UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket Number: V-W-15-C-024
	)	
	)	
Delco Chassis Industrial Land	)	
I & II Site	)	SETTLEMENT AGREEMENT
12950 & 13000 Eckles Road	)	AND COVENANT NOT TO SUE
Livonia, Michigan	)	UNDER THE AUTHORITY OF THE
	)	COMPREHENSIVE ENVIRONMENTAL
Livonia West Commerce	)	RESPONSE, COMPENSATION, AND
Center, LLC	)	LIABILITY ACT OF 1980,
PURCHASER	)	
	)	42 U.S.C. § 9601 *et seq.*, AS AMENDED, AND
	)	THE SOLID WASTE DISPOSAL ACT,
	)	42 U.S.C § 6901, *et seq.*, AS AMENDED
	)	

I. INTRODUCTION

1. This Settlement Agreement and Covenant Not to Sue ("Settlement Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Livonia West Commerce Center, LLC ("the Purchaser") (collectively "the Parties"). This Settlement Agreement relates to the Delco Chassis Industrial Land I & II Site, located in Livonia, Michigan.

2. This Settlement Agreement is entered into pursuant to (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, and (2) the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid

Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6901, *et seq*. The authority of the Administrator of EPA has been delegated to the Regional Administrators of EPA, and further delegated to the Director, Superfund Division, Region 5 and the Director, Land and Chemicals Division, Region 5. The Purchaser consents to and will not object to the United States' jurisdiction to enter into this Settlement Agreement or implement its provisions.

3. The Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, approves this Settlement Agreement pursuant to the authority of the Attorney General to settle claims of the United States, which, in the circumstances of this settlement, has been delegated to the Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division.

4. The Settlement Agreement is also subject to the terms of the Environmental Response Trust Consent Decree and Settlement Agreement entered by the United States Bankruptcy Court for the Southern District of New York in *In re: Motors Liquidation Company, et al., f/k/a General Motors Corp., et al.*, Case No. 09-50026 (REG) ("the General Motors Consent Decree" or "Consent Decree") (*See* Appendix 1). Under the terms of the Consent Decree, certain properties and other assets of General Motors Corp., including the Site, were placed into the Revitalizing Auto Communities Environmental Response ("RACER") Trust, an environmental response trust, in order to be cleaned up and positioned for redevelopment. The provisions of this Settlement Agreement rely on the unique facts and circumstances of the General Motors Consent Decree, and nothing in this Settlement Agreement shall be treated as having any precedential

value in any other agreements between EPA and prospective purchasers of sites that may be subject to the requirements of CERCLA and/or RCRA.

5. The Site is currently owned by the RACER Trust, and, due to the unique circumstances of the General Motors Corp. bankruptcy matter, if a prospective purchaser of sites subject to the General Motors Consent Decree determines that other statutory protections are not sufficient to address its liability concerns, Paragraph 69 of the General Motors Consent Decree provides that EPA shall select a liability clarification tool, including entering into prospective purchaser agreements, in order to address the liability concerns of prospective purchasers regarding the existing contamination on sites formerly owned by the General Motors Corp.

6. The Site is the Delco Chassis Industrial Land I & II Site - EPA ID# MID005356621 (RCRA Corrective Action) in Livonia, Michigan, and consists of approximately 120 acres of land that was formerly occupied by General Motors Corp. The Purchaser plans to acquire the majority of the Site as shown in Appendix 2 ("the Property"), with an option agreement to purchase the remainder of the Site. This Settlement Agreement applies only to the purchase of the Property and does not apply to the remaining portion of the Site available under the option agreement.

7. The Purchaser, Livonia West Commerce Center, LLC, is a limited liability real estate investment company doing business in the State of Michigan. The Purchaser intends to

redevelop the Property as a multi-tenant industrial park. Uses could include, but are not limited to, warehousing, distribution, and light manufacturing.

8. The Parties agree to undertake all actions required by the terms and conditions of this Settlement Agreement. The purpose of this Settlement Agreement is to settle and resolve, subject to reservations and limitations contained herein in Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), and IX (Reservation of Rights), the potential liability of the Purchaser for the Existing Contamination at the Property which could otherwise result from the Purchaser's purchase of and operation at the Property.

