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BROOK E. CLEAVER
HOWARD COUNTY IN RECORDER
ELECTRONICALLY RECORDED
AS PRESENTED ON
07/20/2017 11:14:00AM
REC FEE: \$25.00 PAGES: 13

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 8th day of July, 2017, by Revitalizing Auto Communities Environmental Response (RACER) Trust with an operating address of 500 Woodward Avenue, Suite 2650, Detroit, Michigan, 48226 (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Howard, Indiana, which is located at 1723 North Washington Street in the City of Kokomo and more particularly described as the northern parking lot in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on March 31, 2011, and recorded on May 25, 2011, as Deed Record 1134008830, in the Office of the Recorder of Howard County, Indiana. The Real Estate consists of approximately 4.855 acres of land and has also been identified by the County as parcel identification number 34-03-25-203-002.000-002. The Real Estate, to which the restrictions in this Covenant apply, is depicted on maps attached hereto as Exhibit "B" and Exhibit "C".

WHEREAS: RCRA Corrective Action was conducted under the supervision of the United States Environmental Protection Agency ("USEPA") and in accordance with a Performance-Based Corrective Action Agreement ("Agreement") between USEPA and General Motors Corporation, with an effective date of March 16, 2006. This Agreement enabled General Motors Corporation ("GM") to work independently and voluntarily to investigate, and as necessary, stabilize and remediate releases of hazardous wastes or hazardous constituents at or from the Former GM Delco Plant 5 facility (EPA ID No. IND 000 806 844) that may present an unacceptable risk to human health or the environment.

WHEREAS: As a result of GM's bankruptcy, the operating assets of GM were sold to a newly formed company, which is now known as General Motors Company. Existing, non-continuing assets remain the property of "old" GM, which changed its name to Motors Liquidation Company ("MLC"). RCRA Corrective Action activities were conducted at the facility by MLC from approximately July 2009 to September 2011. A Performance-based Administrative Order on Consent Docket Number RCRA-05-2011-0017 ("Order") was signed by and between RACER Trust and USEPA with an effective date of September 29, 2011, at which point, RACER Trust assumed the responsibility for completing the RCRA Corrective Action activities at the facility in accordance with Section VII of the Order. The Order may be viewed at the publicly accessible repository located at the Kokomo-Howard County Public Library, 220 North Union Street,

REVIEWED
Jul 20 2017
Martha J. Lake / KW
Auditor, Howard County, Indiana



h111-810250

Kokomo, Indiana, 46901. The Order may be viewed electronically in the Indiana Department of Environmental Management ("IDEM") Virtual File Cabinet ("VFC") by accessing the IDEM's Web Site (currently www.in.gov/idem/). The IDEM VFC Document Number (VFC #) is 80476461.

WHEREAS: The RCRA corrective action activities conducted, as approved by the USEPA, provide that contaminants of concern (COCs) will remain in the soil and groundwater of the Real Estate. The USEPA has determined that the COCs will not pose an unacceptable risk to human health or the environment at the remaining concentrations, and that the Real Estate may be withdrawn from the Order provided that the land use restrictions contained herein are implemented. The known COCs remaining are listed in Exhibit "D", which is attached hereto and incorporated herein.

WHEREAS: Pursuant to Section VII, Paragraph 19 of the Order, RACER Trust prepared a report, Parking Lot Summary of Investigation, that summarized the historical uses of the Real Estate and environmental data collected on the Real Estate. The VFC # for the Parking Lot Summary of Investigation report is 80479573. Based on comparison of this environmental data to the IDEM generic screening levels, USEPA determined that land use restrictions to non-residential use and vapor mitigation for future buildings would be required to address potential risk to residual contamination in soil and groundwater.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the EPA Records Center, 77 West Jackson Boulevard – 7th Floor, Chicago, IL 60604 between 8:00 a.m. and 4:00 p.m. (Monday – Friday, excluding Federal holidays) or at the offices of IDEM, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed at the Public Information Repository, which is located at the Kokomo-Howard County Public Library, 220 North Union Street, Kokomo, Indiana, 46901. The documents may also be viewed electronically in IDEM's Virtual File Cabinet by accessing the IDEM's Web Site (currently www.in.gov/idem/).

NOW THEREFORE, RACER Trust subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner:

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall not use the Real Estate for any agricultural use.
- (d) Shall not construct or allow occupancy of a dwelling or work space on the Real Estate unless a vapor mitigation system is installed, operated, and maintained within the dwelling or work space.
- (e) Shall prohibit any activity at the Real Estate that may interfere with the groundwater monitoring or well network.

