

**STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

ACTION AUTO STORE #26
636 E. Michigan Avenue
Lansing, Michigan

**AGREEMENT REGARDING DUE CARE AND
RESCISSION OF CERTAIN OBLIGATIONS OF
ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE**

This Agreement Regarding Due Care and Rescission ("Agreement and Rescission") of Certain Obligations of Administrative Agreement and Covenant Not To Sue ("Administrative Agreement" – **Attachment 1**) is made and entered into the 2nd day of May, between 600 E. Michigan-Lansing, LLC, ("600 E. Michigan") a Michigan limited liability company, and the State of Michigan and its Department of Environmental Quality ("State").

RECITALS

A. This Agreement and Rescission concerns the Administrative Agreement pertaining to the property described in **Schedule A** of the Administrative Agreement located at 636 East Michigan Avenue, Lansing, Michigan (the "Property"), executed by the State and MADC on July 7, 1995, and the due care obligations at the Property under Part 201, Environmental Remediation, and Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), MCL 324.20101 *et seq.* and MCL 324.21301 *et seq.* The legal description for the land included in the Property is set forth in **Attachment 2**.

B. The environmental regulatory functions formerly assigned to the Michigan Department of Natural Resources ("MDNR") were transferred to the Michigan Department of Environmental Quality ("MDEQ") by Executive Order 1995-18, effective October 1, 1995. In 2009, pursuant to Executive Order 2009-45, the MDNR and the MDEQ were consolidated to form the Michigan Department of Natural Resources and Environment ("MDNRE"). Now, pursuant to

the NREPA and Executive Order No. 2011-1, the MDNRE was abolished and the Director of the MDEQ is the state official and the MDEQ is the state agency charged with the administration and enforcement of Parts 201 and 213.

B. The Administrative Agreement contains a Covenant Not To Sue (the "CNTS").

C. The Property, in part, continues to be owned by MADC. A portion of the Property has been sold to James Brogan ("Brogan"). The State, MADC, and Brogan entered into a partial Assignment of Administrative Agreement and Covenant Not to Sue on June 11, 1996.

D. GG Acquisitions, LLC, is a Michigan limited liability company ("GGA").

E. 600 E. Michigan-Lansing, LLC is a Michigan limited liability company.

F. GGA has entered into a Commercial Property Buy and Sell Agreement with MADC with an Effective Date of December 18, 2017, for the purchase of that portion of the Property not earlier sold to Brogan as described on **Attachment 3** (the "MADC Property").

G. GGA has entered into a Commercial Property Buy and Sell Agreement with Brogan with an Effective Date of December 18, 2017, for the purchase of certain real estate, which includes a portion of the Property subject to the Administrative Agreement as described on **Attachment 4** (the "Brogan Property").

H. 600 E. Michigan is in the process of reaching an agreement with GGA that prior to a closing, the Commercial Property Buy and Sell Agreements referenced above for the purchase of the MADC Property and the Brogan Property would be assigned to and closed in the name of 600 E. Michigan. Thereafter, the properties would be developed by 600 E. Michigan.

I. It is the intention of 600 E. Michigan to purchase other real property adjacent to the subject Property and to develop the Property and the surrounding property into multi-use condominiums (the "Condominium Project").

J. The State and 600 E. Michigan, along with MADC and Brogan, entered into an Assignment ("Assignment") of Administrative Agreement and Covenant Not to Sue on May 1, 2018, which transfers the rights, duties, obligations, and benefits of the Administrative Agreement to 600 E. Michigan on the date of the closing on the acquisition of the Property by 600 E. Michigan (the "Closing"). Under the Assignment, MADC and Brogan retain all the rights, benefits, and protections of MADC and Brogan arising out of the Administrative Agreement as to the Property.

K. In the Assignment, the State agreed that upon the Closing on the acquisition of the Property by 600 E. Michigan, the State approves the transfer of the Property to 600 E. Michigan in accordance with Article XIV of the Administrative Agreement.

K. Pursuant to Section XI of the Administrative Agreement, the Administrative Agreement may only be modified by written agreement of 600 E. Michigan (then MADC), the Michigan Department of Attorney General, and the MDEQ (then MDNR).

L. The State and 600 E. Michigan now seek to rescind all obligations in the Administrative Agreement, with the exception of the following surviving provisions: Section VII (Covenants Not to Sue) and Section IX (Reservation of Rights).

M. The State and 600 E. Michigan also now seek to set forth requirements for compliance with due care obligations under Part 201 and Part 213, as applicable, at the Property, including after any transition of control to any association of co-owners as defined in the Condominium Act, 1978 PA 59, as amended, MCL 559.101 *et seq.*

TERMS OF AGREEMENT

1. Upon the date of the conveyance of title of the Property to 600 E. Michigan and the transfer of all rights, duties, obligations, and benefits of the Administrative Agreement to 600 E. Michigan under the Assignment, all rights, duties, obligations, and benefits in the Administrative Agreement are rescinded, with the exception of the following surviving provisions contained in Attachment A: Section VII (Covenants Not to Sue) and Section IX (Reservation of Rights). This rescission does not affect the rights, benefits, and protections of MADC and Brogan retained in the Assignment by MADC and Brogan arising out of the Administrative Agreement as to the Property.

2. For the avoidance of doubt, there shall be no further continued obligations of 600 E. Michigan or any subsequent owner of all or part of the Property pursuant to the Administrative Agreement, to obtain approval from the State before transferring title or ownership to the Property.

3. 600 E. Michigan acknowledges that this rescission does not relieve 600 E. Michigan or any subsequent owner of all or part of the Property from any obligation imposed by Michigan environmental law, including but not limited to the obligations of due care imposed and promulgated by Section 20107a of Part 201 and Section 21304c of Part 213, as applicable, and as may be amended from time to time.

4. 600 E. Michigan agrees to include the following provisions in the master deed ("Master Deed") and/or any by-laws recorded as part of or included in the Master Deed ("By-Laws"), required under the Condominium Act, for the Condominium Project that will include the subject Property:

- a. A provision referencing the Baseline Environmental Assessment that 600 E. Michigan will submit to the MDEQ, which will be submitted prior to the recording of the Master Deed and indicating that the Baseline Environmental Assessment is available for review from the developer of the Condominium

Project or the Condominium Project's association of co-owners ("Association of Co-Owners").

