

LIBER 54194 PAGE 602  
\$21.00 MISC RECORDING  
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05/12/2020 12:57:00 PM RECEIPT# 67379  
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Lisa Brown, Clerk/Register of Deeds

RECEIVED  
OAKLAND COUNTY  
REGISTER OF DEEDS

REC'D FOR 07 MAY 2020

**FIRST AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANT**

EGLE Reference Number: RC-OWMRP-111-20-001  
USEPA ID Number: MID 005 356 886  
USEPA Approval Date: April 17, 2020

This First Amended and Restated Declaration of Restrictive Covenant (First Amended Restrictive Covenant) restates in its entirety and then selectively amends the original Declaration of Restrictive Covenant recorded on November 7, 2017 at Liber 51261 pages 771 through 808 (the "2017 Restrictive Covenant"). To the extent this First Amended Restrictive Covenant conflicts with the 2017 Restrictive Covenant, the terms of this First Amended Restrictive Covenant shall govern and control.

This First Amended 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 administrative rules promulgated pursuant to those Parts, Michigan Administrative Code (MAC) R 299.9101 *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, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.* (collectively, RCRA), and the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* (TSCA).

This First Amended Restrictive Covenant is made by RACER Properties LLC, the Grantor, who is the current fee title holder of the Property, for the benefit of the Grantee, State of Michigan, Department of Environment, Great Lakes and Energy (EGLE), whose address is 525 West Allegan Street, P.O. Box 30473, Lansing, MI 48909-7973.

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This First Amended Restrictive Covenant is made to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination, to prevent damage to or disturbance of any component of the constructed remedy/corrective measures, at certain parcels of real property located in Pontiac, MI 48340, Tax Parcels 14-17-427-001, 14-17-276-004, and 14-17-227-001, legally described in Exhibit 1 and illustrated in Exhibit 2 (Property or Site). The Property is part of the former General Motors Pontiac North Campus facility, MID 005 356 886, which has undergone or is undergoing RCRA Corrective Action. The Property was formerly owned by Revitalizing Auto Communities Environmental Response Trust (RACER Trust). Because of the former facility's long history of industrial use, and the industrial use of the surrounding property,

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recording this First Amended Restrictive Covenant is designed to: 1) prohibit or restrict activity that could result in unacceptable exposures to environmental contamination potentially located on the Property; 2) assure that the use of the Property is consistent with the surrounding industrial use and nonresidential cleanup criteria established under MCL 324.20120a(1)(b); 3) prevent (i) interference with corrective measures being implemented on the Property, and (ii) exacerbation of current environmental conditions on the Property; 4) require Owner or tenant of the Property to assess the potential for vapor intrusion or install a vapor mitigation system prior to building any new structures; and 5) require any future work or other activities on the Property by or for Owner, to be conducted in conformance with: i) applicable EGLE soil relocation requirements including but not limited to MCL 324.20120c, any related administrative rules and EGLE guidance, and RCRA; 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 (or HAZWOPER), 29 Code of Federal Regulations (CFR) Part 1910.

The land and resource use restrictions contained in this First Amended Restrictive Covenant are based upon information available to, and the corrective actions approved by, the United States Environmental Protection Agency (USEPA) and EGLE at the time this document was recorded. Failure of the corrective measures to achieve and maintain the cleanup criteria, exposure controls, if any, 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 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 First Amended Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. Additional restrictions may become necessary. Information pertaining to the environmental conditions at the Property and any corrective measures undertaken at the Property is on file with the USEPA Region 5, Land, Chemicals and Redevelopment Division.

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 (Exhibit 3). USEPA and EGLE recommend 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.

This First Amended Restrictive Covenant cites laws, rules and regulations in effect at the time it was recorded. To the extent those laws, rules or regulations are subsequently amended, replaced or otherwise superseded, this First Amended Restrictive Covenant shall be read to incorporate those amending, replacing or otherwise superseding laws, rules and regulations in place of those currently cited herein.

As of the date of this First Amended Restrictive Covenant, RACER Trust continues to perform activities in keeping with its goal to obtain from USEPA a formal RCRA "Corrective Action Complete with Controls" determination for the Property.

### Summary of Corrective Measures

The Property was part of a larger automotive components manufacturing facility previously owned and operated by General Motors Corporation (GMC) (Larger Facility).

The Property includes portions of the former Canadian National railroad corridor as well as portions of the former railroad marshalling area.

Since 1996, the Larger Facility, including the Property has been the subject of ongoing soil, groundwater and light non-aqueous phase liquid (LNAPL) investigations as part of RCRA Corrective Action under the direction of USEPA. Hazardous substances including volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs) and metals have been detected in soil and groundwater in concentrations that exceed EGLE Part 201 Generic Cleanup Criteria and may pose unacceptable risk of exposure without proper controls on the Property (see Exhibit 3). In addition, an interim measure consisting of removal of arsenic-impacted soil has been implemented on the Property.