II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- 3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
- 4. Access for USEPA and the IDEM. The Owner shall grant to the USEPA, IDEM, and their designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records.
- 5. Written Notice of the Presence of Contamination. Owner agrees to include in any

instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF HOWARD COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to USEPA and IDEM of the Conveyance of Property. Owner agrees to provide notice to the USEPA and IDEM of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the USEPA and IDEM with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, IDEM may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.
9. The Owner, EPA, and IDEM may proceed in court, individually or jointly, by appropriate action to enforce the terms of this Covenant, including but not limited to the restrictions. All remedies available hereunder shall be in addition to any and all other remedies at law or equity. Enforcement of the terms of this Covenant shall be at the discretion of the Owner, EPA, and IDEM and any forbearance, delay, or omission by any of them to exercise rights available under this Covenant in the event of a breach of any term of this Covenant shall not be

deemed to be a waiver by the Owner, EPA, or IDEM of such rights or of any subsequent breach of the same or any other term. Also, at any time after RACER Trust becomes a former Owner, RACER Trust shall have the right to enforce the terms of this Covenant, including but not limited to the restrictions, in the same manner as granted herein to EPA and IDEM, if actions are taken or threatened by a subsequent owner or a third party in violation of the restrictions that may exacerbate any residual liability of RACER Trust for the remediation conducted at the Real Estate.

IV. TERM, MODIFICATION, AND TERMINATION

10. Term. The restrictions shall apply until the USEPA and IDEM determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
11. Modification and Termination. This Covenant shall not be amended, modified, or terminated without USEPA and IDEM's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Howard County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the USEPA and IDEM.

V. MISCELLANEOUS

12. Waiver. No failure on the part of the USEPA or IDEM at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect USEPA or the IDEM's right to enforce such term, and no waiver on the part of the USEPA or IDEM of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
13. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
14. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, Remediation Closure Guide ("RCG") guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.

15. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
RACER Trust
500 Woodward Avenue
Suite 2650
Detroit, MI 48226
Attn: Robert Hare, Cleanup Manager

To USEPA:
U.S. EPA Region 5
77 W. Jackson Boulevard
Mail Code: LU-9J
Chicago, IL 60604-3507
Attn: Land and Chemicals Division Remediation and Reuse
Branch

To IDEM:
IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Section Chief, Hazardous Waste Permit Program

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

16. Severability. If any portion of this Covenant, or other term set forth herein, is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect, as if such portion found invalid had not been included herein.
17. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, RACER Trust, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 5th day of July, 2017.

**REVITALIZING AUTO COMMUNITIES
ENVIRONMENTAL RESPONSE TRUST,**
a trust formed under the laws of the State of
New York

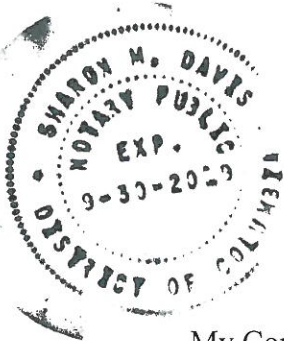
By: EPLET, LLC, acting solely in its
Capacity as Administrative Trustee

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

DISTRICT OF Columbia)
) SS:
CITY OF _____)

Before me, a Notary Public in and for said City and District, personally appeared 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 trust organized and existing under the laws of the State of New York, and acknowledged the execution of the foregoing Environmental Restrictive Covenant for and on behalf of said company and trust, and who, have been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 5th day of July, 2017.



Sharon M. Davis
Sharon M. Davis, Notary Public
Residing in _____ County, _____

My Commission Expires: 9/30/19

This instrument prepared by:
Sarah Fisher
Arcadis U.S., Inc.
132 East Washington Street,
Indianapolis, Indiana 46204

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Land lying in the Northeast $\frac{1}{4}$ of Section 25 of Township 24 North, Range 3 East, City of Kokomo, Township of Center, County of Howard, State of Indiana:

All that part of Lots 25, 28, 33, 35, 36 in Avery's Addition to the City of Kokomo, lying west of North Washington Street as shown in Recorder's Plat Book 1, Page 9; and also, a strip of ground 18 feet wide adjacent to said Lot 35 in Avery's Addition to the City of Kokomo on the Southwest corner thereof and being the East Half of that part of Robinson Street heretofore vacated which lies at the Southwest corner of and adjacent to said Lot 35; and also, all of Spraker Street (50 feet wide) vacated lying West of Washington Street and lying between all that part of Lot 25 and all that part of Lot 26 in Avery's Addition West of Washington Street and Lots 27, 28, 33, 34 and 35 in Avery's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 1, page 9. Excepting therefrom that part thereof which has been appropriated for North Washington Street, and more particularly described as follows:

Beginning at the intersection of the South right-of-way line of West Butler Street (50 feet wide) and the East right-of-way line of North Webster Street, said intersection also being the Northwest corner of Lot 36 of Avery's Addition to the City of Kokomo, thence running South 82 degrees 26 minutes 24 seconds East a distance of 270.93 feet to a point; thence South 07 degrees 33 minutes 36 seconds West a distance of 208.56 feet to a point; thence South 82 degrees 26 minutes 24 seconds East a distance of 393.56 feet to a point; thence South 00 degrees 00 minutes 00 seconds West a distance of 258.56 feet to a point; thence North 82 degrees 26 minutes 24 seconds West a distance of 559.89 feet to a point; thence North 26 degrees 47 minutes 30 seconds West a distance of 169.16 feet to a point; thence North 00 degrees 00 minutes 00 seconds East a distance of 328.07 feet to the Point of Beginning.