- b. A provision referencing the documentation of due care compliance that will be prepared by 600 E. Michigan, which delineates how 600 E. Michigan will comply with its due care obligations under Part 201 and Part 213, as applicable ("Documentation of Due Care Compliance"), and indicating that the Documentation of Due Care Compliance is available for review from the developer of the Condominium Project or the Condominium Project's Association of Co-Owners.
- c. A provision stating that 600 E. Michigan, as the developer, is responsible for all due care obligations under Part 201 and Part 213, as applicable, until the recording of the Master Deed and the formation of the Association of Co-Owners.
- d. A provision stating that upon the recording of the Master Deed and the formation of the Association of Co-Owners, the Association of Co-Owners is responsible for all due care obligations under Part 201 and Part 213, as applicable, and may assess as common area expenses to the co-owners of units in the Condominium Project the cost of due care obligations if done so in accordance with applicable law.

MDEQ shall be given the opportunity to review the Master Deed and By-Laws prior to their recording solely for the purpose of determining compliance with this Paragraph 4 of this Agreement and Rescission. MDEQ shall be given twenty-one (21) calendar days to review such Master Deed and By-Laws after its receipt of the documents, and if MDEQ does not object, MDEQ will have waived its opportunity to review the document. This provision does not impact MDEQ's enforcement authorities under Part 201 or 213, or any other applicable law.

5. For the purposes of providing clear information to potential purchasers, 600 E. Michigan agrees that, for the Condominium Project that will include the subject Property, if a condominium unit is sold to a purchaser that is not affiliated with 600 E. Michigan, the developer, as that phrase is defined in the Condominium Act at Section 3(2), prior to purchase, 600 E. Michigan will provide notice to the purchaser regarding the known contamination at the site, the existing due care obligations at the Condominium Project, and any obligation of the condominium unit purchaser to fund the due care obligations, whether directly or indirectly.

6. Upon the date of Closing, 600 E. Michigan may file this Agreement and Rescission with the Register of Deeds.

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600 E. MICHIGAN-LANSING, LLC,
A Michigan Limited Liability Company

By: Gillespie Group Manager, LLC
Its: Manager

Patrick K. Gillespie

By: Patrick K. Gillespie

Its: Manager

Dated: 7-30-2018

STATE OF MICHIGAN)
)ss
COUNTY OF Ingham

JAMIE SZUMLINSKI
NOTARY PUBLIC, STATE OF MI
COUNTY OF LIVINGSTON
MY COMMISSION EXPIRES Aug 26, 2020
ACTING IN COUNTY OF Ingham

The foregoing instrument was subscribed to and sworn before me in Ingham County,
Michigan on this 30 day of April, 2018, by Patrick K. Gillespie, as Manager
of Gillespie Group Manager, LLC, a Michigan limited liability company, on behalf of 600 E.
Michigan-Lansing, LLC.

Jamie Szumlinski
Michigan, Notary Public
Livingston County, Michigan
My commission expires: 8/26/2020

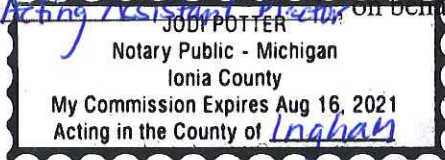
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STATE OF MICHIGAN,
Department of Environmental Quality

Joshua M Mosher
By: Joshua Mosher
Acting Assistant Director
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Dated: 05/02/2018

STATE OF MICHIGAN)
)ss
COUNTY OF Ingham)

The foregoing instrument was subscribed to and sworn before me in Ingham County,
Michigan on this 2nd day of May, 2018, by Joshua Mosher,
its Acting Assistant Director on behalf of Michigan Department of Environmental Quality.



Jodi Potter
Michigan, Notary Public
Ionia County, Michigan
My commission expires: 8-16-2021

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Department of Attorney General

Megen E. Miller
By: Megen E. Miller
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
Dated: May 2, 2018

STATE OF MICHIGAN)
)ss
COUNTY OF INGHAM)

The foregoing instrument was subscribed to and sworn before me in INGHAM County, Michigan on this 2ND day of MAY, 2018, by MEGEN E. MILLER its _____, on behalf of Michigan Department of Environmental Quality.

JULIE L. SIMISON
NOTARY PUBLIC, STATE OF MI
COUNTY OF SHIAWASSEE
MY COMMISSION EXPIRES Jun 28, 2022
ACTING IN COUNTY OF INGHAM

Julie L. Simison
JULIE L. SIMISON, Notary Public
SHIAWASSEE County, Michigan
My commission expires: 6-28-22
ACTING IN INGHAM COUNTY, MI

WHEN RECORDED RETURN TO: John R. Fifarek (P35518) Lasky Fifarek, P.C. 120 N. Washington Sq., Ste. 625 Lansing, Michigan 48933 517-267-2222	DRAFTED BY: Megen E. Miller (P78901) Michigan Department of Attorney General 525 W. Ottawa St. Lansing, MI 48911 517-373-7540
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ATTACHMENT 1

ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE

This Administrative Agreement and Covenant Not To Sue (hereinafter referred to as the "Agreement") is executed and entered into this 7th day of July 1995 by and between the State of Michigan and its Department of Natural Resources ("the State" or "MDNR") and Michigan Avenue Development Company, L.L.C. ("MAD"). By execution of this agreement, the State and MAD stipulate and agree to be bound by all of the recitals, terms and conditions herein. JS
SFP

I. DEFINITIONS

1. The terms used in this Agreement shall have the following meanings:

1.1 "Act 307" or "MERA" means the former Michigan Environmental Response Act, 1982 PA 307, as amended, MCL 324.20101 et seq, (now Part 201 of the Natural Resources and Environmental Protection Act), and its rules.

1.2 "Act 307 Rules" means the administrative rules promulgated under the former Michigan Environmental Response Act 1982 PA 307, as amended, MCL 324.20101, et seq (now Part 201 of the Natural Resources and Environmental Protection Act).

1.3 "Action Auto" means Action Auto, Inc., the owner and/or operator of the Property described below and the Debtor-in-Possession in In re: Action Auto Stores, Inc., Case No. 90-11710 filed in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division, Flint, Michigan.