### Definitions

"Agreement" shall mean the RCRA Section 3008(h) Performance-based Administrative Order on Consent, Docket Number RCRA-05-2011-0019 between USEPA and RACER Trust effective September 29, 2011.

"Grantee" shall mean EGLE, its respective successor entities and those persons or entities acting on its behalf.

"Grantor" shall mean RACER Properties, LLC, the current title holder of the Property at the time this First Amended Restrictive Covenant was executed, or any future title holder of the Property or some relevant sub-portion of the Property.

"EGLE" means the Michigan Department of Environment, Great Lakes and Energy, 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 the Property or any portion thereof, including any lessees (and ground lessees) and its successors or assigns and those persons or entities authorized to act on the title holder's behalf.

"Part 111" means Part 111, Hazardous Waste Management, of the NREPA in effect at the time of the recording of this First Amended Restrictive Covenant.

"Property" shall mean the property legal description which is set forth in Exhibit 1, and as illustrated in Exhibit 2, Illustration 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 RACER 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 111 of NREPA and the Part 111 Administrative Rules, or Part 201 of NREPA and the Part 201 Administrative Rules, solely to the extent not inconsistent with the definitions in Part 111 or the Part 111 Administrative Rules, shall have the same meaning in this document as in those statutes and rules as on the date this First Amended 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 and resources 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) USEPA; (2) EGLE; and (3) RACER Trust.

1. **Land Use Prohibitions.** 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 4 (Description of Allowable Uses).
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 or activities that interfere with, disturb or damage any element of the corrective measures, performance of operation and maintenance activities, monitoring or other measures necessary to ensure the effectiveness and integrity of the completed remedial action. 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 EGLE 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 contaminated soils (if present) may be relocated on the Property except as provided for under Part 201, Section 20120c, MCL 324.20120c.*
- d. *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 or Part 111, except pursuant to a plan, permit or license approved in advance by writing by USEPA or EGLE, pursuant to those statutory authorities.*
- e. *If Owner elects to remove any slabs, pavement, or other impervious surface on the Property, Owner shall first obtain prior written approval from USEPA or EGLE as applicable, and from RACER Trust, and 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.*
- f. *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 or regulations promulgated pursuant to Part 111 and RCRA and all other relevant state and federal laws, including but not limited to MCL 324.20120c and 40 CFR Part 761; 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.*
- g. *Owner shall prohibit construction and/or occupancy of any new buildings, structures, basements and/or additions to existing structures on the Property, unless such construction and/or occupancy incorporates engineering controls designed to eliminate the potential for subsurface vapor phase contaminants or hazardous substances to migrate into the new structure at concentrations greater than the appropriate concentrations protective of public health; or unless prior to construction and/or occupancy of any structure, an evaluation of the potential for any contaminants or hazardous substances to volatilize into indoor air assures the protection of persons who may be present in the buildings. Prior to the potential for any human exposures, documentation of compliance with the above requirements must be submitted to EGLE and USEPA for approval, and both this documentation of compliance and evidence of USEPA's or EGLE's written approval must be submitted to RACER Trust.*
- h. *Owner shall not construct or install subsurface utilities, structures or other features (Subsurface Features), at the Property unless the construction is: 1) approved in writing in advance by USEPA or EGLE as applicable, and RACER Trust; and 2)*

such Subsurface Features incorporate engineering controls designed; i) to eliminate the potential for the Subsurface Features and/or the Subsurface Feature corridor to be a preferential contaminant migration pathway for impacted subsurface water or vapor; or ii) for the Subsurface Features to release fluids that could infiltrate through the subsurface and exacerbate impacts to groundwater.

- i. *Owner will not remove, disturb, interfere with, or damage any monitoring wells, soil gas ports, or remediation systems currently on the Property as identified in Exhibit 5, or that may be installed/present in the future pursuant to USEPA or EGLE approval, except if a plan for such activity is submitted to and approved by USEPA or EGLE as applicable, and RACER Trust in writing in advance. Owner will repair, relocate or replace as necessary any monitoring wells, soil gas ports, or remediation system components disturbed, damaged or destroyed by Owner.*
  - j. *Owner will not perform any excavation or other intrusive activities, including but not limited to removal, disturbing, damaging, interfering, or otherwise negatively affecting the integrity, effectiveness, and operation of exposure barriers (concrete, asphalt, and/or soil) that may be installed/present in the future pursuant to USEPA or EGLE approval, except if: 1) a plan for such activity is submitted to and approved by USEPA or EGLE as applicable, and RACER Trust in writing in advance; and 2) such activity: i) is temporary (less than sixty (60) days in duration); ii) is conducted in accordance with all applicable environmental laws; and iii) does not cause or result in a new release, exacerbation of any pre-existing environmental condition, or any other violation of environmental laws; and iv) includes repairs to at least the pre-disturbance condition within fourteen (14) days of work completion.*
  - k. *Owner shall not remove existing storm water inlet seals nor the storm sewer bulkheads that may be installed/present in the future pursuant to USEPA or EGLE approval.*
3. **Compliance with this First Amended Restrictive Covenant and Applicable Due Care Obligations.** Owner shall at all times comply with the conditions and restrictions of this First Amended Restrictive Covenant and the applicable due care obligations under Section 20107a of NREPA and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* (CERCLA). 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.** Owner shall grant to USEPA, EGLE and/or RACER Trust the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with this First 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 RCRA, TSCA, Parts 111 and 201 and other applicable federal laws and regulations.