9. The Parties agree that the Purchaser's entry into this Settlement Agreement, and the actions undertaken by the Purchaser in accordance with the Settlement Agreement, do not constitute an admission of any liability by the Purchaser. The resolution of any potential liability of the Purchaser in exchange for the provisions and obligations undertaken by the Purchaser in this Settlement Agreement is of a substantial benefit to EPA and is deemed to be in the public interest.

II. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA and/or RCRA, or in regulations promulgated under CERCLA and/or RCRA shall have the meaning assigned to them in CERCLA and/or RCRA or in such regulations, including any amendments thereto.

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601-9675.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XV (Effective Date).

d. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments, agencies, or instrumentalities.

e. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants, or contaminants or Waste material present or existing on or under the Property as of the Effective Date of this Settlement Agreement;

ii. any hazardous substances, pollutants, or contaminants or Waste material that migrated from the Property prior to the Effective Date of this Settlement Agreement; and

iii. any hazardous substances, pollutants, or contaminants or Waste material presently at the Site that migrate onto, under, or from the Property after the Effective Date of this Settlement Agreement.

f. "General Motors Consent Decree" shall mean the Environmental Response Trust

Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, fourteen States, and the Saint Regis Mohawk Tribe, entered in *In re: Motors Liquidation Co., et al., f/k/a General Motors Corp., et al.* , Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York on March 31, 2011, a copy of which is attached as Appendix 1.

g. "MDEQ" shall mean the Michigan Department of Environmental Quality and any of its successor departments or agencies.

h. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

i. "Parties" shall mean the United States and the Purchaser.

j. "Property" shall mean that portion of the "Site" that will be owned by the Purchaser under the initial purchase agreement and does not include any parcel later acquired under the option agreement. The Property is located at 12950 and 13000 Eckles Road in Livonia, Michigan, as outlined in yellow and described in Appendix 2 of the Settlement Agreement, and comprises approximately 101 of the Site's approximately 120 acres. The remainder of the Site is outlined in blue in Appendix 2.

k. "Purchaser" shall mean Livonia West Commerce Center, LLC, a limited liability real estate investment company doing business in the State of Michigan, and its members and respective officers, directors, and employees. The majority member of Livonia West Commerce Center, LLC is Ashley Holdings VI, LLC, which is owned by the two principals of Ashley Capital, LLC. Ashley Capital, LLC is a limited liability real estate investment company doing business in the State of Michigan.

l. "RACER" or "RACER Trust" shall mean the Revitalizing Auto Communities Environmental Response trust established by the United States Bankruptcy Court in 2011 and formed under the laws of the State of New York to clean up and position for redevelopment properties and other facilities that were owned by the former General Motors Corp. before General Motors Corp.'s bankruptcy in 2009.

m. "RCRA" shall mean the Solid Waste Disposal Act of 1976 (also known as the Resource Conservation and Recovery Act), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901-6992(k).

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "Settlement Agreement" shall mean this Settlement Agreement and Covenant Not to Sue and all appendices attached hereto (listed in Section XVIII of this Settlement Agreement). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

p. "Site" shall mean the Delco Chassis Industrial Land I & II Site at 12950 and 13000 Eckles Road in Livonia, Michigan, encompassing approximately 120 acres and outlined in blue and yellow in Appendix 2 of the Settlement Agreement. The area in Appendix 2 outlined in yellow is the Property that will be purchased by Livonia West Commerce Center, LLC while the remainder of the Site is outlined in blue. The Site shall include the Property, and all areas where hazardous substances and/or pollutants or contaminants have come to be located.

q. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities, including EPA.

r. "Waste material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

III. STATEMENT OF FACTS

11. The Property that is the subject of this Settlement Agreement is a part of the previously operating General Motors Corporation North American Operations, at 12950 and 13000 Eckles Road, Livonia, Michigan, known as the Delco Chassis Industrial Land I & II Site. The EPA identification number for the RCRA corrective action responsibilities at the Delco Chassis Industrial Land I & II Site is # MID005356621.