1.4 "Administrative Agreement and Covenant Not To Sue" or "Agreement" means this document, its Attachments, and any report, document or other submittal made pursuant to this document or any Attachment hereto. All Attachments to this document and other reports, documents or other submittals made under this document are incorporated into and made an enforceable part of this document.

1.5 "Debtor" or "Debtor-in-Possession" means the Action Auto, Inc. in In re: Action Auto Stores, Inc., Case No. 90-11710 filed in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division, Flint, Michigan.

1.6 "Environmental Clean Up Fund" means the fund established by the Order Confirming Michigan National Bank's Liquidating Plan of Reorganization for Debtor Action Auto Stores, Inc., which will receive 33% of the Net Sale Proceeds from the sale of all the Debtor's real properties.

1.7 "Environmental Consultant/Prime Contractor" means a consultant/prime contractor selected by the Post-Confirmation Committee.

1.8 "ERD" means the Environmental Response Division of MDNR and its successor entities.

1.9 "Existing Contamination" refers to any Hazardous Substance at any level above "Type A" or "Type B" as those terms are defined in the Act 307 Rules, in any location, including soils, groundwater, surface water, sewer lines and utility trenches that (1) presently exists at, or (2) is presently emanating from, or (3) is presently subjacent to the Property and, regardless of its location, is attributable to releases that occurred prior to the closing of the sale of a Property. For purposes of this definition "presently" means it exists at the effective date of this Agreement and "past" means it occurred prior to the effective date of this Agreement. In addition, for further purpose of defining Existing Contamination, the State and MAD agree that all data and technical reports for a particular Facility produced to date by Action Auto, Action Auto's consultants or the State, and all further data and technical reports developed by MAD, the Environmental Consultant/Prime Contractor or the State, within 180 days of the closing of the sale of the Property or completion of the Response Activities set forth in paragraph 4.2, which ever occurs first, are probative evidence of the nature and extent of Existing Contamination for purposes of this Agreement and shall be admissible as evidence in any proceeding involving a dispute over the same.

1.10 "Facility" means the former Action Auto Property located at 636 East Michigan Avenue, Lansing, Michigan, and any other area, place or property where Hazardous Substances are located if the Hazardous Substances are attributable to Existing Contamination.

1.11 "Hazardous Substance" means any regulated substance as defined in LUST Section 21313(3), MCL 324.21313(3) or any Hazardous Substance as defined in Section 20101(n) of Act 307, including petroleum and petroleum by-products.

1.12 "LUST" or "the LUST Act" means the former Leaking Underground Storage Tank Act, 1988 PA 478, as amended, MCL 324.21301, et seq (now Part 213 of the Natural Resources and Environmental Protection Act).

1.13 "MAD" refers to Michigan Avenue Development Company, L.L.C., a Michigan corporation, located at 636 East Michigan Avenue, Lansing, Michigan 48913, who is the purchaser of some of the assets of Action Auto, including the Property.

1.14 "MDNR" means the Michigan Department of Natural Resources and those persons or entities acting on its behalf.

1.15 "MUSTFAA" means the former Michigan Underground Storage Tank Financial Assurance Act, 1988 PA 518, as amended, MCL 324.21501, et seq (now Part 215 of the Natural Resources and Environmental Protection Act).

1.16 "Net Sale Proceeds" means the remaining proceeds from the sale of a Property after the costs of maintaining and preserving that Property and the unpaid and accrued real estate taxes on that Property have been deducted.

1.17 "Plan of Reorganization" or "Plan" means the plan of reorganization approved and authorized by the Order Confirming Michigan National Bank's Liquidating Plan of Reorganization for Debtor Action Auto Stores Inc., dated December 9, 1992, and the Exhibits incorporated therewith.

1.18 "Post-Existing Contamination" means contamination associated with the release or threatened release of any Hazardous Substance at the Property after the execution of this Agreement.

1.19 "Post-Confirmation Committee" means the committee established pursuant to Article X of the Plan of Reorganization.

1.20 "Property" means the former Action Auto property located at 636 East Michigan Avenue, Lansing, Michigan.

1.21 "Purchase Agreement" means the Purchase Agreement between James Brogan and the Post-Confirmation Committee executed on September 21, 1994 and September 27, 1994, respectively, and subsequently assigned to MAD on December 9, 1994.

1.22 "Release" has the meaning as described in Section 20101(u) of Act 307.

1.23 "Remedial Investigation" means those activities necessary to characterize the source, nature and vertical and horizontal extent and impact of Existing Contamination associated with the Facility.

1.24 "Remediate" means to cleanup or take other Response Activity to protect the public health, safety and welfare and the environment consistent with Act 307, the LUST Act, the UST Act, and other applicable authority.

1.25 "Response Activity" has the meaning as described in Section 20101(x) of Act 307.

1.26 "Response Activity Costs" or "costs of response activity" means (1) all costs incurred by MDNR relating to the review, oversight, selection or implementation of Response Activity after the closing of the sale of a Property, including enforcement costs; or (2) all costs for work performed by the Environmental Consultant/Prime Contractor and subcontractors relating to the selection and implementation of Response Activity. "Incurred" means costs that have been disbursed or

paid out by MDNR. Costs incurred does not include costs that are due or owed by MDNR. "Performed" means professional services provided by the Environmental Consultant/Prime Contractor and its subcontractors implemented in accordance with site-specific work plans and budgets approved by MDNR.

1.27 "State" means the State of Michigan, including the Department of Attorney General and MDNR, and any authorized representative acting on their behalf.

1.28 "The UST Act" means the former Underground Storage Tank Act, 1984 PA 423, as amended, MCL 324.21101, et seq and its rules (now Part 211 of the Natural Resources and Environmental Protection Act).

1.29 "UST" or "Underground Storage Tank System" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of Hazardous Substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground.

II. STATEMENT OF OBJECTIVES

2.1 It is the objective of the State of Michigan and MAD in entering into this Agreement to: (a) Provide for the implementation of Response Activity to Remediate Existing Contamination associated with the Facility to the maximum extent possible given the financial resources made available; (b) Expedite the implementation of such Response Activity; (c) Provide a mechanism for MAD to purchase the Property without incurring liability for Existing Contamination; (e) Prevent the Property from becoming an "orphan site" and allow the commercial use of the Property; and (f) Engender the social and economic benefits accompanying the establishment of new commercial uses of the Property.