5. **Transfer of Interest.** Grantor shall provide notice to USEPA, EGLE and RACER Trust (at the addresses provided in Section 6) 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 First Amended Restrictive Covenant. 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 FIRST AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT DATED \_\_\_\_\_ [month, day, year], AND RECORDED WITH THE OAKLAND COUNTY REGISTER OF DEEDS, LIBER \_\_\_\_\_, PAGE \_\_\_\_\_.**

(Note that the "transfer of interest" provisions in this Section 5 are not intended to and neither expand nor enlarge any property or transactional rights of any holder of any easement interest, which rights are solely defined by the terms of any such easement.)

A copy of this First 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 First Amended Restrictive Covenant shall be made in writing; include a statement that the notice is being made pursuant to the requirements of this First Amended Restrictive Covenant; include the Michigan Facility MID Number: MID 005 356 886 and EGLE Reference Number: RC-OWMRP-111-20-001, and shall be served either personally, or sent via first class mail, postage prepaid, as follows:

For RACER Trust:

Michigan Cleanup Manager  
RACER Trust  
1505 Woodward Avenue, Suite 200  
Detroit, MI 48226

with a copy to

General Counsel  
RACER Trust  
P.O. Box 43859  
Detroit, MI 48243

For USEPA:

Director  
Land, Chemicals, and Redevelopment Division (L-17J)  
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 EGLE:

Hazardous Waste Section Director  
Materials Management Division  
Michigan Department of Environment, Great Lakes and Energy  
P.O. Box 30473  
Lansing, MI 48909-7973

7. **Term.** This First Amended 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 First Amended Restrictive Covenant may only be modified or rescinded with the written approval of USEPA or EGLE as applicable, and RACER Trust. Owner, USEPA, EGLE and/or RACER Trust each shall have the right as "claimants" under MCL 565.103 to record any notices required by MCL 565.103 to preserve and keep effective the restrictions of record herein.
8. **Enforcement.** Grantor and/or RACER Trust or its successors are entitled to enforce the restrictions and covenants of this First 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 USEPA and EGLE are entitled to enforce the restrictions and covenants in this First 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 shall be in addition to any and all other remedies at law or equity.
9. **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 First Amended 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, EGLE, their successors and assigns and the Third Party Beneficiary.

10. **USEPA Entry and Access.** Nothing in this First Amended Restrictive Covenant shall limit or otherwise affect USEPA's right of entry and access or authority to undertake actions under RCRA, CERCLA or the National Contingency Plan (40 CFR Part 300), and any successor statutory or regulatory 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 Section 4 (Access) of this First Amended Restrictive Covenant.
11. **Modification/ Release/Rescission.** Grantor or Owner may request in writing to USEPA or EGLE, as applicable, and RACER Trust at the addresses provided in Section 6, modifications to, or release or rescission of, this First Amended Restrictive Covenant. This First Amended Restrictive Covenant may be modified, released or rescinded only with the written approval of USEPA or EGLE, as applicable, and RACER Trust. Any approved modification to, or release or rescission of this First Amended Restrictive Covenant shall be filed with the appropriate Register of Deeds by the Grantor or Owner and a certified copy shall be returned to USEPA, EGLE and RACER Trust at the addresses provided Section 6.
12. **Severability.** If any provision of this First Amended 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 First Amended Restrictive Covenant and all other provisions shall continue to remain in full force and effect.
13. **Limitation on Liability.** RACER Trust's, RACER Properties LLC's and the Administrative Trustee's liability under this First Amended Restrictive Covenant is limited by the terms and conditions of the Settlement Agreement, which are incorporated herein by reference.
14. **Authority to Execute First Amended Restrictive Covenant.** The undersigned person executing this First Amended Restrictive Covenant represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this First Amended Restrictive Covenant.
15. **Miscellaneous.**
  - a) **Controlling Law.** The interpretation and performance of this First Amended Restrictive Covenant shall be governed by the laws of the United States as to the obligations referred to in the Agreement and the laws 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 First 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 201.