12. In June 2009, the former General Motors Corporation ("General Motors Corp.") filed for Chapter 11 reorganization bankruptcy and subsequently emerged as two new companies. The first of these two new companies, General Motors LLC, purchased the "General Motors" name and certain assets of General Motors Corp. and now operates automobile manufacturing plants in Michigan, Ohio, Indiana, Illinois, and Wisconsin. The second company, Motors Liquidation Company ("MLC"), retained all of the assets that General Motors LLC did not purchase, as well as the liabilities. This included many properties, including the Site.

13. In March 2011, the bankruptcy court approved MLC's plan of liquidation ("Plan"). On

the effective date of the Plan, 89 sites were placed into an Environmental Response Trust (the "Trust") administrated by RACER, as defined in Section II, above. Pursuant to the terms of the Plan and the Trust, specific amounts of funds were set aside for each property in the Trust to address environmental contamination at the specific property. RACER has worked and currently works with Federal and State environmental agencies to review, approve, and undertake response actions to address the contamination at each property, including the Delco Chassis Industrial Land I & II Site. U.S. EPA is the lead agency for the Delco Chassis Industrial Land I & II Site and has overseen and will continue to oversee the work conducted by RACER until completion.

14. Between 1954 and 1998, various General Motor Corp. divisions operated at the Site, which was used primarily for the production of vehicle bumpers and coil and leaf springs and involved metal stamping and metal plating processes, among others. Support processes at the Site included industrial wastewater treatment, recycling of oils, and degreasing and parts cleaning. Environmental decommissioning of the Site began in 1999, with EPA beginning a RCRA Corrective Action in 2001. A variety of contaminants have been identified at the Site, including heavy metals such as chromium and nickel along the southwest portion, trichloroethylene ("TCE") and lower levels of volatile organic compounds ("VOCs") along the eastern portion, polychlorinated biphenyls ("PCBs") in several areas, and non-aqueous phase liquid ("NAPL") in the area of the cement slab. A contaminated groundwater plume containing chlorinated volatile organic compounds, including TCE, has migrated off-site to the southeast and into a residential neighborhood. A 2012 RACER investigation evaluated the potential that soil vapors were present at or above the plume; a vapor mitigation system was installed in one home. Depth to groundwater

is approximately nine feet. These contaminants have been addressed as part of the remediation process and are ongoing as part of the groundwater treatment and monitoring program at the Site. All Site structures, except the groundwater collection and treatment buildings on the southwest corner of the Site, have been decommissioned and demolished. Former concrete floor slabs remain in place, with the exception of the Marshalling Building slab that has been removed. A subsurface barrier wall was installed to supplement the groundwater collection system. A six-foot high security fence topped with barbed wire encloses the Site, and all gates are locked when the Site is inactive. The groundwater collection and treatment operation in the southwest corner of the Site collects groundwater impacted by the historical chrome plating operations through a drain system. The water is treated at a maximum rate of approximately 70 gallons per minute and then discharged to the Detroit Water and Sewerage Department under a special discharge permit. No other activities are currently conducted at the Site.

15. The Site is currently owned by RACER Trust and consists of approximately 120 acres located at 12950 and 13000 Eckles Road, Livonia, Michigan. The former Delco Chassis Industrial Land I & II Site is subject to RCRA corrective action because General Motors Corp. filed a Part A Permit application in November 1980. The U.S. EPA identification number associated with the November 1980 Part A permit application is MID005356621. RACER is not currently conducting business operations at the Site.

16. On September 30, 2011, RACER and EPA entered into an Administrative Order on Consent, Docket No. RCRA-05-2011-0025, for RACER to investigate and address contamination

at the Site. RACER has and is performing additional investigation activities at the Site, including preparing a final report for its vapor intrusion investigation and conducting pilot studies to reduce the length of time that will be required to operate the groundwater collection and treatment system. RACER plans to submit a final report and full scale implementation work plan after completion of the In-Situ Chemical Reduction pilot study. RACER also intends to submit a Corrective Action Complete with Controls request to EPA after EPA approval of the vapor-intrusion investigation and in situ groundwater treatment final report. Future Site controls will include: limiting use to non-residential; preventing groundwater usage; maintaining appropriate cover material over certain portions; managing soil properly; and requiring evaluation and possible mitigation of potential vapor intrusion to any new buildings.

17. The Purchaser represents and, for the purposes of this Settlement Agreement, EPA relies on the Purchaser's representation that it has had no direct involvement in any prior use, contamination, or remediation of the Site.