III. BACKGROUND INFORMATION CONCERNING THE PROPERTY

3.1 The Property has been used as a bulk storage facility by Action Auto, Inc. As such, the Property was a location where various petroleum products, including gasoline, kerosene and diesel fuel were stored.

3.2 Releases of petroleum products into the environment have occurred on the Property and these Releases have resulted in the Existing Contamination.

3.3 Hazardous substances found at the Facility in soils, groundwater or surface water are present at concentrations exceeding those allowed under the Act 307 Rules.

3.4 There is need to undertake additional Response Activities at the Facility.

3.5 MAD is purchasing the Property described in Attachment A from the Post-Confirmation Committee. A portion of the Net Sale Proceeds from the sale is normally placed into the Environmental Clean Up Fund established pursuant to Exhibits B and F of the Plan of Reorganization which may be utilized for Response Activity at a Facility. The Parties acknowledge and understand that no Net Sale Proceeds will be available from the sale and that no Net Sale Proceeds will be placed into the Environmental Clean Up Fund. MAD shall, however, utilizing its own funds, perform the Response Activities set forth in paragraph 4.2 herein. MDNR, in its sole discretion, may or may not allocate additional monies from the Environmental Clean Up Fund for Response Activities at the Facility. Nothing in this Agreement shall be construed to prohibit or limit the implementation of additional MDNR approved Response Activity by MAD or other parties.

3.6 Article X of the Plan of Reorganization establishes a "Post-Confirmation Committee" and requires the Post-Confirmation Committee to undertake all necessary measures to apply for, establish and maintain eligibility under MUSTFAA. Any payments received from the MUSTFAA Fund for Response Activity conducted at the Facility shall be deposited to the Environmental Clean Up Fund to reimburse the Fund for any expenditures the Fund has paid out for Response Activity at the Facility. After reimbursing the Environmental Clean Up Fund for funds that have been advanced by the Fund to pay for Response Activity at a Facility, all other payments from the MUSTFAA Fund may be applied to pay for Response Activity conducted at that Facility, provided, however, that MUSTFAA payments to the Post-Confirmation Committee for Response Activity performed by the Environmental Consultant/Prime Contractor prior to sale are redistributed as Net Sale Proceeds.

IV. OWNERSHIP AND OPERATIONS IN COMPLIANCE WITH UST AND LUST; IMPLEMENTATION OF RESPONSE ACTIVITIES

4.1 MAD shall either (1) remove all USTs from the Property, or (2) bring all UST systems at the Property into compliance with the UST Act and RCRA. UST upgrades shall include, but not be limited to, spill prevention, corrosion protection, and leak detection up-upgrades as required by the UST Act or RCRA. UST systems which are upgraded shall be upgraded and retested for tightness, in accordance with the UST Act and regulations and other applicable laws and regulations, prior to being placed in service.

4.2 MAD shall properly disassemble or demolish, remove and properly dispose of all of the above-ground storage tanks located on the Property within 180 days of the closing of the sale of the Property.

4.3 Nothing contained in Paragraphs 4.1 or 4.2 shall be deemed or construed to enlarge or otherwise impose additional obligations upon MAD other than those specifically set forth herein.

V. ACCESS TO PROPERTY AND RECORDS

5.1 Pursuant to MCL 324.20133(4), upon reasonable notice to MAD, and upon presentation of proper identification, from the effective date of this Agreement until the release or threat of release at the Property has been remediated, the MDNR and its authorized employees and representatives, as well as the Environmental Consultant/Prime Contractor and its authorized employees and representatives, shall have an irrevocable right to access at all reasonable times to the Property and any real property to which access is required for the implementation of Response Activity to the extent access to the Property is owned, controlled by or available to MAD for the purpose of conducting any activity authorized by this Agreement or required under Federal or State law with respect to environmental conditions at the Property, including, but not limited to:

(A) Monitoring Response Activity, including collecting environmental samples.

(B) Verifying any data or information submitted to the MDNR.

(C) Collecting environmental samples, photos, video tape or other data, upon presenting credentials and undertaking a reasonable attempt to inform a person in charge at a Property or their designee. A receipt for the collection of such samples and data shall be provided by the MDNR to the person in charge at a Property.

(D) Conducting Response Activity.

(E) Assessing the need for evaluating, planning or implementing Response Activity.

(F) Inspecting and copying non-privileged records, operating logs, contracts or other documents which may be required to monitor MAD compliance with this Agreement.

5.2 Upon reasonable notice to MAD, from the effective date of this Agreement, any other party and their authorized contractors and consultants shall have the right to access the Property for the purpose of conducting Response Activity provided that the Response Activity is being conducted under a consent decree or administrative order by consent executed by the MDNR. Such Response Activity shall be implemented and coordinated with Response Activity undertaken under this Agreement. The party conducting Response Activity under a consent decree or administrative order by consent shall be required, or shall require its consultants and contractors, to coordinate all

activities at a Property with MAD, and to use its (their) best efforts to minimize interference and whenever possible conduct Response Activities that are the least intrusive to MAD operation and commercial activities at the Property unless such interference is necessary for the implementation of Response Activity.

5.3 Consistent with MDNR's responsibilities under federal or state law, MDNR and its authorized employees and representatives, shall use their best efforts to minimize interference and whenever possible employ efforts that are the least intrusive to the operations and commercial activities at the Property. For purposes of this Section V, "Best Efforts" shall not include taking efforts which would result in incurring any material cost increases in performing Response Activity. However, in the event MDNR, its authorized representatives, or other parties, undertakes or monitors Response Activity at the Property, the parties to this Agreement recognize and agree that MDNR and the other parties may have to disrupt, halt or otherwise interfere with operations or commercial activities at the Property.

5.4 When all necessary Response Activity has been implemented to the satisfaction of MDNR, MDNR's rights to access the Property under MCL 324.20133(4) shall terminate. This Agreement does not restrict or limit any other right the MDNR may have to enter the Property or other properties to which access is required pursuant to MCL 324.20117 or other statutory or regulatory authority.