- b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this First Amended Restrictive Covenant shall be liberally construed to affect the purpose of this First Amended Restrictive Covenant, and the policy and purpose of RCRA, TSCA, and the land use restrictions and prospective use limitations required by Part 201. If any provision of this First Amended Restrictive Covenant is found to be ambiguous, an interpretation consistent with the purpose of this First Amended Restrictive Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.
  
- c) Entire Agreement. This First Amended Restrictive Covenant and its attachments and appendices supersedes all prior discussions, negotiations, understandings, or agreements relating specifically to this First Amended Restrictive Covenant, all of which are merged herein.

[signature page follows]

IN WITNESS WHEREOF, RACER Properties LLC has caused this First Amended Restrictive Covenant, EGLE Reference Number: RC-OWMRP-111-20-001, to be executed on this 14 day of April, 2020.

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: 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 14th day of April, 2020, 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 Signature

TRACIE L. NICHOLS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 03-19-2023  
Acting in the County of Wayne

Name of Notary Public Tracie L. Nichols  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires: 3/19/23  
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:  
Carl Garvey, General Counsel  
RACER Trust  
1505 Woodward Avenue, Suite 200  
Detroit, MI 48226

When Recorded Return To: P. Cedeno  
First American Title Insurance Company  
National Commercial Services  
900 Wilshire Drive, Suite 260  
Troy, MI 48064  
File No. NCS 830172-17

**LIST OF EXHIBITS**

- 1 LEGAL DESCRIPTION OF PROPERTY**
- 2 ILLUSTRATION OF PROPERTY**
- 3 HAZARDOUS SUBSTANCES ABOVE CRITERIA IN SOIL AND GROUNDWATER**
- 4 DESCRIPTION OF ALLOWABLE USES**
- 5 MONITORING WELLS**

## EXHIBIT 1

## LEGAL DESCRIPTION OF PROPERTY

Part of the Southeast  $\frac{1}{4}$  of Section 17, also part Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 10 East, and part of the Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 10 East, City of Pontiac, Oakland County, Michigan and being more particularly described as follows:

Commencing at the East  $\frac{1}{4}$  corner of Section 17, Township 3 North, Range 10 East, City of Pontiac, Oakland County, Michigan and running thence South 86 degrees 57 minutes 26 seconds West, along the East-West  $\frac{1}{4}$  line of said Section 17, said line being also the center of Columbia Avenue (120 feet wide at this point), a distance of 1,201.95 feet to a point; thence South 05 degrees 52 minutes 04 seconds East, a distance of 60.07 feet to a point on the South line of said Columbia Avenue, said point being the point of beginning of the parcel of land herein being described,

Proceeding thence from said point of beginning South 05 degrees 52 minutes 04 seconds East, a distance of 1,640.59 feet to a point; thence South 84 degrees 07 minutes 56 seconds West a distance of 100.00 feet to a point on the East line of the Grand Trunk Western Railroad right-of-way (50 feet wide); thence the following the courses and distances along the East line of said railroad right-of-way, South 05 degrees 52 minutes 04 seconds East, a distance of 1,980.76 feet; thence South 05 degrees 50 minutes 04 seconds East, a distance of 397.11 feet to a point of curve; thence along the arc of a curve, concave to the West radius 4,646.71 feet, an arc distance of 469.66 feet (chord bears South 02 degrees 56 minutes 20 seconds East, 469.46 feet) to a point of tangent; thence South 00 degrees 02 minutes 36 seconds East, along said railroad right-of-way line, a distance of 508.00 feet to the point of intersection of said right-of-way line with the North line of Montcalm Street (width varies); thence North 60 degrees 11 minutes 46 seconds West across said railroad right-of-way, a distance of 57.64 feet to the point of intersection of the West line of said railroad right-of-way with the North line of said Montcalm Street; thence the following courses and distances along the West line of said Grand Trunk Western Railroad right-of-way: North 00 degrees 02 minutes 36 seconds West, said line being also part of the East line of Civic Improvement Company's Marquette Subdivision, as recorded in Liber 22, Page 15 of Plats, Oakland County Records, a distance of 479.91 feet to a point of curve in said right-of-way line; thence continuing along said right-of-way line, said line being also part of the East line of said Civic Improvement Company's Marquette Subdivision, along the arc of a curve concave to the West, radius 4,596.71 feet, an arc distance of 464.61 feet (chord bears North 02 degrees 56 minutes 20 seconds West, 464.41 feet) to a point of tangent; thence North 05 degrees 50 minutes 04 seconds West, along the West line of said right-of-way, said line being also part of the East line of said Civic Improvement Company's Marquette Subdivision, a distance of 397.09 feet to a point; thence South 79 degrees 39 minutes 34 seconds East, along the Easterly extension of the Northerly line of vacant Kennett Road, a distance of 1.04 feet to a point; thence North 05 degrees 52 minutes 04 seconds West, along a line 1.00 foot East of, as measured at right angles to and parallel with the original West line of said Grand Trunk Western Railroad right-of-way, a distance of 1,457.52 feet to a point; thence South 84 degrees 12 minutes 24 seconds West, along the Easterly extension of the South line of vacated Tennyson Avenue (60 feet wide), a distance of 1.00 foot to a point; thence North 05 degrees 52 minutes 04 seconds West, along the West line of the Grand Trunk Western Railroad right-of-way (50 feet wide at this point), said line being also part of the East line of Baldwin Park Subdivision, as recorded in Liber 21, Page 7 of Plats, Oakland County Records, a distance of 2,171.51 feet to the point of intersection of said railroad right-of-way line with