Containing 4.855 acres of land, more or less, and subject to any and all recorded easements and rights-of-way.

EXHIBIT B
MAP OF REAL ESTATE



EXHIBIT C

SITE MAP WITH SAMPLE LOCATIONS

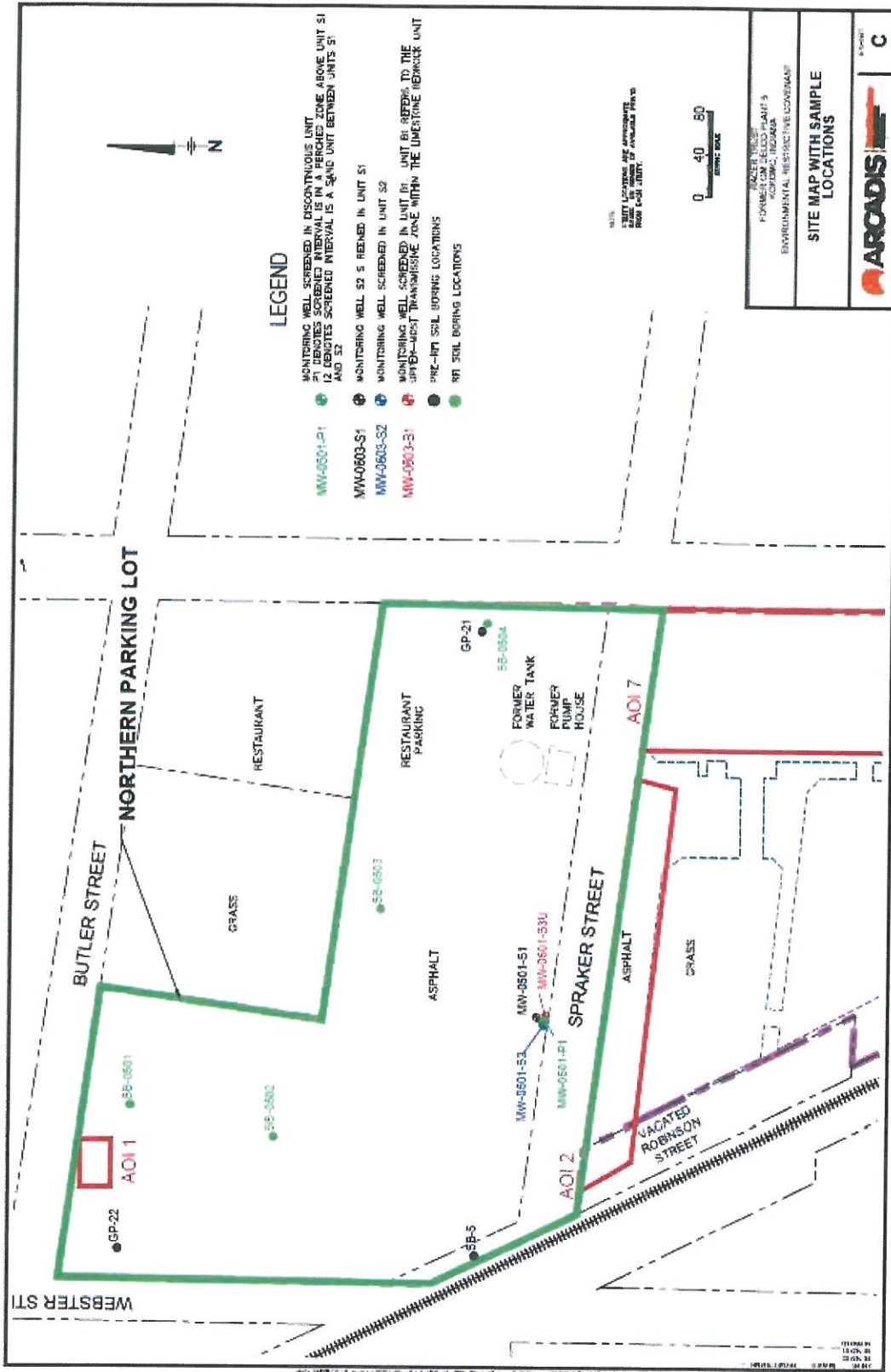


EXHIBIT D

LIST OF COCs

Samples have been collected from soil and groundwater within the northern parking lot of the Real Estate prior to and during Corrective Action activities at the Real Estate. The following constituents have been analyzed for and detected at concentrations higher than the identified 2017 Indiana Department of Environmental Management Remediation Closure Guide (RCG) Screening Levels. The analytical results are presented in the Parking Lot Summary of Investigation report (VFC # 80479573.)

Soil

2017 IDEM RCG Mitigation to Groundwater Screening Levels

- Arsenic
- Cobalt
- Iron
- Manganese
- Thallium

2017 IDEM RCG Direct Contact Residential Screening Levels

- Arsenic
- Thallium

Groundwater

2017 IDEM RCG Groundwater Tap Residential Screening Levels

- Trichloroethene
- Vinyl Chloride
- Manganese (dissolved)

2017 IDEM RCG Groundwater Residential Vapor Exposure Screening Levels

- Vinyl Chloride