

**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANT**

MDEQ Reference Number: RC-OWMRP-111-15-005  
Facility MID Number: MID 000 809 905  
MDEQ Approval Date: October 12, 2015

This Amended and Restated Declaration of Restrictive Covenant (Amended Restrictive Covenant) is made to protect public health, safety, or welfare or the environment pursuant to the provisions of Part 111, Hazardous Waste Management, Michigan Compiled Laws ("MCL") 324.11101, *et seq.* ("Part 111") 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 administrative rules promulgated pursuant to those Parts, MAC R 299.9001 *et seq.* and MAC R 299.5101 *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 Amended Restrictive Covenant is made on October 12, 2015, by RACER Properties LLC, the address of which is 500 Woodward Avenue, Suite 2650, Detroit, MI 48226, the Grantor and an entity wholly owned by the Revitalizing Auto Communities Environmental Response Trust ("Trust") and the current fee title holder of the Property, such Property legally described in Exhibit 1 and depicted in Exhibit 2, the location of which is located at 37350 Ecorse Road in the City of Romulus, County of Wayne, State of Michigan ("Property" or "Site"), for the benefit of the Grantee, State of Michigan, Department of Environment Quality ("MDEQ"), whose address is 525 West Allegan Street, P.O. Box 30473, Lansing, MI 48909-7973.

The recording of this Amended Restrictive Covenant amends and restates in its entirety the Declaration of Restrictive Covenant recorded with the Wayne County Register of Deeds on November 24, 2014, having document number 2014454672, and recorded at Liber 51882, Page 1137 (the 2014 Restrictive Covenant"). To the extent this Amended Restrictive Covenant conflicts with the 2014 Restrictive Covenant, the terms of this Amended Restrictive Covenant shall govern and control.

This Amended Restrictive Covenant has been made to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination present at the Property. Recording of this Amended 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

Ref # 10020

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.

The land and resource use restrictions contained in this Amended Restrictive Covenant are based upon information available to, and the corrective action approved by, the MDEQ at the time this document was recorded. Failure of the corrective measures to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the approved corrective action; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Part 111 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 Amended Restrictive Covenant not being protective of public health, safety, or welfare, or the environment. Additional restrictions may become necessary. Information pertaining to the environmental conditions at the Property and the corrective action undertaken at the Property is on file with the MDEQ, Office of Waste Management and Radiological Protection.

Based on the results of site investigations, the Property contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of NREPA. MDEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 20107a of NREPA.

#### Definitions

“Grantee” will mean MDEQ, its respective successor entities, and those persons or entities acting on its behalf.

“Grantor” will mean RACER Properties LLC, an entity wholly-owned by the Trust, the title holder of the Property at the time this Amended 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” will 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” will mean Part 111, Hazardous Waste Management, of the NREPA in effect at the time of the recording of this Amended Restrictive Covenant.

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

“Property” will 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” will have the same meaning as “Property.”

“USEPA” will 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, will have the same meaning in this document as in those statutes and rules as on the date this Amended Restrictive Covenant is made.

#### Summary of Corrective Measures

Previous corrective measures at the Site included cleanup and investigation associated with a diesel fuel release at the former above ground storage tank farm and investigation associated with the in-place closure of a former underground storage tank.

RCRA corrective action activities related to the Site began in 2011 with the preparation of a Current Conditions Summary. Six Areas of Interest (AOIs) were identified at the Property as warranting investigation. These areas have the potential presence of hazardous waste and/or hazardous constituents due to possible past release(s) to the environment. RCRA Facility Investigation (RFI) activities followed in 2012 through 2013.

The RFI groundwater sampling activities documented exceedances of the drinking water environmental protection standards established under the administrative rules promulgated pursuant to Part 111 of NREPA, for arsenic at two monitoring wells located interior to the Site (arsenic was detected at essentially regional background levels and therefore determined to not be a concern), and copper and selenium have been detected in exceedance of their respective groundwater-surface water interface (GSI) criteria, identified in Exhibit 3. The McClaughrey Drain,

a county drain, wraps around the Property from the southwest corner and exits near the northeast side, is the primary focus of evaluation of the GSI at the Property.

