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## DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant is made to protect public health, safety, and 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.*

This Declaration of Restrictive Covenant ("Restrictive Covenant") is made on September 27, 2013 by RACER Properties LLC, a Delaware limited liability company ("Grantor"), the current fee title holder of the property, whose address is 500 Woodward Avenue, Suite 1510, Detroit, Michigan 48226, for the benefit of the Grantee, *i.e.*, State of Michigan, Department of Environmental Quality ("MDEQ"), whose address is 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 commonly known as Davison Road Land, Burton, Michigan, in the City of Burton, Genesee County, Tax Identification Numbers: 59-10-100-031 and 59-10-100-030 and legally described in Exhibit 1 ("Property") and illustrated in Exhibit 2.

Recording of this 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 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, and the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) 29 CFR Part 1910.

The land or resource use restrictions contained in this Restrictive Covenant are based upon information available at the time this document was recorded. Future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Part 201; 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, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. Additional restrictions may become necessary.

### Definitions

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

9/4/13

"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. On March 31, 2011 the Revitalizing Auto Communities Environmental Response Trust ("Trust") took title to the Property – title held by RACER Properties LLC, an entity wholly owned by the Trust (RACER Properties and the Trust are collectively referred to herein as "RACER"). RACER was established and assumed the rights, title, and interest of Motors Liquidation Company 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, 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).

All other terms used in this document which are defined in Parts 3, 111, and 201 of NREPA or Parts 111 and 201 of Michigan 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 or Resource Use Restrictions

The Grantor(s) as current fee title holder(s) of the Property, hereby declare(s) and covenant(s) that the Property, shall be subject to those restrictions on use 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) the Grantor, if it is no longer owner; and (2) the MDEQ.

1. Land Use Prohibitions. The Owner shall prohibit all uses of the Property that are not compatible with nonresidential land use category under MCL 324.20120a(1)(b) and generally described in the Description of Allowable Uses, attached hereto as Exhibit 3.

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 2010, and MAC R 299.5701 – R 299.5727, effective December 21, 2002.

2. Activities Prohibited. The Owner shall prohibit activities on the Property that may result in exposures above the nonresidential 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-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 any, may be relocated on the Property except as provided for under Part 201, Section 20120c, MCL 324.20120c.
  - d. No buildings or structures may be constructed on the Property unless the Owner has considered the potential for vapor intrusion, if any, and has taken steps to address such potential, if necessary, as may be required by the MDEQ.
  - e. The 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 the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* or equivalent State Law, except pursuant to a plan or permit approved in writing by the MDEQ and the Grantor.
  - f. If the Owner elects to remove any slabs, pavement or other impervious surface on the Property, the 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 (if any) and all other soils located on the Property in accordance with the requirements of Part 111, and Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* (RCRA), 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.
5. Access. The Owner shall grant to the MDEQ 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 and, inspect any records relating thereto, and to perform any actions necessary to maintain compliance with Part 111 and Part 201.
6. Notice. The Owner shall provide notice to the MDEQ of the Owner's intent to transfer any interest in the Property prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and the applicable provisions of MCL 324.20116. The notice required to be made to the MDEQ under this Paragraph shall be made to: Chief, Office of Waste Management and Radiological Protection, P.O. Box 30241, Lansing, Michigan 48909-7741 and Chief, Remediation and Redevelopment Division, P.O. Box 30241, Lansing, Michigan 48909-7741 (or to the similar position should the MDEQ change organizational names from time-to-time); and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.
7. 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. This Restrictive Covenant may only be modified or rescinded with the written approval of the MDEQ.

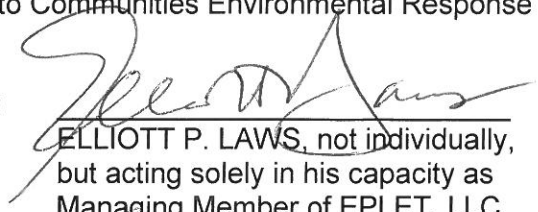
8. Enforcement. The Grantor is entitled to enforce the restrictions and covenants in this Restrictive Covenant by specific performance or other legal action in a court of competent jurisdiction against subsequent Owners of all or part of the Property. The Grantor, on behalf of itself, and its successors in title, intends and agrees that the MDEQ is 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.
9. 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.
10. Limitation on RACER's Liability. RACER's and the Administrative Trustee's liability is limited by the terms and conditions of the Settlement Agreement, which are incorporated herein by reference.
11. 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.

IN WITNESS WHEREOF, Racer Properties LLC has caused this Restrictive Covenant, to be executed on this 27<sup>th</sup> day of September, 2013.