VI. AFFIRMATIVE COVENANTS, CERTIFICATIONS, AND ADDITIONAL OBLIGATIONS BY

6.1 MAD hereby certifies that, prior to the effective date of this Agreement, it has fully disclosed or made available to the State all information known to it relating to: (a) the nature and extent of Existing Contamination associated with the Facility; (b) any other environmental conditions relating to the Facility that may present a risk of harm to the public health, safety or welfare or the environment; and (c) the age, location and historic contents of all UST systems at the Property. In addition, MAD certifies to the best of its knowledge, after reasonable inquiry, that prior to the effective date of this Agreement: (a) MAD is financially capable of redeveloping and reusing the Property in accordance with the Covenant Not To Sue; (b) that the redevelopment or reuse of the Property by MAD will not result in a release or threat of release; (c) MAD has never owned or operated the Property at any time prior to the execution of the Purchase Agreement; and (d) that MAD is not affiliated in any way with any person that may be liable under Section 20126 of MERA for a release or threat of release at the Property, including Action Auto and its subsidiaries, successors, directors or officers or any other owner or operator of the Property.

6.2 MAD hereby further certifies in accordance with Section 20133(3) of MERA, that it will cooperate with MDNR or other persons conducting Response Activity approved by MDNR, and that it will exercise due care with respect to the Existing Contamination. MAD further certifies that its ownership, operations, or commercial activities at the Property will not contribute to or exacerbate the Existing Contamination, interfere with the implementation or completion of any Response Activity, pose health risks, or cause an increase in the cost of Response Activities. If information becomes available which indicates that conditions at the Property may or will pose unacceptable health risks related to the release or threat of release of Existing Contamination to persons who may be present at or in the vicinity of the Property, MAD shall take the necessary precautions to prevent, minimize, or mitigate those risks to public health, safety and welfare.

6.3 MAD hereby acknowledges and understands that the implementation of Response Activity may temporarily disrupt, halt or otherwise interfere with MAD's operations and commercial activities at the Property. Furthermore, MAD agrees that any site construction, remodeling or redevelopment shall not exacerbate or contribute to Existing Contamination and that such construction, remodeling or redevelopment activities shall not interfere with any Response Activity. Such site construction, remodeling or redevelopment activities on the Property include, but are not limited to: UST system removal, installation or replacement; lot paving; pump and dispenser system installation or replacement; canopy removal or installation; utility line work; drainage system redesign, installation or removal; drinking water well construction or removal; building demolition, relocation or construction; and any soil removal, replacement, relocation, regrading, etc., associated with the above listed activities. MAD shall notify MDNR and the Environmental Consultant/Prime Contractor, at least 60 days prior to undertaking construction, remodeling or redevelopment activities on the Property that could affect Response Activity, including activities which may affect approved plan(s) or plans under MDNR review. The notice provided to MDNR shall contain a description of the planned construction, remodeling or redevelopment activities and an explanation of all precautions that will be taken so as to prevent any exacerbation of or contribution to Existing Contamination. The above 60-day notification requirement may be waived by MDNR and the Environmental Consultant/Prime Contractor provided such waiver is in writing.

6.4 MAD hereby agrees that it shall not grant or convey any easement, license, right-of-way or other prescriptive right that will exacerbate or contribute to Existing Contamination, interfere with the implementation of Response Activity or pose health risks to persons that may be present at or in the vicinity of the Property. MAD shall notify MDNR and the Environmental Consultant/Prime Contractor, at least 60 days prior to granting or conveying easement, license, right-of-way or other prescriptive right on the Property. The above 60-day

notification requirement may be waived by MDNR and the Environmental Consultant/Prime Contractor provide such waiver is in writing.

6.5 MAD shall have the burden of proving that activities it performs, or has performed, did not exacerbate or contribute to Existing Contamination. MAD shall have the burden of demonstrating the extent to which any claims asserted by the State are attributable to Existing Contamination.

6.6 The parties agree that MAD must satisfactorily perform all obligations identified in this Agreement, including the Attachments, upon the effective date of this Agreement, regardless of whether MAD operates all of the Property and regardless of any agreement that may arise or exist between MAD and any entity or person regarding operations of all of the Property.

VII. COVENANTS NOT TO SUE

7.1 The State hereby covenants not to sue or take any civil, judicial or administrative action against MAD (excluding any officers, directors or employees formerly employed by any previous owner or operator of the Property) for any claims arising from (a) Existing Contamination associated with the Facility and (b) the acts or omissions of any owner or operator of the Property prior to the effective date of this Agreement that may have contributed to or caused Existing Contamination at the Facility.

7.2 MAD hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies or their authorized representatives for any claims arising from: (a) the Existing Contamination associated with the Facility; (b) any acts or omissions of the State or its authorized representatives prior to the effective date of this Agreement related to the Existing Contamination; (c) Post-Existing Contamination; (d) off-site disposal, remediation, recycling or reclamation of Hazardous Substances; or (e) the Post-Confirmation Committee's failure to apply for, establish and maintain MUSTFAA eligibility. The parties agree that this provision in no way limits MAD's right to pursue funding for Response Activity for Post-Existing Contamination pursuant to MUSTFAA. MAD further agrees not to take any civil, judicial or administrative action to attempt to compel the State to undertake, implement or complete any Response Activity at or related to the Facility. MAD makes such agreement even if there is Existing Contamination, Post-Existing Contamination or other environmental conditions associated with the Facility.

VIII. VOIDING OF THE AGREEMENT AND REMEDIES FOR BREACH OF THE AGREEMENT

8.1 This Agreement shall become void if MAD violates any of its covenants or certifications set forth in Paragraph 6.1.

8.2 Except as provided in Paragraph 8.1 and Section IX, in the event the State determines that MAD has not materially complied with the terms of this Agreement, including all of its Attachments, or has otherwise not materially fulfilled its obligations under this Agreement, the State may pursue any remedies available by law.

IX. RESERVATION OF RIGHTS

9.1 The covenant stated in Paragraph 7.1 shall apply to only Existing Contamination. The State reserves the right to take independent judicial or administrative actions against MAD for any of the following: (a) Post-Existing Contamination associated with the Facility; (b) the release or threat of release of any Hazardous Substance resulting from the redevelopment or reuse of the Property by MAD; (c) the exacerbation of or contribution to the Existing Contamination associated with the Property, including: (i) the introduction of any substance (such as air or water), other than as part of an approved RAP, and (ii) remodeling, redevelopment and construction which has the effect of exacerbating or contributing to Existing Contamination; (d) MAD's interference with or failure to cooperate with the MDNR, its contractors or other persons conducting response activities or Response Activity approved by the MDNR; (e) failure by MAD to exercise due care with respect to any release or threat of release; (f) any action by MAD which renders a Response Activity required by this Agreement less effective or more expensive than it might otherwise be; or (g) any other violations of law not relating to the Existing Contamination.