Several rounds of groundwater monitoring have demonstrated that groundwater flow is consistently to the north-northeast and that copper and selenium concentrations in groundwater down-gradient of the well containing concentrations above the GSI criteria are below criteria. Groundwater contamination has not migrated to the drain or off-site, and sufficient data has been collected to demonstrate that concentrations are stable and no constituents are migrating into the McClaughrey Drain. MDEQ has approved the RCRA Corrective Action Environmental Indicator Migration of Contaminated Groundwater Under Control (CA750).

**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, will be subject to those restrictions on use described below, and intends that said restrictions and covenants will 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; and (2) MDEQ.

1. Land Use Prohibitions. The Owner will prohibit all uses of the Property that are not compatible or consistent with the exposure assumptions for the nonresidential cleanup criteria under MCL 324.20120a(1)(b) and generally described in the Description of Allowable Uses, attached hereto as Exhibit 4.

Nonresidential environmental protection standards are established under the administrative rules under Part 111 of NREPA found at MAC 299.9629.

2. Activities Prohibited. Owner will prohibit activities on the Property that may result in exposures above the nonresidential 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 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. Except groundwater may be used for non-potable purposes if approved by MDEQ or EPA in writing.

- c. *The Owner will not remove, disturb or damage any monitoring wells on the Property 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. *Owner will 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 equivalent State Law, except pursuant to a plan or permit approved in writing by MDEQ or USEPA.*
- f. *If Owner elects to remove any slabs, pavement or other impervious surface on the Property, Owner will 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 will not build or occupy any building on the Property without first completing one of the following: Option 1) Evaluate and determine, in accordance with applicable environmental laws, rules, or regulations that no unacceptable vapor intrusion risks to human health exist in any existing or newly constructed site buildings; or Option 2) 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 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 Section 20107a of NREPA.*

If Option 2 above is selected, the Owner will 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 Amended Restrictive Covenant until it is determined that a vapor barrier or mitigation system is no longer necessary in accordance with Option 1, above.

- h. *The Owner will manage contaminated soils, media and/or debris 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. Compliance with this Amended Restrictive Covenant and Applicable Due Care Obligations. The Owner shall at all times comply with the conditions and restrictions of this Amended Restrictive Covenant and the applicable due care obligations under Section 20107a of NREPA and CERCLA, 42 U.S.C. § 9601, et seq. Owner agrees to maintain records of its applicable due care activities and shall supply copies of any records documenting such compliance upon request from Grantor or any Agency.
4. Access. The Owner will grant to the Trust and MDEQ the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with this Amended 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 Parts 111 and 201, applicable federal laws and regulations.
5. Transfer of Interest. The Owner will provide notice at the addresses provided in this document to MDEQ of the Owner's intent to transfer any interest in the Property, or any portion thereof, at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property will not be consummated by Owner without adequate and complete provision for compliance with the terms and conditions of this Amended Restrictive Covenant and the applicable provisions of Section 20116 of the NREPA. Grantor will 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 WAYNE COUNTY REGISTER OF DEEDS, LIBER \_\_\_\_\_, PAGE \_\_\_\_\_.**

A copy of this Amended Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

6. Notices. Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Amended Restrictive Covenant will be made in writing; include a statement that the notice is being made pursuant to the requirements of this Amended Restrictive Covenant; include the MDEQ Reference Number RC-OWMRP-111-15-005, the Facility MID Number MID000809905; and will be served either personally, or sent via first class mail, postage prepaid, as follows:

For MDEQ:

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

For RACER Trust:

Michigan Cleanup Manager  
RACER Trust  
500 Woodward, Suite 2650  
Detroit, MI. 48226