#### RACER PROPERTIES LLC

By: Revitalizing Auto Communities Environmental Response Trust,  
Sole Member of RACER Properties LLC

By: EPLET, LLC, acting solely in its capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust

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

Date: September 27, 2013

STATE OF District )  
 ) ss:  
 COUNTY OF Columbia )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of Sept. 2013, 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 Cheryl L. Best

My commission expires 11-14-15

Acting in District of Columbia County

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

Prepared by/return to:

Kurt M. Brauer, Esq.

Warner Norcross & Judd LLP

2000 Town Center, Suite 2700

Southfield, Michigan 48075-1318

Telephone: 248-784-5000

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## EXHIBIT 1

### LEGAL DESCRIPTION OF PROPERTY

#### Parcel 1

Part of the North 1/2 of Section 10, Town 7 North, Range 7 East, City of Burton, Genesee County, Michigan, and "Emerald Estates Subdivision", as recorded in Liber 38, Page 18, of Plats, Genesee County Records, and also part of vacated Donegal Street and vacated Flanigan Street, described as: Commencing at the North quarter corner of Section 10, Town 7 North, Range 7 East, City of Burton, Genesee County, Michigan; thence North 88 degrees 02 minutes 45 seconds West, 1322.12 feet along the North line of said Section to the intersection of the West line of Donegal Street extended and the North line of Section 10, thence South 00 degrees 22 minutes 43 seconds East, 550.07 feet along the West line of Donegal Street extended to the Northwest corner of "Emerald Estates Subdivision"; thence continuing South 00 degrees 22 minutes 43 seconds East, 194.76 feet to the POINT OF BEGINNING; thence South 89 degrees 18 minutes 28 seconds East, 206.67 feet to a point on the Westerly line of Lot 1 of said subdivision; thence on a curve to the left, along the Westerly line of said Lot 1, having a radius of 153.80 feet, with a chord bearing and distance of North 39 degrees 38 minutes 31 seconds West, 141.98 feet; thence on a curve to the right, continuing along the Westerly line of Lot 1, having a radius of 93.80 feet, with a chord bearing and distance of North 33 degrees 44 minutes 17 seconds West, 103.25 feet; to the Northwest corner of said Lot 1; thence South 88 degrees 02 minutes 45 seconds East, 763.74 feet along the North line of said Subdivision to the Northeast corner of Lot 7 of said subdivision; thence South 00 degrees 16 minutes 59 seconds East, 109.87 feet along the East line of said Lot 7 to the Northwest corner of Lot 8 of said Subdivision; thence South 88 degrees 02 minutes 45 seconds East, 433.71 feet along the North line of said subdivision; thence North 00 degrees 28 minutes 55 seconds West, parallel to the North-South 1/4 line, 660.00 feet to the North line of Section 10; thence South 88 degrees 02 minutes 45 seconds East along the North line of Section 10, 66.00 feet to the North 1/4 Corner; thence South 00 degrees 28 minutes 55 seconds East along the North-South 1/4 line, 300.00 feet; thence South 88 degrees 05 minutes 10 seconds East, parallel to the North line of Section 10, 30.00 feet; thence South 00 degrees 28 minutes 55 seconds, parallel to the North-South 1/4 line, 556.34 feet; thence due East, 74.53 feet; thence due South, 240.00 feet; thence due West, 72.51 feet to the North-South 1/4 line; thence South 00 degrees 28 minutes 55 seconds East along the North-South 1/4 line, 907.74 feet; South 65 degrees 16 minutes 21 seconds East, 311.57 feet; thence South 00 degrees 50 minutes 34 seconds West, 360.47 feet to the North line of the Grand Trunk Western Railroad Right of Way; thence North 89 degrees 15 minutes 08 seconds West, along said North line, 906.17 feet to the East line of the Consumers Power Sub-Station property; thence North 00 degrees 22 minutes 32 seconds West, 464.18 feet to the Northeast corner of said Consumers Power property; thence South 89 degrees 37 minutes 28 seconds West, 723.12 feet to the East line of said Consumers Power property; thence North 00 degrees 22 minutes 43 seconds West, 1324.83 feet along said East line to the point of beginning.