9.2 The parties agree that nothing in this Agreement shall be construed as a statement, representation or finding by the State that the Property is fit for any particular use.

9.3 Nothing in this Agreement shall in any way limit the power and authority of the State to take appropriate action to: (a) protect public health, safety or welfare or the environment or (b) prevent, abate or minimize an actual or threatened release associated with the Facility, including the authority to undertake Response Actions or otherwise address Existing or Post-Existing Contamination.

9.4 Nothing in this Agreement shall in any way limit or affect the State's right to take judicial or administrative action against any responsible party other than MAD. Furthermore, this Agreement shall not be construed as discharging

the liability of any other person or entity, including, but not limited to, Action Auto or any successor, subsidiary, director or officer of Action Auto.

9.5 Nothing in this Agreement shall affect the duties and obligations MAD may have with respect to permits or other governmental approval or waive MAD's duties and obligations under applicable federal or state law.

9.6 The parties agree that it is their mutual intention that MAD shall be afforded contribution protection pursuant to Act 307, MCL 299.20129(5) to the extent that MAD is in compliance with this Agreement. The State acknowledges that MAD, through this Agreement, has resolved any liability it may have had for Existing Contamination associated with the Facility, and further, that MAD is not liable for contribution claims if such claims arise from an action brought by the State against other responsible parties.

X. DISPUTE RESOLUTION

10.1 The parties agree that should any dispute arise between them concerning this Agreement and/or any acts or omissions by the parties under it, it will be resolved by the following dispute resolution procedure:

(A) If the parties are unable to resolve the dispute, they shall exchange with one another written statements of their positions, specifying in detail all the facts and reasons underlying their positions at that time, and offering all criticisms of the other's proposed solution to the dispute. Within two weeks following the exchange of these written presentations, the parties agree to meet and review their positions in an attempt to resolve the dispute at this level.

(B) If the parties are unable to resolve their dispute informally, either party shall be free to submit the dispute to any court of competent jurisdiction.

XI. MODIFICATIONS

11.1 This Agreement shall not be modified unless such modification is in writing and signed by both MAD and the Department of Attorney General on behalf of the MDNR.

XII. APPLICABLE LAW

12.1 All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable State and Federal laws and regulations,

including LUST, UST, WRCA, MERA and their rules and amendments; laws relating to occupational safety and health; and other Federal and State environmental laws.

XIII. APPLICATION

13.1 This Agreement and its attachments shall apply to and be binding on the parties to this Agreement and their respective successors and assigns.

13.2 This Agreement, including its attachments, is only for the benefit of the parties hereto and their respective successors, assigns, and transferees. This Agreement shall not be enforceable by, or interpreted to be for the benefit of, any third party.

XIV. SUCCESSORS/ASSIGNS/TRANSFEREES AND DISSOLUTION

14.1 MAD shall not assign this Agreement or any of its rights or responsibilities under this Agreement, except as provided in this Section XIV. For purposes of this Section, MAD shall mean MAD or other persons to whom MAD's or its assignees' benefits, duties, and obligations under this Agreement have been assigned in compliance with this Section.

14.2 MAD may assign this Agreement in its entirety in connection with the transfer of fee title to all or a portion of the Property, provided that the transferee makes the demonstrations set forth in Paragraph 14.5 and the State first approves the transfer in writing. Upon the consummation of such transfer, the transferee assumes responsibility for the obligations set forth in this Agreement. MAD shall continue to enjoy the protections afforded by this Agreement, but shall automatically be released from the responsibilities imposed by this Agreement as they apply to the transferred property.

14.3 MAD may sell on land contract, lease, or sublease or otherwise convey an interest which does not constitute a fee title interest with respect to all or any part of the Property; provided that the transferee makes the demonstrations set forth in Paragraph 14.5 and the state first approves of the transfer in writing. In the event of such a transfer, both MAD and the transferee shall have the full rights, duties, obligations, and benefits of this Agreement.

MAD may require the transferee to perform all or part of MAD's responsibilities under this Agreement, but MAD shall remain primarily liable to the State for the performance of all of its responsibilities under this Agreement. This Paragraph does not apply to grants of easements, licenses, right of ways or other prescriptive rights, which are governed by Paragraph 6.4.

14.4 The state shall not unreasonably withhold any approval under this Section XIV, and shall either grant or deny the approval, in writing, stating the reasons for any denial, within

thirty (30) days following its receipt of a written request for approval. The State shall not, as a condition of approval of a transfer, require the expenditure of additional funds for investigation or remediation of Existing Contamination at the Facility, except for any investigation necessary to demonstrate that the transferee's proposed use of the Property will not violate Paragraphs 6.2 and 6.3 of this Agreement.

14.5 Prior to transfer of title to all or any portion of the Property, the transferee shall demonstrate to the satisfaction of the MDNR, all of the following:

(A) That the transferee is financially capable of redeveloping and reusing the Property in accordance with the covenant not to sue;

(B) That the transferee is not affiliated in any way with any person that may be liable under Section 20126 of the MERA for Existing Contamination at the Facility;

(C) That the redevelopment or reuse of the Property by the transferee will not result in a release or threat of release;

(D) That the redevelopment or reuse of the Property by the transferee will not do any of the following:

- (1) Exacerbate or contribute to Existing Contamination;
- (2) Interfere with the implementation of Response Activities;
- (3) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the Facility.

XV. SEVERABILITY

15.1 The provisions of this Agreement shall be severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or state law, and therefore, unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

XVI. EFFECTIVE DATE

This Agreement shall become effective upon the date MAD closes on the purchase of the Property from the Action Auto estate.

XVII. SIGNATORIES

17.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party they represent to

enter into this Agreement and to legally bind such party to the terms and conditions of this Agreement, the Environmental Reserve Agreement and the other Attachments.

