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DECLARATION OF RESTRICTIVE COVENANT

DEQ Reference No: RC-RD-201-14-018

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Kent County Register of Deeds to protect public health, safety, welfare and the environment pursuant to the applicable Sections of Part 201, Environmental Remediation, Michigan Compiled Laws ("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 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 3838 Clay Avenue SW, in City of Wyoming, Kent County, Michigan, Tax Identification Number: 41-17-24-178-012 and legally described in Exhibit 1 ("Property") and illustrated in Exhibit 2, and to assure that the use of the Property is consistent with the exposure assumptions used to develop the Non-residential clean-up criteria under Section 20120a(1)(b) of the NREPA and the exposure control measures relied upon at the Property.

Recording of this Restrictive Covenant with the Kent County Register of Deeds 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 Code of Federal Regulations ("C.F.R.") 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.



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Definitions

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

"Owner" means at any given time the then current fee title holder(s) 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.

"RACER" means the Revitalizing Auto Communities Environmental Response Trust ("Trust"), which on March 31, 2011 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*, 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). RACER Properties LLC, an entity wholly owned by the Trust (RACER Properties and the Trust are collectively referred to herein as "RACER"), held title to the Property until RACER transferred ownership in June 2011.

All other terms used in this document which are defined in Part 3 Definitions, Part 201 of NREPA, or Part 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.

Summary of Response Activities

Hazardous substances including copper was identified in groundwater at a concentration above the Part 201 Groundwater-Surface Water Interface Criterion (GSIC), manganese was identified in groundwater at a concentration above the Part 201 Residential and Non-Residential Drinking Water Criteria (DWC), and sodium and vanadium were identified in groundwater at concentrations above the Part 201 Residential DWC. These constituents were not identified in soil at the Property above the Groundwater-Surface Water Interface Protection Criteria (GSIPC) or the Residential Drinking Water Protection Criteria (DWPC). This Restrictive Covenant will prohibit the use or groundwater at, in, or under the Property by any person or entity for any purpose as well as establish other land use restrictions.

NOW THEREFORE,

Declaration of Land Use or Resource Use Restrictions

RACER, with the express written permission of the Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions and intends that said restrictions and covenants shall run with the land., and may be enforced in



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perpetuity against the Owner by the following entities: (1) RACER or its successor; and (2) 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 31, 2013, and MAC R 299.5701 – R 299.5727, effective December 31, 2013.

2. Activities Prohibited. The Owner shall prohibit activities on the Property that may result in exposures above the nonresidential land use category. These prohibited activities include:

- a. No drinking water or irrigation 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. 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.* (“RCRA”), or equivalent State Law, except pursuant to a plan or permit approved in writing by MDEQ and Grantor or its successor in title.
- e. If Owner elects to remove any slabs, pavement or other impervious surface on the Property, Owner shall be responsible for any and all obligations under environmental laws arising from any such removal, alteration or disturbance, whether or not caused by, arising from or related to, an environmental condition.

23. 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 any applicable requirements of Part 111, Subtitle C of RCRA, the administrative rules



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promulgated pursuant to Part 111 and RCRA, and all other relevant state and federal laws, including but not limited to MCL 324.20120c.

4. Access. The Owner shall grant MDEQ and RACER the right to enter the Property at reasonable times (1) to conduct and complete any and all response activities, together with any reasonably needed ingress and egress to the Property, and (2) 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.

5. Notice. The Owner shall provide notice to the MDEQ and RACER 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. The notice required to be made to RACER under this Paragraph shall be made to: General Counsel, RACER, 500 Woodward Avenue, Suite 1500, Detroit, Michigan, 48226. 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.

6. 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 and RACER.

7. Enforcement. RACER 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 current and subsequent Owners of all or part of the Property. 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. All remedies available hereunder shall be in addition to any and all other remedies at law or equity.

8. 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



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any other provisions of this Restrictive Covenant and all other provisions shall continue to remain in full force and effect.

9. 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.

10. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant has the expressed written consent of the Owner (Exhibit 4), and represents and certifies that he is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

[signature page follows]



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EXHIBIT 1

LEGAL DECRPTION OF PROPERTY

Land in the City of Wyoming, County of Kent and State of Michigan more particularly described as:

That part of the East 1/2 of the East 1/2 of the Northwest 1/4 of Section 24, Town 6 North, Range 12 West, City of Wyoming, Kent County, Michigan, described as: Commencing at the North 1/4 corner of said Section; thence South 88°04' West 163.4 feet along the North line of said Section to the Westerly line of the Consumers Power Company right of way; thence South 4°32'40" East 990.0 feet along said Westerly right of way line to the point of beginning; thence South 4°32'40" East along said right of way line 1097.25 feet; thence South 88°04' West 465.75 feet parallel with the North line of said Section to the East line of Clay Avenue; thence North 4°26' West 225.74 feet along the East line of Clay Avenue; thence Northeasterly 443.47 feet on a 533.66 foot radius curve to the right, the long chord of which bears North 19°22'23" East 430.82 feet; thence North 43°10'45" East 134.26 feet; thence Northeasterly 421.36 feet on a 595.22 foot radius curve to the left, the long chord of which bears North 22°53'58" East 412.62 feet to the intersection of the East line of Clay Avenue and a line which is 990.0 feet South of the North line of said Section; thence East 0.66 feet parallel to the North line of said Section to the point of beginning.

Except: All that part of the East 1/2 of the Southeast 1/4 of the Northwest 1/4 of Section 24, Town 6 North, Range 12 West, City of Wyoming, Kent County, Michigan, described as: Commencing at the center of said Section 24; thence South 87°53'20" West 161.35 feet along the East and West 1/4 line of said Section to a point being 100.0 feet distant West (perpendicular measurement) from the West line of the Consolidated Rail Corporation (formerly Pennsylvania Rail Company) right of way; thence North 4°32'38" West 556.72 feet parallel with said railroad right of way line and 100.0 feet distant West (perpendicular measurement) therefrom to a point that is 768.95 feet South from the North line of said East 1/2 of the Southeast 1/4 of the Northwest 1/4 for the place of beginning of this description; thence South 87°58'45" West 466.05 feet parallel with said North line of the East 1/2 of the Southeast 1/4 of the Northwest 1/4 to a point being 33.00 feet distant East (perpendicular measurement) from the West line of said East 1/2 of the Southeast 1/4 of the Northwest 1/4; thence North 4°25'48" West 8.15 feet parallel with said West line of the East 1/2 of the Southeast 1/4 of the Northwest 1/4 to a point that is 2087.25 feet South from the North line of said Section 24; thence North 88°04'00" East 466.08 feet parallel with the North line of said Section to a line being North 4°32'38" West from the place of beginning of this description, said line being 100.0 feet distant West (perpendicular measurement) from the West line of said Consolidated Rail Corporation right of way; thence South 4°32'38" East 7.43 feet to the place of beginning.

Commonly known as: 3838 Clay Ave SW, Wyoming, Michigan

Tax Identification No.: 41-17-24-178-012

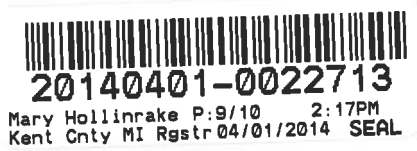


EXHIBIT 3

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.



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EXHIBIT 4

CONSENT OF OWNER

Kendall Electric, Inc., a Michigan corporation, the current and legal Owner of the Property, does hereby consent to the recording of this Restrictive Covenant, RC-RD-201-2014-018, and authorizes the Revitalizing Auto Communities Environmental Response Trust to file the Restrictive Covenant with the Kent County Register of Deeds for recording.

KENDALL ELECTRIC, INC.,
a Michigan corporation

By: [Signature]
James L. Treadwell, VP of Finance/Treasurer

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this 11th day of FEBRUARY, 2014, by James L. Treadwell, VP of Finance/Treasurer of Kendall Electric, Inc., a Michigan corporation, on behalf of said corporation.

[Signature]

DENISE M. HAZELRICK
NOTARY PUBLIC KENT CO., MI
MY COMMISSION EXPIRES JUL 28, 2013 2019
ACTING IN THE COUNTY OF KENT

Notary Public, _____ County, Michigan
My Commission Expires: _____
Acting in _____ County, Michigan