Tax ID # 59-10-100-031

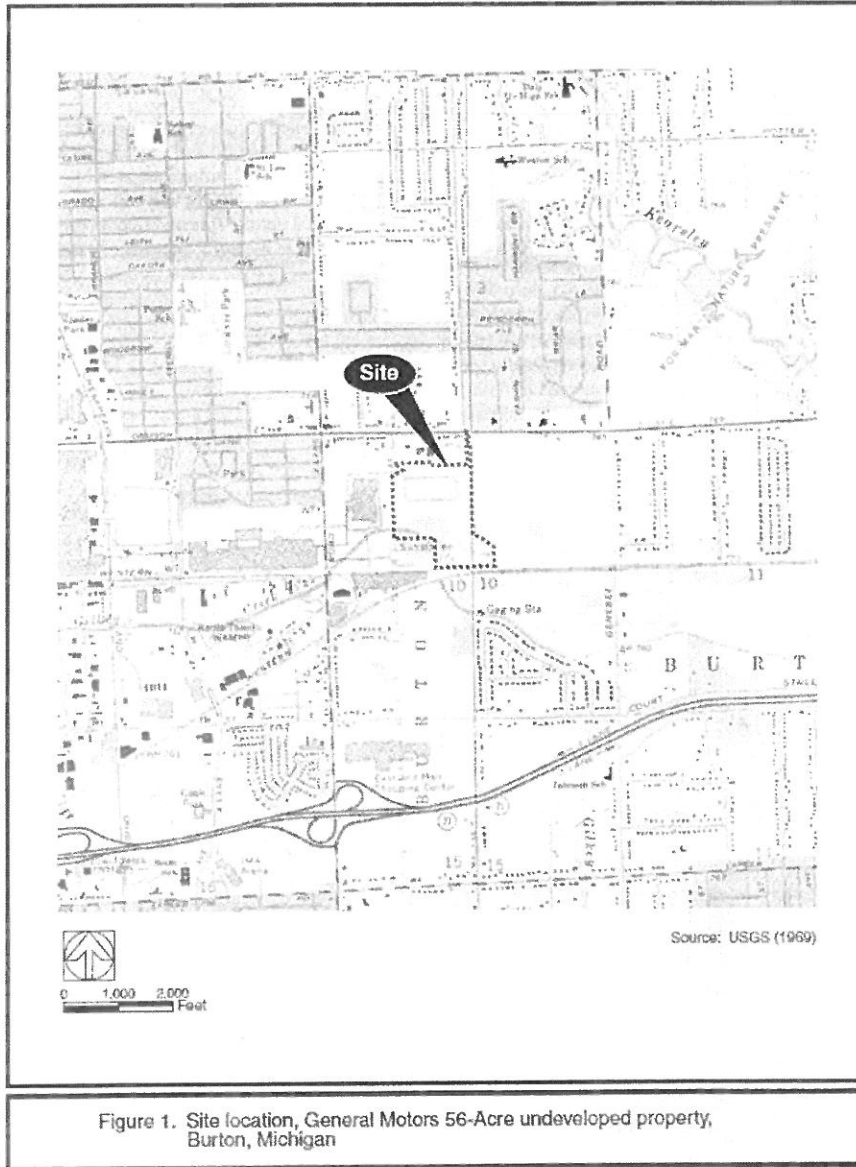
## Parcel 2

Part of the Emerald Estates Subdivision, as recorded in Liber 38 of Plats, page 18, Genesee County, Michigan Records AND ALSO part of vacated Donegal Street, described as follows: Commencing at the North 1/4 of Section 10, Town 7 North, Range 7 East, City of Burton, Genesee County, Michigan; thence North 88 degrees 02 minutes 45 seconds West, along the North line of Section 10, a distance of 66.00 feet; thence South 00 degrees 28 minutes 55 seconds East, 660.00 feet to the North line of said EMERALD ESTATES SUBDIVISION; thence along said North line of EMERALD ESTATES SUBDIVISION, North 88 degrees 02 minutes 45 seconds West, 433.71 feet AND North 00 degrees 16 minutes 59 seconds West 109.87 feet (platted as 110.00 feet) and North 88 degrees 02 minutes 45 seconds West, 763.74 feet (platted as 763.82 feet) to the Northwest corner of Lot 1 of said plat, and the Place of Beginning of this description; thence along the Westerly line of said Lot 1, on a curve to the left, having a radius of 93.80 feet, with a chord bearing and distance of South 33 degrees 44 minutes 18 seconds East, 103.25 feet; thence on a curve to the right, having a radius of 153.80 feet, with a chord bearing and distance of South 39 degrees 38 minutes 29 seconds East, 141.98 feet; thence North 89 degrees 18 minutes 28 seconds West, 206.67 feet, to the West line of East 1/2 of the Northwest 1/4 of said Section 10; thence North 00 degrees 22 minutes 43 seconds West, 194.75 feet to the North line extended West of said Lot 1 of EMERALD ESTATES SUBDIVISION; thence South 88 degrees 02 minutes 45 seconds East, 60.05 feet to the Place of Beginning.

Tax ID # 59-10-100-030

## EXHIBIT 2

### DRAWING ILLUSTRATING DESCRIPTION OF PROPERTY



### EXHIBIT 3

#### 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.