THE STATE AND MICHIGAN AVENUE DEVELOPMENT COMPANY, L.L.C.
AGREE TO ALL RECITALS, TERMS, AND CONDITIONS HERETOFORE SET FORTH.

IT IS SO STIPULATED:

DEPARTMENT OF ATTORNEY GENERAL FOR THE STATE OF MICHIGAN

By: 

Dated: 7/7/95

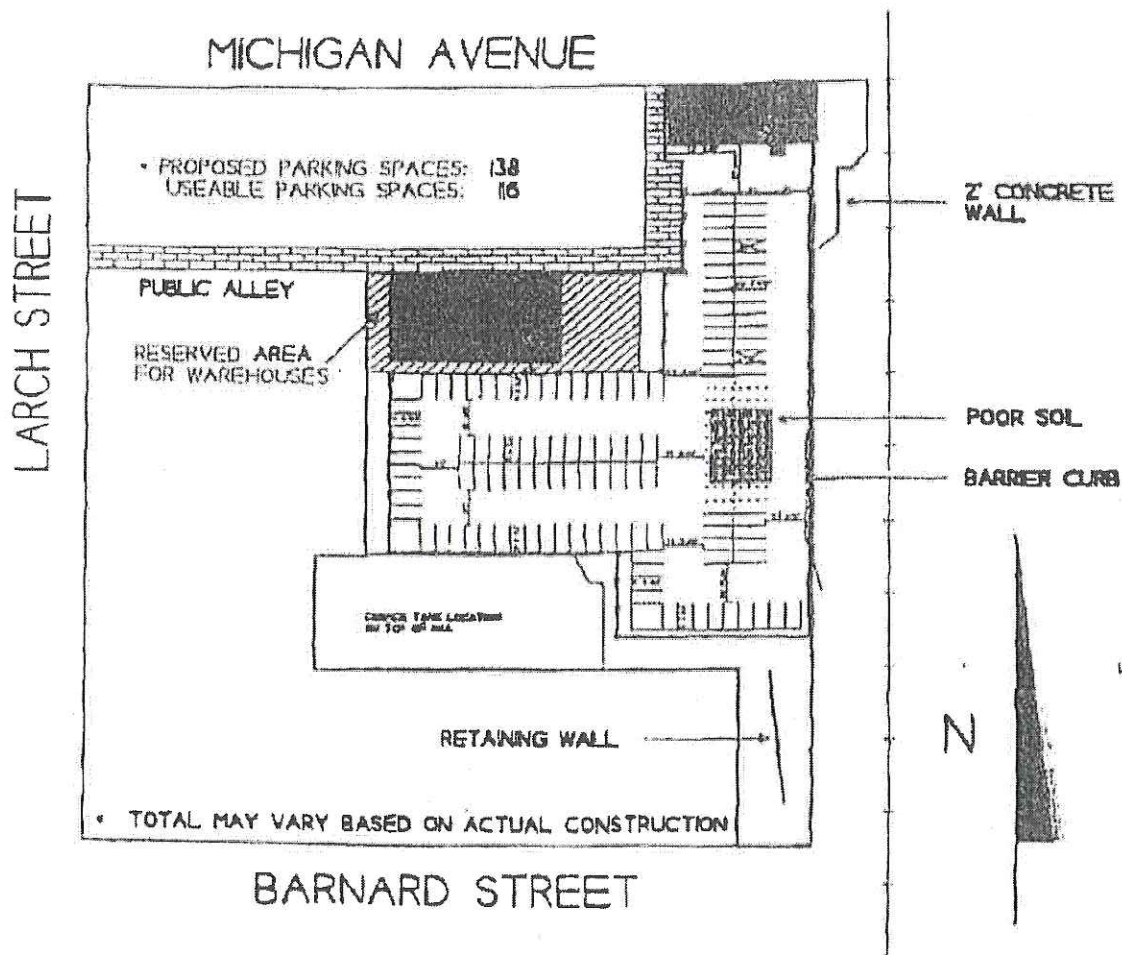
MICHIGAN AVENUE DEVELOPMENT COMPANY, L.L.C.

By:  member

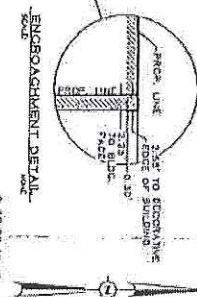
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EXHIBIT 66A99



ATTACHMENT 2



LEGEND	
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100	ARMED AND DANGEROUS

RC ENGINEERING, INC.
(414) 469-2101 • FAX 517-792-0541

BOUNDARY SURVEY w/ MORTGAGE
CERTIFIED TO:
ACTION AUTO STORES, INC. POST
CONFIRMATION COMMITTEE,
MICHIGAN NATIONAL BANK
AND METROPOLITAN TITLE COMPANY
836 E. MICHIGAN AVENUE
CITY OF LANSING
INGHAM COUNTY, MICHIGAN

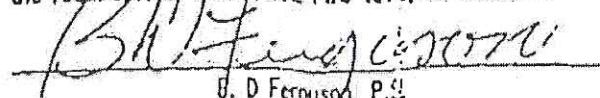
DATE 01/24/94	ENGR. FILE # 4271-00
GRAVEY PIT J. T. M.	SCALE 1"=40'
ENGINEER BY B. D. F.	SHEET 1 OF 1
PREPARED UNDER THE SUPERVISION OF	