the South line of Columbia Avenue (proposed 120 feet wide); thence North 86 degrees 57 minutes 26 seconds East, along a line 60.00 feet South of, as measured at right angles to and parallel with the East-West  $\frac{1}{4}$  line of Section 17, Township 3 North, Range 10 East, across said railroad right-of-way, a distance of 150.18 feet to the point of beginning.

Tax Parcel ID: 14-17-427-001

And also,

That part of Lots 1, 2 & 3 lying south of Grand Trunk Western Railroad right-of-way, also that part of vacated Hopkins Avenue adjacent to Lots 1 & 2 of Glenwood Estates Subdivision, City of Pontiac, Oakland County, Michigan, as recorded in Liber 22 of Plats, on Page 8, and more particularly described as follows:

A part of the Northeast  $\frac{1}{4}$  of Section 17, Township 3 North, Range 10 East, City of Pontiac, County of Oakland, State of Michigan, commencing at East  $\frac{1}{4}$  corner of said Section 17 and running thence South 86 degrees 57 minutes 26 seconds West along the East-West  $\frac{1}{4}$  line of said Section, said line also being the centerline of Columbia Avenue (120 feet wide at this point), a distance of 1,302.07 feet to a point; thence North 05 degrees 52 minutes 04 seconds West along the Southerly extension of the East line of the Grand Trunk Western Railroad right-of-way (50 feet wide) a distance of 60.07 feet to the point of intersection of said right-of-way line with the North line of said Columbia Avenue; thence North 05 degrees 52 minutes 04 seconds West along said right-of-way line a distance of 1226.29 feet to the Point of Beginning of the parcel of land herein being described; thence North 84 degrees 24 minutes 59 seconds East a distance of 400.02 feet to a point; thence North 05 degrees 29 minutes 59 seconds West along part of the West line of vacated Cambridge Avenue at its Southerly extension, a distance of 80.45 feet to a point; thence along the arc of a curve, concave to the Northeast, radius 726.04 feet, an arc distance of 348.42 feet, (chord bears North 60 degrees 44 minutes 01 seconds West, 345.09 feet) to a point of tangent; thence North 46 degrees 59 minutes 09 seconds West, along the Southerly line of a Grand Trunk Western Railroad right-of-way, a distance of 184.14 feet to a point; thence South 05 degrees 52 minutes 04 seconds East, along the East right-of-way line of said Grand Trunk Western Railroad, a distance of 415.28 feet to the Point of Beginning.

Tax Parcel ID Number: 14-17-227-001

And also,

A tract of land situated in the City of Pontiac, County of Oakland, State of Michigan, and more particularly described as follows:

Part of the Northwest  $\frac{1}{4}$  of Section 16, also part of the Northeast  $\frac{1}{4}$  of Section 17, Town 3 North, Range 10 East, and Part of Lots 1 through 5 inclusive, all of Lots 336 through 371 inclusive, and Lots 304 through 309 inclusive, including adjoining vacated streets and alleys of Glenwood Estates Subdivision, as recorded in Liber 22, Page 8 of Plats, Oakland County Records, and being more particularly described as follows:

Commencing at the East  $\frac{1}{4}$  corner of Section 17, Town 3 North, Range 10 East, City of Pontiac, Oakland County, Michigan and running thence South 86 degrees 57 minutes 26 seconds West along the East-West  $\frac{1}{4}$  line of said Section 17, said line being also the center