IV. SETTLEMENT AGREEMENT

18. Based on the General Motors Consent Decree, the work that has been and is being conducted by RACER pursuant to the Plan, and in consideration of and exchange for the United States' Covenant Not to Sue in Section VIII of this Settlement Agreement, the Purchaser agrees to comply with all provisions of this Settlement Agreement, including, but not limited to, Sections V (Access/Cooperation), VI (Due Care), and VII (Certification) of this Settlement Agreement, and Paragraph 73 of the GM Consent Decree, which is attached as Appendix 1.

19. Nothing in this Settlement Agreement would require the Purchaser to undertake any on-going or planned response actions at the Site that are funded by and/or undertaken by RACER, so long as the Purchaser complies with the requirements of Sections V (Access/Cooperation) and VI (Due Care).

V. ACCESS/COOPERATION

20. Commencing upon the date that it acquires title to the Property, the Purchaser shall provide access to the Property that will include the right of EPA, MDEQ, their authorized officers, employees, representatives, and all other persons performing response actions under EPA's or MDEQ's oversight and/or under direction of these entities, to an irrevocable right of access at all reasonable times to the Property and to any property to which access is required for the implementation of the response action at the Property, to the extent such other property is controlled by the Purchaser, for the purposes of performing and overseeing response actions at the Site. EPA agrees to provide reasonable notice to the Purchaser of the timing of its own actions to be undertaken at the Property. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation, including any amendments thereto.

21. The Purchaser shall comply with any and all land use restrictions and institutional controls on the Property. If the Property is transferred to the Purchaser before RACER has

finalized all necessary restrictive covenants, the Purchaser shall file with Wayne County and/or other appropriate units of government all required deed notices and restrictive covenants developed and required by EPA. These restrictions will include a prohibition on the use of groundwater, limiting land use to non-residential, and restrictions on disturbing any cover of contaminated soil in certain areas of the Property unless replaced with equivalent cover, managing soil properly, and requiring evaluation and possible mitigation of potential vapor intrusion to new buildings.

22. The Purchaser shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation, including implementing institutional controls. Further, the Purchaser shall ensure that a copy of this Settlement Agreement is provided to any current lessees or sublessees on the Property as of the Effective Date and shall ensure that any subsequent leases, subleases, assignments, or transfers of the Property or an interest in the Property are consistent with this Section and Section XI (Parties Bound).

VI. DUE CARE

23. The Purchaser shall exercise due care at the Property with respect to the Existing Contamination and comply with all applicable local, State, and federal laws and regulations, and all applicable restrictive covenants and deed restrictions. If the Purchaser, its contractors and/or subcontractors encounter any Existing Contamination during their construction and/or operations on the Property, it/they must handle, excavate, and dispose of any encountered Existing

Contamination in accordance with all applicable federal and State law. Prior to taking any action with regard to Existing Contamination, the Purchaser shall notify EPA and MDEQ. If a new building is constructed on the Property, the Purchaser will either install a vapor mitigation system in the new building or undertake an investigation to determine that no such system is needed. The Purchaser shall notify EPA and MDEQ of the option implemented at the new building.

24. In the event the Purchaser becomes aware, after the Effective Date, of any action or occurrence which causes or threatens a release of Waste material at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, and such action or occurrence is not being addressed with funds from the Trust, the Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. In the event that the Purchaser fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, the Purchaser shall reimburse EPA all costs of the response action not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. 300. Further, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, regardless of the cause of the release, the Purchaser will immediately notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, as well as the EPA contacts listed in Section XIV (Notices and Submissions) of this Settlement Agreement, of any release at the Property of which it becomes aware.

25. Nothing in the preceding Paragraphs or in this Settlement Agreement shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, subject to Section VIII of this Settlement Agreement (United States' Covenant Not to Sue).

26. The Purchaser agrees to cooperate fully with EPA and MDEQ in the implementation of response actions, corrective action, and environmental monitoring at the Site under the terms, provisions, and limitations set forth in the General Motors Consent Decree. The Purchaser further agrees not to interfere with such activities. The Purchaser recognizes that the implementation of response actions at the Site may interfere with the use of the Property. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Purchaser's operations by such entry and activities.