7. Term. This Amended Restrictive Covenant will run with the Property, and will 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.
8. Enforcement. Grantor and/or the Trust is entitled to enforce the restrictions and covenants of this Amended 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 is entitled to enforce the restrictions and covenants in this Amended 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 will be in addition to any and all other remedies at law or equity.
9. Modification/ Release/Rescission. Grantor or Owner may request in writing to MDEQ at the addresses provided in herein, modifications to, or release or rescission of, this Amended Restrictive Covenant. This Amended Restrictive Covenant may be modified, released or rescinded only with the written approval of MDEQ. Any approved modification to, or release or rescission of, this Amended Restrictive Covenant will be filed with the appropriate Registrar of Deeds by the Grantor or Owner and a certified copy will be returned to MDEQ at the addresses provided herein.
10. Severability. If any provision of this Amended Restrictive Covenant is held to be invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of any other provisions of this Amended Restrictive Covenant and all other provisions will continue to remain in full force and effect.

11. Limitation on Liability. The Trust's, RACER Properties LLC's and the Administrative Trustee's liability under this Amended Restrictive Covenant is limited by the terms and conditions of the Settlement Agreement, which are incorporated herein by reference.
12. Authority to Execute Amended Restrictive Covenant. The undersigned person executing this Amended Restrictive Covenant represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Amended Restrictive Covenant.
13. Miscellaneous.
  - a) Controlling Law. The interpretation and performance of this Amended Restrictive Covenant will 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 Amended 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 111 of the NREPA.
  - b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Amended Restrictive Covenant will be liberally construed to affect the purpose of this Amended 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 Amended Restrictive Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Amended Restrictive Covenant that would render the provision valid will be favored over any interpretation that would render it invalid.
  - c) Entire Agreement. This Amended 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 Amended Restrictive Covenant, MDEQ Reference Number RC-OWMRP-111-15-005, to be executed on this 28th day of October, 2015.

RACER PROPERTIES LLC

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: *Elliot P. Laws*  
ELLIOTT P. LAWS, not individually, but acting solely in his  
representative capacity as Managing Member of EPLET, LLC

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DISTRICT/STATE OF Michigan CITY/COUNTY OF Wayne

The foregoing instrument was acknowledged before me this 28th day of October, 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 representative 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 the company.

*Tracie L. Nichols*  
Notary Public Signature

Name of Notary Public Tracie L. Nichols  
Notary Public, District/State of Michigan  
City/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).

Prepared by/Return to:  
Dawda, Mann, Mulcahy & Sadler, PLC  
39533 Woodward Avenue, Suite 200  
Bloomfield Hills, Michigan 48304  
Attn: Edward C. Dawda

## EXHIBIT 1

### LEGAL DESCRIPTION OF PROPERTY

(Per First American Title Insurance Company, Commitment No. NCS-650541-MICH,  
Dated: January 02, 2014.)