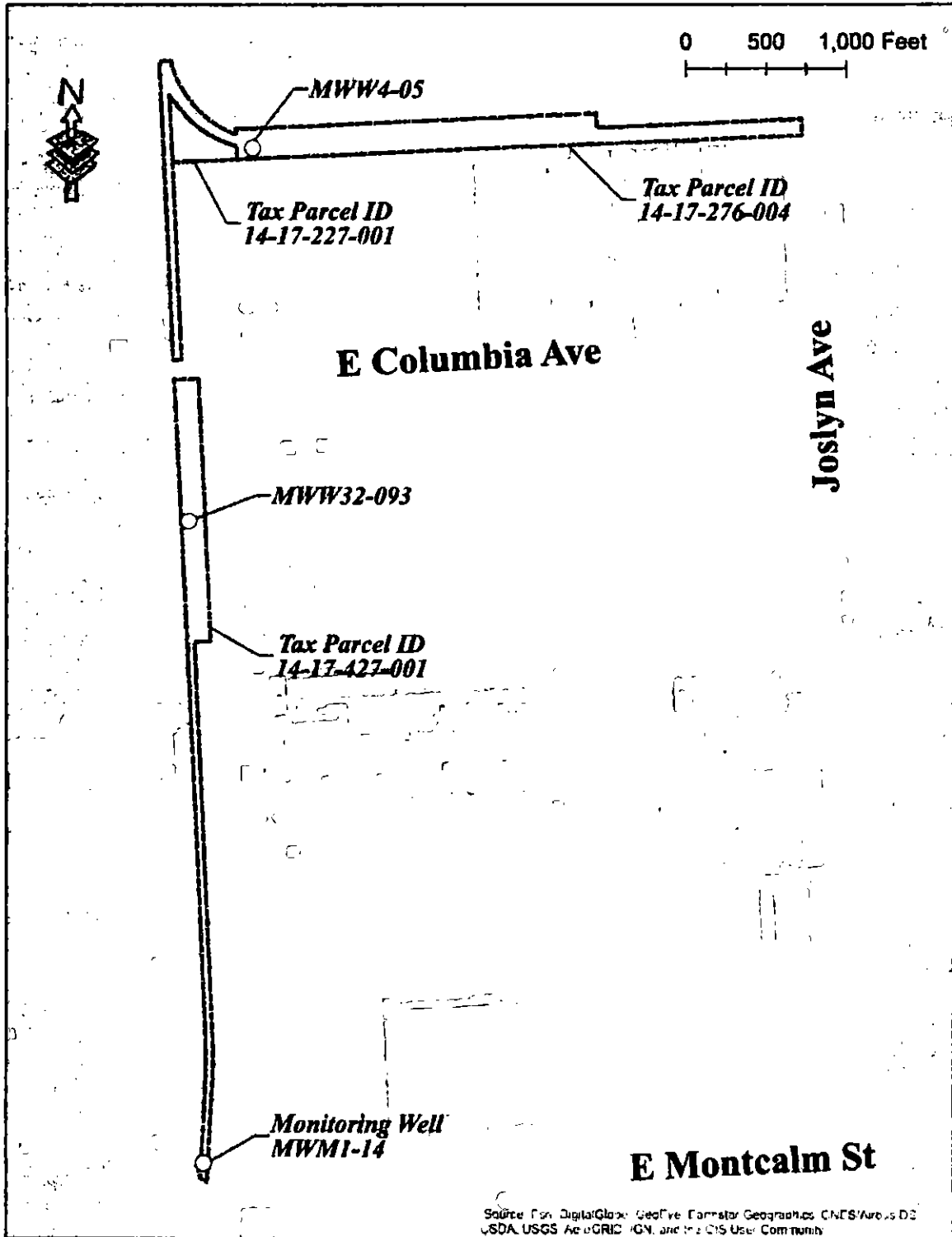
line of Columbia Avenue (120 feet wide at this point), a distance of 1302.07 feet to a point; thence North 05 degrees 52 minutes 04 seconds West along the Southerly extension of the East line of the Grand Trunk Western Railroad Right-of-way (50 feet wide) a distance of 60.07 feet to the point of intersection of said right-of-way line with the North line of said Columbia Avenue said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning South 86 degrees 57 minutes 26 seconds West, across said railroad right-of-way, said line being 60.00 feet North of, as measured at right angles to and parallel with the East-West 1/4 line of said Section 17, a distance of 50.06 feet to the point of intersection of the West line of said railroad right-of-way with the proposed North line of said Columbia Avenue; thence North 05 degrees 52 minutes 04 seconds West, along the West line of said railroad right-of-way, said line being also part of the East line of the plat of Dupont Heights Subdivision, as recorded in Liber 21, Page 22 of Plats, Oakland County Records, a distance of 1849.82 feet to a point; thence North 84 degrees 15 minutes 51 seconds East across said railroad right-of-way a distance of 71.51 feet to a point; thence along the Grand Trunk Western Railroad right-of-way line as described in Liber 3028 of Deeds, on Page 523, Oakland County Records, Southeasterly along the arc of a curve concave to the Northeast, radius 653.31 feet, an arc distance of 344.35 feet, (chord bears South 31 degrees 53 minutes 09 seconds East, 340.38 feet) to a point of compound curve; thence continuing along said right-of-way line, Southeasterly along the arc of a curve, not tangent to the foregoing line, concave to the Northeast, radius 660.04 feet, a measured arc distance of 291.18 feet (described 287.99 feet), (chord bears South 59 degrees 37 minutes 37 seconds East, measured 288.82 feet, described 285.89 feet) to a point; thence North 05 degrees 29 minutes 59 seconds West, along said railroad right-of-way line, said line being also part of the West line of vacated Cambridge Avenue (60 feet wide) a distance of 31.75 feet to a point; thence North 84 degrees 15 minutes 51 seconds East, along the North line of said Grand Trunk Western Railroad right-of-way, said line being also the South end of a vacated portion of said Cambridge Avenue, the South line of Lots 288 through 300 inclusive, across a vacated alley (18 feet wide), the South line of Lot 303, and across the West 1/2 of a vacated portion of Highwood Avenue, of said subdivision, a distance of 910.00 feet to a point on the center line of said vacated Highwood Avenue; thence North 84 degrees 16 minutes 53 seconds East, along the North line of said railroad right-of-way, said line crossing the East 1/2 of a vacated portion of Highwood Avenue, the South line of Lot 310, the South end of a public alley (18 feet wide), the South line of Lots 313 through 325 inclusive, the South end of Laurel Avenue (60 feet wide) and the South line of Lots 326 through 335 inclusive, a distance of 1329.41 feet to the Southeast corner of said Lot 335; thence South 05 degrees 59 minutes 06 seconds East, along the East line of said Glenwood Estates Subdivision, a distance of 89.00 feet to a point; thence North 83 degrees 53 minutes 42 seconds East a distance of 1275.22 feet to the point of intersection of said right-of-way line with the West line of Joslyn Road (120 feet wide); thence South 05 degrees 08 minutes 18 seconds East, said line being 60.00 feet West of, as measured at right angles to and parallel with the North-South 1/4 line of Section 16, Town 3 North, Range 10 East, across said railroad right-of-way, a distance of 100.01 feet to the point of intersection of the South line of said right-of-way with the West line of said Joslyn Road; thence South 83 degrees 53 minutes 42 seconds West, along the South line of said railroad right-of-way, a distance of 1273.75 feet to an angle point in said right-of-way line; thence South 84 degrees 24 minutes 59 seconds West, continuing along said railroad right-of-way line, a distance of 2240.98 feet to a jog in said railroad right-of-way; thence North 05 degrees 29 minutes 59 seconds West, along said jog, said line being also part of the West line of said vacated Cambridge Avenue and its Southerly extension, a distance of 80.45 feet to a point; thence along the arc of a curve, concave to the Northeast, radius 726.04 feet, an arc distance of 348.42 feet (chord bears North 60 degrees 44 minutes 01 seconds West, 345.09 feet) to a point of tangent; thence North 46 degrees 59 minutes 09 seconds West, along the Southerly line of the Grand

