the corrective measures, and inspect any records relating thereto, and to perform any



actions necessary to maintain compliance with Parts 111 and 201, applicable federal laws and regulations, and the USEPA Final Decision and the subsequent CACC Report.

6. Transfer of Interest. The Grantor shall provide notice at the addresses provided in this document to MDEQ and USEPA 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 NREPA. The 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 AND ENVIRONMENTAL PROTECTION EASEMENT, DATED \_\_\_\_\_ [month, day, year], AND RECORDED WITH THE OAKLAND COUNTY REGISTER OF DEEDS, LIBER \_\_\_\_\_, PAGE \_\_\_\_\_.**

7. 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 Facility MID Number: MID005356902 and MDEQ Reference Number: RC-WHMD-111-14-006; 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

RC-OWMRP-11-15-002

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:

Chief  
Office of Waste Management and Radiological Protection  
Michigan Department of Environmental Quality

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

8. 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.
9. Enforcement. The Grantor 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. The 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 the 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.
10. Third Party Beneficiary. The 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 the Grantor, MDEQ, and their successors and assigns, and the Third Party Beneficiary.
11. 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 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. The 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 6 (Access) of this Restrictive Covenant.
12. 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 107a of NREPA, MCLA 324.20107a, under the applicable Michigan administrative rules R299.51003, and under CERCLA, 42 U.S.C. § 9601, *et seq.* Owner agrees to maintain records of its activities to comply with this Declaration of Restrictive Covenant and applicable Due Care obligations, and shall timely supply copies of any records documenting such compliance upon request from Grantor, MDEQ or USEPA.

13. Modification / Release / Rescission. The Grantor or Owner may request in writing to MDEQ or USEPA, at the addresses provided in herein, 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. 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 and USEPA at the addresses provided herein.
14. 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.
15. Limitation on the Trust's Liability. The Trust's and the Administrative Trustee's liability is limited by the terms and conditions of the Settlement Agreement, which are incorporated herein by reference.
16. 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.
17. 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 1998 Administrative Order on Consent, the USEPA Final Decision, and the CACC Report; and 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 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, the 2007 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 and the 2007 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.

[Signatures follow]

IN WITNESS WHEREOF, RACER Properties LLC has caused this Restrictive Covenant, RC-WHMD-111-15-???, to be executed on this 15 day of January, 2015.

RC-OWMRP-11-15-002

RACER PROPERTIES LLC

By: Revitalizing Auto Communities  
Environmental 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: Elliott P. Laws  
ELLIOTT P. LAWS, not individually, but  
acting solely in his representative capacity as  
Managing Member of EPLET, LLC,

STATE OF MICHIGAN  
COUNTY OF Wayne

The foregoing instrument was acknowledged before me this 12 day of January, 2015 by ELLIOTT P. LAWS, as Managing Member of EPLET, LLC, acting solely in its 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

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

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

When recorded return to:  
Carl Garvey, General Counsel  
RACER Trust  
500 Woodward Avenue, Suite 1510  
Detroit, Michigan 48226

WHEN RECORDED RETURN TO:  
Title Source Inc.  
662 Woodward Avenue  
Detroit, MI 48226  
59766247J.J.

COMMERCIAL

EXHIBIT 1

LEGAL DESCRIPTION

Real property in the City of Pontiac, County of Oakland, State of Michigan, described as follows:

That part of Lot 5, ASSESSOR'S PLAT NO. 110, as recorded in Liber 52, Page 46 of Plats, Oakland County Records, described as follows: Beginning at a point on the North line of said Section 3, which is North 87 degrees 23 minutes 00 seconds West, 49.70 feet from the North  $\frac{1}{4}$  corner of said Section 3; thence South 02 degrees 36 minutes 47 seconds West, 1125.94 feet; thence on a curve to the left, having a radius of 810.00 feet, with a chord bearing and distance of South 13 degrees 41 minutes 13 seconds East, 454.68 feet; thence South 29 degrees 59 minutes 13 seconds East, 135.67 feet; thence South 60 degrees 00 minutes 47 seconds West, 498.29 feet; thence on a curve to the left having a radius of 347.00 feet, with a chord bearing and distance of South 41 degrees 09 minutes 50 seconds West, 224.22 feet; thence South 18 degrees 13 minutes 45 seconds West, 175.45 feet; thence South 22 degrees 18 minutes 53 seconds West, 347.12 feet; thence on a curve to the right, having a radius of 269.50 feet, with a chord bearing and distance of South 80 degrees 01 minutes 02 seconds West, 455.61 feet; thence North 42 degrees 16 minutes 49 seconds West, 408.58 feet; thence on a curve to the right, having a radius of 269.50 feet, with a chord bearing and distance of North 19 degrees 50 minutes 14 seconds West, 205.77 feet; thence North 02 degrees 36 minutes 20 seconds East, 2236.04 feet to the North line of Section 3; thence South 87 degrees 23 minutes 00 seconds East along said North line, 1334.96 feet to the Point of Beginning.