27. The Purchaser shall not treat, store, or dispose of Waste material at the Property, or release or cause the release of such Waste material on, to, or from the Property, except in compliance with applicable law.

VII. CERTIFICATION

28. By entering into this Settlement Agreement, the Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to the Purchaser and all information in the possession or control of its members, officers, directors, employees, contractors, and agents which relates in any way to any Existing Contamination or any past or potential future release of Waste material at or from the Site and to its qualification for this Settlement Agreement. The Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of Waste material at the Site. If the United States determines that information provided by the Purchaser is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the United States, shall be null and void, and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

29. Subject to the Reservation of Rights in Section IX of this Settlement Agreement, the United States covenants not to sue or take any other civil or administrative action against the Purchaser for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Sections 3008(h) or 7003 of RCRA, 42 U.S.C. §§ 6928(h) or 6973, with respect to the Existing Contamination. These covenants not to sue extend only to the Purchaser and do not extend to any other person except as provided in Section XI of this Settlement Agreement (Parties Bound/Transfer of Covenant). Further, the covenant not to sue extends only to the Property

portion of the Site owned by the Purchaser.

IX. RESERVATION OF RIGHTS

30. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII of this Settlement Agreement (United States' Covenant Not to Sue). The United States reserves, and the Settlement Agreement is without prejudice to, all rights against the Purchaser with respect to all other matters, including but not limited to the following:

(a) liability for a failure by the Purchaser to meet a requirement of this Settlement Agreement, including but not limited to Section V (Access/Cooperation), and Section VI (Due Care) of this Settlement Agreement;

(b) any liability resulting from future releases of Waste material, at or from the Property caused or contributed to by the Purchaser, its successors, assignees, lessees, or sublessees;

(c) any liability resulting from the exacerbation by the Purchaser, its successors, assignees, lessees, or sublessees of Existing Contamination;

(d) any liability resulting from the release or threat of release of Waste material at the Property after the Effective Date of this Settlement Agreement that is not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment; and

(g) liability for violations of local, State, or federal law or regulations.

31. With respect to any claim or cause of action asserted by the United States, the Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

32. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation, or other entity not a party to this Settlement Agreement.

33. Nothing in this Settlement Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Purchaser to perform or pay for response actions at the Site. Nothing in this Settlement Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. The Purchaser acknowledges that it is purchasing/operating on the Property where response actions may be required.

X. THE PURCHASER'S COVENANT NOT TO SUE

34. In consideration of the United States' Covenant Not To Sue in Section VIII of this Settlement Agreement, the Purchaser hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Property or this Settlement Agreement, including but not limited to, any direct

or indirect claims for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law; any claim against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Property; Section 7002(a) of RCRA; or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

35. The Purchaser reserves, and this Settlement Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Purchaser's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

36. Except as provided in this Section, the Purchaser reserves the right to assert any defenses available to it under applicable law.

XI. PARTIES BOUND/TRANSFER OF COVENANT

37. This Settlement Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Purchaser, its officers, directors, and employees. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVII

of this Settlement Agreement shall apply to the Purchaser and its officers, directors, or employees to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of the Purchaser, and not to the extent that the alleged liability arose independently of the alleged liability of the Purchaser. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

38. Notwithstanding any other provisions of this Settlement Agreement, all of the rights, benefits and obligations conferred upon Purchaser under this Settlement Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

39. Upon completion of the following conditions, a Transferee of all or a portion of the Property shall have all rights, duties and obligations of this Settlement Agreement, including Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), IX (Reservation of Rights), X (Purchaser's Covenant Not to Sue), and XIII (Document Retention):

a. at least five (5) days before the transfer, the Transferee submits to EPA an affidavit in substantially the same form as that attached as Appendix 3, which identifies the Transferee and the Property to be transferred, describes the proposed transfer, and certifies that:

i. prior to the Transfer, the Transferee was not and/or is not subject to potential liability under CERCLA, RCRA, and/or any other law for Existing Contamination;

ii. the Transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;

iii. the Transferee's use of the Property (or part of the Property, as the case may be) will not result in a release or threat of release of any Waste material except in compliance with law;

iv. the Transferee's use of the Property (or part of the Property, as the case may be) will not cause or contribute to the migration or new release of any Existing Contamination or any new threat to human health or the environment caused by any such release or threat of release;

v. the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the Transferee; and

vi. the Transferee is bound by all of the requirements, duties, obligations, and limitations on the use of and actions at the Property and Site set forth in this Settlement Agreement.