Trunk Western Railroad right-of-way, a distance of 184.14 feet to a point; thence South 05 degrees 52 minutes 04 seconds East, along the East line of said railroad right-of-way, a distance of 1641.57 feet to the point of beginning.

Tax Parcel ID: 14-17-276-004

EXHIBIT 2

ILLUSTRATION OF PROPERTY



## EXHIBIT 3

HAZARDOUS SUBSTANCES ABOVE CRITERIA  
IN SOIL AND GROUNDWATER

Media	Substance	Criteria Exceeded <sup>(1)</sup>
Soil	Aluminum	SDBL, RDWP, NRDWP
	Arsenic	SSBC, SDBL, RDWP, NRDWP, GSIP
	Barium	SSBC, SDBL
	Chromium	SSBC, RDWP, NRDWP, GSIP
	Cobalt	RDWP, NRDWP, GSIP
	Iron	SDBL, RDWP, NRDWP
	Lead	SSBC, SDBL,
	Manganese	RDWP, NRDWP, GSIP
	Mercury	SDBL, RDWP, NRDWP, GSIP
	Selenium	SDBL, GSIP

Media	Substance	Criteria Exceeded <sup>(1)</sup>
Groundwater	Vinyl Chloride	GSI, RDW, NRDW
	Fluoranthene	GSI
	Arsenic	GSI, RDW, NRDW
	Lead	GSI, RDW, NRDW
	Manganese	RDW, NRDW

**SOIL**

NRDWP- Non-Residential Drinking Water Protection  
RDWP – Residential Drinking Water Protection  
GSIP – Groundwater Surface Water Interface Protection  
SSBC - Site Specific Background Criteria  
SDBL -Statewide Default Background Levels

**GROUNDWATER**

NRDW – Non-Residential Drinking Water Criteria  
RDW – Residential Drinking Water Criteria  
GSI – Groundwater Surface Water Interface Criteria