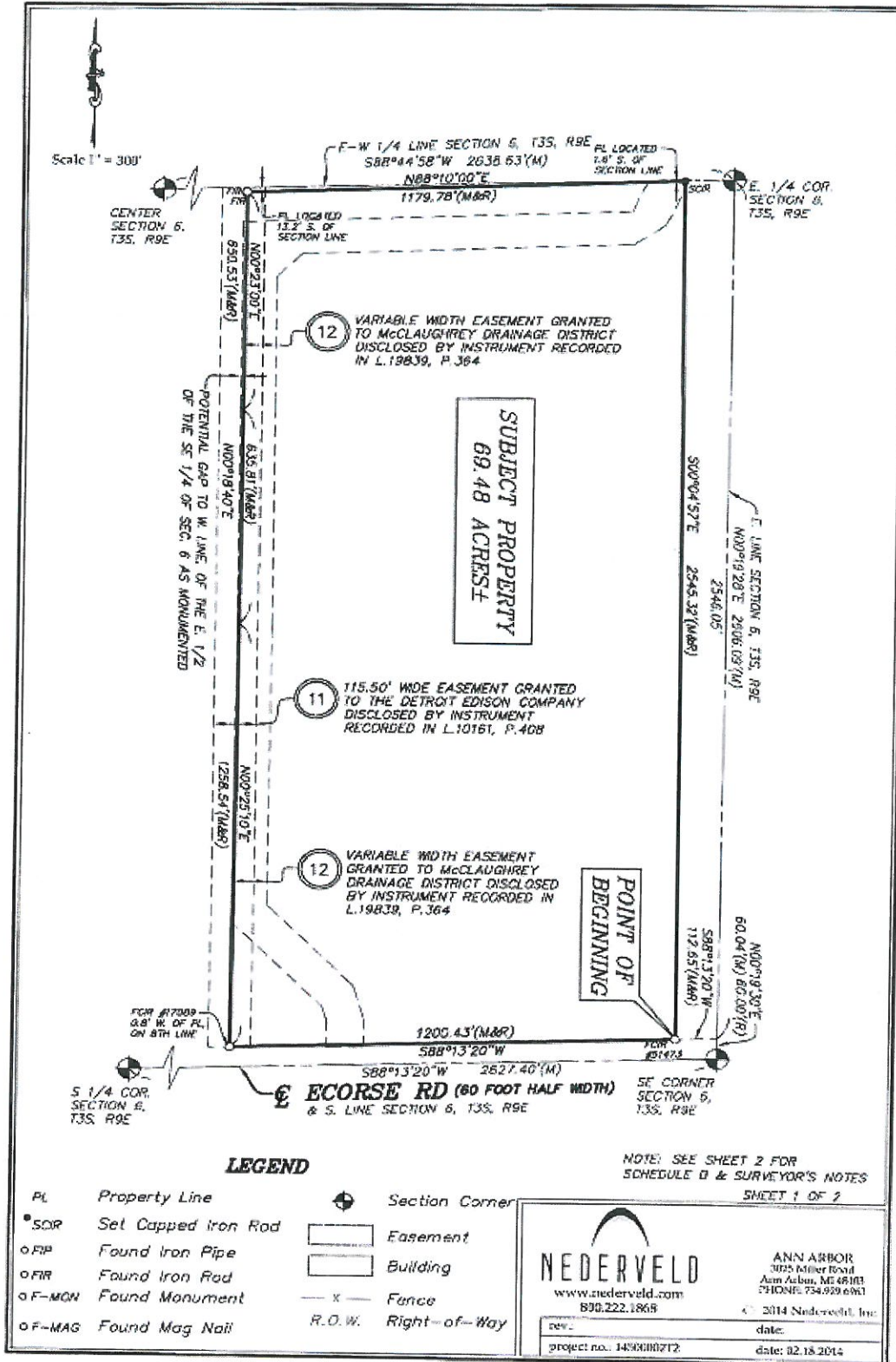
Real property in the City of Romulus, County of Wayne, State of Michigan,  
described as follows:

Part of the Southeast Quarter of Section 6, Town 3 South, Range 9 East,  
City of Romulus, Wayne County, Michigan; described as commencing at the  
Southeast corner of said section; Thence North 00 degrees 19 minutes 30  
seconds East 60.00 feet; Thence South 88 degrees 13 minutes 20 seconds  
West 112.65 feet to the point of beginning; Thence South 88 degrees 13  
minutes 20 seconds West 1200.43 feet; Thence North 00 degrees 25  
minutes 10 seconds East 1258.54 feet; Thence North 00 degrees 18 minutes  
40 seconds East 635.81 feet; Thence North 00 degrees 23 minutes 00  
seconds East 650.53 feet; Thence North 88 degrees 10 minutes 00 seconds  
East 1179.78 feet; Thence South 00 degrees 04 minutes 57 seconds East  
2545.32 feet to the point of beginning.

Tax Parcel No. 80-24-99-0005-703

Commonly known as 37350 Ecorse Road, Romulus, Michigan

## EXHIBIT 2 SURVEY OF PROPERTY



**EXHIBIT 3**

**LIST OF CONTAMINANTS ABOVE CRITERIA IN GROUNDWATER**

**Applicable Environmental Criteria**

<b>Contaminant</b>	<b>Chemical Abstract Service Number</b>	<b>Parts per Billion (ppb)</b>
Copper	7440-50-8	GSI - 9.0 ppb
Selenium	7782-49-2	GSI - 5.0 pp

## EXHIBIT 4

### 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