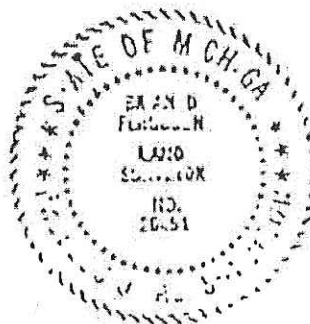
LEGAL DESCRIPTION

Lots 1, 2, 3, 24 and the East 10 feet of the North 51.55 feet of of Lot 4, Connard's Subdivision of Lot 1, of Block 242, of the Original Plat of the City of Lansing, according to the recorded plat thereof, ALSO beginning at the Southeast corner of said Lot 1; thence South 18 feet; thence West 77 feet; thence North 18 feet; thence East 77 feet to the Point of Beginning; ALSO Lot 1 of Block 1 of Barnard's Subdivision, recorded in Liber 1 of Plots, Page 32, Ingham County Records; ALSO the North 1/2 of Lot 2, Block 242, except the West 135 feet thereof and except the East 30 feet of the West 165 feet of the North 8 feet thereof, Original Plat of the City of Lansing. The said property may also be described as: Beginning at the Northeast corner of Lot 1 of Connard's Subdivision of Lot 1 of Block 242 of the Original Plat of the City of Lansing, according to the plat thereof; thence South along the Eastern boundaries of Lot 1, Lot 1 extended; and Lot 24 of Connard's Subdivision, the North 1/2 of Lot 2, Block 242 and Lot 1 of Block 1 of Barnard's Subdivision, a measured distance of 521.30 feet to an "X" cut on concrete marking the Southeast corner of Lot 1 of Block 1 of Barnard's Subdivision; thence West 42 feet to a point being the Southwest corner of said Lot 1, Block 1 of Barnard's Subdivision; thence North 121.5 feet to a point, which point is a measured distance of 41.87 feet West of the Eastern boundary line of Lots 1 and 24 aforesaid, being the Northwest corner of said Lot 1, Block 1 of Barnard's Subdivision; thence West 251.21 feet to a point being the Northwest corner of Lot 7, Block 1 of Barnard's Subdivision; thence North 78.62 feet; a point 135 feet East of the East Boundary of Lorch Street; thence East 30 feet to a point being 8 feet South of the North line of Lot 2, Block 242; thence North a measured distance of 195.9 feet along the West boundary line of Lot 24 of Connard's Subdivision of Block 242 to a point being the Northwest corner of said Lot 24; thence East 183.04 feet along the Northern boundary line of said Lot 24 to a point 18 feet South of the Southwest corner of Lot 13 of Connard's Subdivision; thence Northerly 18 feet to a point being the Southwest corner of Lot 3 of Connard's Subdivision; thence continuing North along the West boundary line of said Lot 3, 59.5 feet to an "X" cut therein; thence West 10 feet to an "X" cut; thence North a measured distance of 51.55 feet to a point in the Northern Boundary line of Lot 4 and South Boundary line of Michigan Avenue; thence East along the South boundary of Michigan Avenue and the North boundary lines of Lots 4, 3, 2 and 1 of Connard's Subdivision to place of beginning.

All dimensions are in feet and decimals thereof.

I hereby certify that I have surveyed the parcel(s) of land described and delineated hereon, that the ratio of closure is 1' in 5000' and that this survey complies with the requirements of Act 132 P.A. 1970, as amended.


B. D. Ferguson, P.E.
Professional Surveyor No. 26451



ATTACHMENT 3

MADC Property

	First American Title™	Commitment for Title Insurance
		ISSUED BY First American Title Insurance Company
Exhibit A		

File No.: 174555

The Land referred to herein below is situated in the County of Ingham, State of Michigan, and is described as follows:

Lots 1, 2, 3, 24, and the East 10 feet of the North 51.55 feet of Lot 4, Connard's Subdivision of Lot 1, of Block 242, of the Original Plat of the City of Lansing, according to the recorded plat thereof; ALSO beginning at the Southeast corner of said Lot 1; thence South 16 feet; thence West 77 feet; thence North 16 feet; thence East 77 feet to the point of beginning; ALSO Lot 1 of Block 1 of Barnard's Subdivision, recorded in Liber 1 of Plats, Page 32, Ingham County Records; ALSO the North 1/2 of Lot 2, Block 242, except the West 135 feet thereof and except the East 30 feet of the West 165 feet of the North 8 feet thereof, Original Plat of the City of Lansing. The said property may also be described as: Beginning at the Northeast corner of Lot 1 of Connard's Subdivision of Lot 1 of Block 242 of the Original Plat of the City of Lansing, according to the recorded plat thereof; thence South along the Eastern boundaries of Lot 1, Lot 1 extended; and Lot 24 of Connard's Subdivision, the North 1/2 of Lot 2, Block 242 and Lot 1 of Block 1 of Barnard's Subdivision, a measured distance of 521.30 feet to an "X" cut on concrete marking the Southeast corner of Lot 1 of Block 1 of Barnard's Subdivision; thence West 42 feet to a point being the Southwest corner of said Lot 1, Block 1 of Barnard's Subdivision; thence North 121.5 feet to a point, which point is a measured distance of 41.87 feet West of the Eastern boundary line of Lots 1 and 24 aforesaid, being the Northwest corner of said Lot 1, Block 1 of Barnard's Subdivision; thence West 251.21 feet to a point being the Northwest corner of Lot 7, Block 1, of Barnard's Subdivision; thence North 78.62 feet; a point 135 feet East of the East Boundary of Larch Street; thence East 30 feet to a point being 8 feet South of the North line of Lot 2, Block 242; thence North a measured distance of 195.9 feet along the West boundary line of Lot 24 of Connard's Subdivision of Block 242 to a point being the Northwest corner of said Lot 24; thence East 183.04 feet along the Northern boundary line of said Lot 24 to a point 16 feet South of the Southwest corner of Lot 3 of Connard's Subdivision; thence Northerly 16 feet to a point being the Southwest corner of Lot 3 of Connard's Subdivision; thence continuing North along the West boundary line of said Lot 3, 59.5 feet to an "X" cut therein; thence West 10 feet to an "X" cut; thence North a measured distance of 51.55 feet to a point in the North Boundary line of Lot 4 and the South boundary line of Michigan Avenue; thence East along the South boundary of Michigan Avenue and the North boundary lines of Lots 4, 3, 2, and 1 of Connard's Subdivision to place of beginning.

ATTACHMENT 4

Premises situated in the City of Lansing, County of Ingham, and State of Michigan:

Part of Lot 24, Connard's Subdivision of Lot 1, of Block 242, of the Original Plat of the City of Lansing, according to the recorded plat thereof recorded in Liber 1 of Plats, Page 32, Ingham County Records, being further described as COMMENCING at the Northwest corner of Lot 24, of said Plat; thence South $90^{\circ}00'00''$ East, 161.04 feet, along the Northerly line of Lot 24; thence South $00^{\circ}24'00''$ East, 62.63 feet; thence South $89^{\circ}49'30''$ West, 161.52 feet, to the W'ly line of Lot 24; thence North $00^{\circ}02'00''$ East, 63.12 feet, along said W'ly line to the POINT OF BEGINNING.