b. EPA must consent in writing to the transfer of the rights, benefits, and obligations conferred under the Settlement Agreement to the Transferee. Any transfer of rights is subject to review and approval by EPA and shall not be effective until such approval is given. EPA agrees that it shall issue such approval, addressed to both Purchaser and the Transferee, promptly upon receipt of each Transferee's affidavit that conforms with the requirements of this Section XI (Parties Bound/Transfer of Covenant); and

c. Prior to or simultaneous with the transfer of all or a portion of the Property, the Transferee consents in writing to be bound by and perform, from the date of transfer, all of the terms and remaining obligations of the Settlement Agreement applicable to the Purchaser or the applicable transferor.

If the Transferee's affidavit is not materially accurate or complete, or the Transferee fails to meet the obligations and requirements of this Settlement Agreement, the United States' covenants not to sue in Section VIII shall be null and void with respect to the Transferee, and the United States reserves all rights it may have against the Transferee.

40. If all conditions in Paragraph 39 are satisfied, upon transfer of ownership of the Property (or part of the Property, as the case may be), the Purchaser shall be released from the obligations set forth in this Settlement Agreement with respect to the Property or the portion of the Property transferred.

XII. DISCLAIMER

41. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA that the Property is fit for any particular purpose.

XIII. DOCUMENT RETENTION

42. The Purchaser agrees to retain and make available to EPA all Site studies and investigations and documents relating to operations at the Property, for at least ten years, following the Effective Date of this Settlement Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Purchaser shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. NOTICES AND SUBMISSIONS

43. Documents that must be submitted under this Settlement Agreement shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Purchaser and EPA designate in writing:

As to EPA:

Greg Rudloff
Remediation and Reuse Branch
Land and Chemicals Division
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: LU-9J
Chicago, Illinois 60604-3590
Phone: (312) 886-0455
E-mail: Rudloff.gregory@epa.gov

Peter Felitti
Assistant Regional Counsel
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: C-14J
Chicago, Illinois 60604-3590
Phone: (312) 886-5114
FAX: (312) 692-2495
E-mail: felitti.peter@epa.gov

As to the Purchaser:

Livonia West Commerce Center, LLC
Susan Harvey
2575 S. Haggerty Rd.
Suite 500
Canton, Michigan 48188
Phone: (734) 394-1900

Legal Counsel:
Douglas G. McClure
Conlin, McKenney & Philbrick, PC
350 S. Main Street, Suite 400
Ann Arbor, Michigan 48104
Phone: (734) 761-9000

XV. EFFECTIVE DATE

44. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

XVI. TERMINATION

45. If any Party believes that any or all of the obligations under Section V (Access/Cooperation) are no longer necessary to ensure compliance with the requirements of the Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVII. CONTRIBUTION PROTECTION

46. With regard to claims for contribution against the Purchaser, the Parties hereto agree that this Settlement Agreement is an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Purchaser is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and response costs incurred or to be

incurred by the United States or any other person with respect to the Existing Contamination.

47. The Purchaser agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

48. The Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify in writing the United States within 10 days of service of the complaint on it.

XVIII. APPENDICES

49. a. Appendix 1 is the General Motors Consent Decree, as defined in Section II.

b. Appendix 2 is a map of the Site and Property, as defined in Section II.

c. Appendix 3 is a copy of the Transfer Affidavit, as described in Section XI.

XIX. PUBLIC COMMENT

50. This Settlement Agreement shall be subject to notice in the Federal Register and a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate this Settlement Agreement is inappropriate, improper, or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

7-23-15

Richard C. Karl
Director
Superfund Division
U.S. EPA Region 5

Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

7/20/2015

Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. EPA Region 5

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

08-10-2015

Thomas A. Mariani, Jr.
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

BY:

8-11-2015

Ashleigh G. Morris, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

IT IS SO AGREED:

LIVONIA WEST COMMERCE CENTER, LLC
a Michigan Limited Liability Company

By: Susan M. Harvey 6/5/2015
Susan M. Harvey Date
Senior Vice President