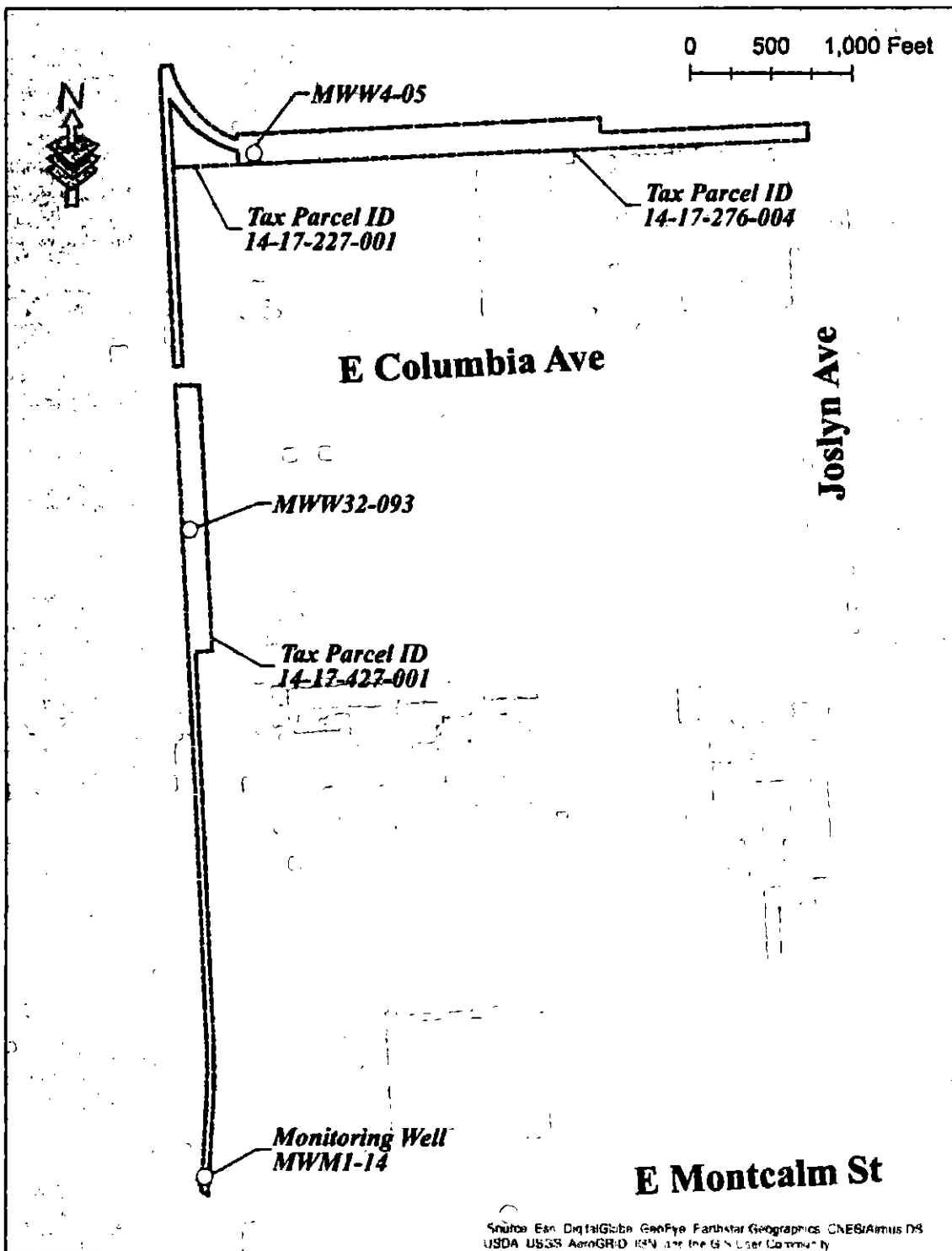
1 – The substances and exceedances listed in this exhibit are based on a comparison of the data for the Property to EGLE Part 201 Generic Cleanup Criteria – Non-Residential Soil and Groundwater Criteria, Table 1 and Table 2, dated December 30, 2013. However, it is noted that as of the date of this First Amended Restrictive Covenant, USEPA's authorization of the EGLE RCRA Program includes the September 28, 2012 Part Generic Cleanup Criteria.

**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 amended restrictive covenant.

EXHIBIT 5  
MONITORING WELLS



**MONITORING WELLS**

<u>WELL ID</u>	<u>EASTING (X)</u>	<u>NORTHING (Y)</u>
MWW32-093	13411510.90	427278.24
MWW4-05	13411904.72	429597.93
MWM1-14	13411605.60	423289.56

Coordinate System North America Datum 1983 (NAD 83), Michigan State Plane Michigan South FIPS 2113, International Feet