19-03-126-008

The above-described parcels are the same land as described in First American Title Insurance Company Commitment Number 59766247 effective December 22, 2014.

**EXHIBIT 2**

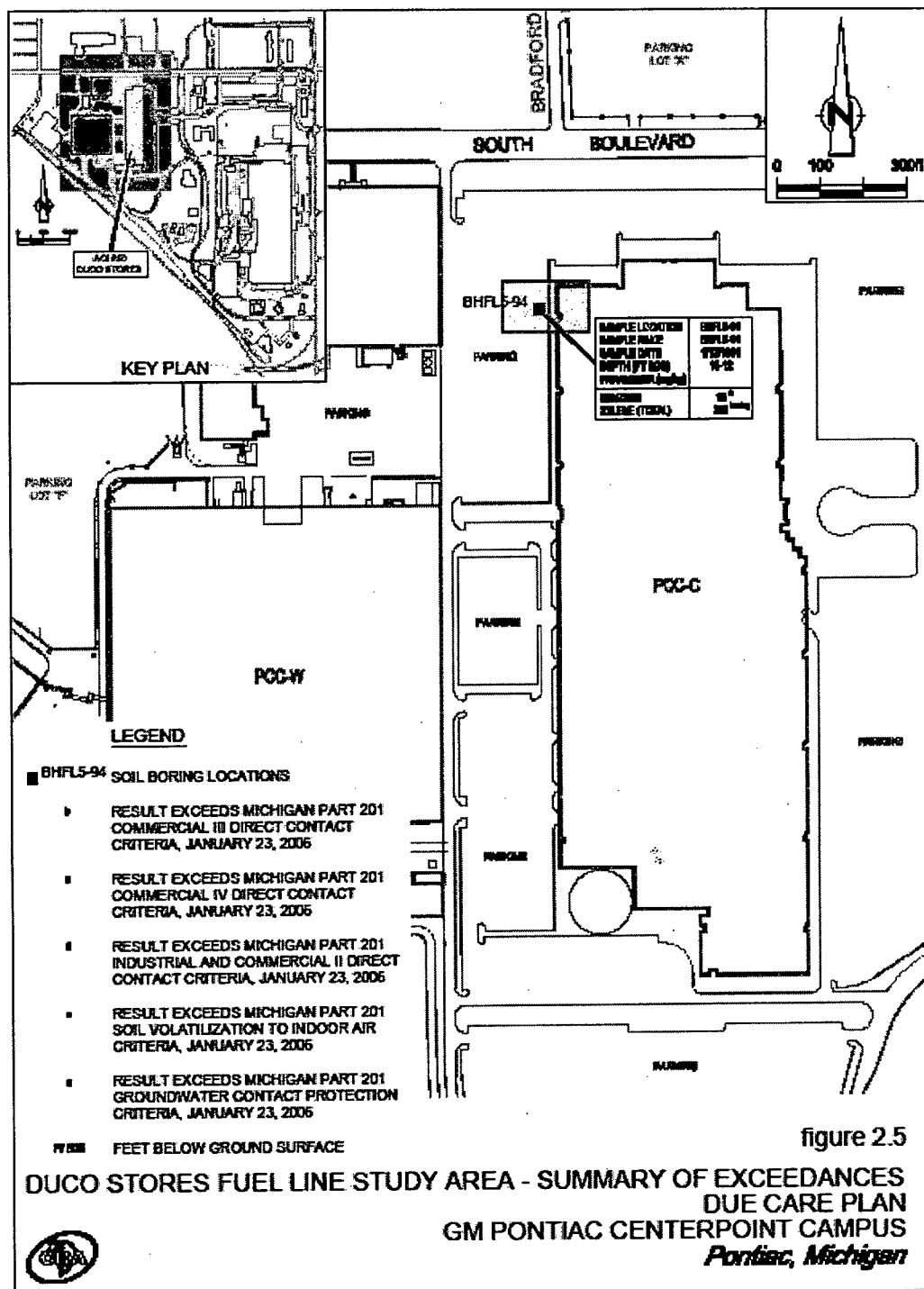
**DRAWING ILLUSTRATING DESCRIPTION OF PROPERTY**

[Drawing on following page]





## LOCATION OF POTENTIAL VAPOR INTRUSION



07097-01(D59)GN-WA011 SEP 05/2007

## EXHIBIT 4

### DESCRIPTION OF ALLOWABLE USES

Non-residential 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.