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DERRICK QUINNE

INGHAM COUNTY MICHIGAN

REGISTER OF DEEDS

RECORDED ON:

09/26/2017 10:12 AM

PAGES: 12

3/22/2017 9:24:00 AM

**DECLARATION OF RESTRICTIVE COVENANT AND
GRANT OF ENVIRONMENTAL PROTECTION EASEMENT**

This transfer is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively, because the amount of consideration for the transfer tax is less than \$100.00.

Barrels, Inc. Superfund Site
Ingham County, Michigan
MDEQ Site ID No. 33000004
USEPA Site No. MID01718673

MDEQ Reference No. RC-SF-201-17-003

This Declaration of Restrictive Covenant and Grant of Environmental Protection Easement ("Restrictive Covenant and Easement") is made on September 5, 2017, by CSX Transportation, Inc. (CSXT) the Grantor, whose address is 500 Water Street, Jacksonville, FL 32202 for the benefit of the Grantee, the Michigan Department of Environmental Quality ("MDEQ"), whose address is P.O. Box 30426, Lansing, Michigan 48909-7926, with the United States Environmental Protection Agency ("USEPA") as a Third Party Beneficiary. This Restrictive Covenant and Easement is in addition to and supplements the Restrictive Covenant and Easement previously made on September 17, 2015, and recorded on September 23, 2015, Instrument Number 2015-035651 among the land records of the Ingham County, Michigan Register of Deeds.

RECITALS

- i. The Grantor is the title holder of the real property located in Ingham County, Michigan and legally described in Exhibit 1 attached hereto ("Property"). The parcel number is No. 33-01-01-09-281-011 (Exhibit 1).
- ii. The purpose of this Restrictive Covenant and Easement is to create restrictions that run with the land in the Grantor's real property rights; to protect the public health, safety, and welfare, and the environment; to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination present at the Property; and to grant access to the Grantee, the USEPA as a Third Party Beneficiary, and either the MDEQ or the USEPA's representatives to

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Warren's Northass.

monitor and conduct Response Activities.

iii. The Property is associated with the Barrels, Inc. Superfund Site (the "Barrels Site"), MDEQ Site ID No. 33000004. Hazardous substances, including polychlorinated biphenyls (PCBs), volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), metals, and cyanide, have been released and/or disposed of on the Property. The Barrels Site was placed on the National Priorities List ("NPL") on October 4, 1989 and is a facility as that term is defined in Section 101(g) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"); and Section 20101(1)(r) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 *et seq.* ("NREPA").

iv. Response activities were implemented to address environmental contamination at the Property pursuant to Part 201 of the NREPA, MCL 324.20101 *et seq.* and 40 CFR Part 761.

v. At the time of recording this Restrictive Covenant and Easement, contamination remains at the Property and is described within the Revised No Further Action Report (December 8, 2016) prepared by Progressive Engineering & Construction, Inc., submitted to MDEQ. The MDEQ has determined that the hazardous substances at the Property may present a threat to human health and that the land use and resource use restrictions set forth below are required to prevent unacceptable exposures.

vi. The restrictions contained in this Restrictive Covenant and Easement are based upon information available to the MDEQ at the time of recording. Future changes in the environmental condition of the Property or changes in the applicable cleanup criteria; the discovery of environmental conditions at the Property that were not accounted for in those reports, regardless of the date of the release of hazardous substances contributing to those environmental conditions; or the use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant and Easement not being protective of public health, safety, and welfare, and the environment. Information pertaining to the environmental conditions at the Property and Response Activities undertaken at the Barrels Site is on file with the USEPA, the MDEQ Remediation and Redevelopment Division, and with CSXT and/or the Barrels Inc. PRP Group per applicable records retention requirements.

vii. The MDEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the applicable requirements of Section 20107a of the NREPA and 40 CFR Part 761.

SUMMARY OF RESPONSE ACTIVITIES

Former operations at the Barrels Site resulted in soil contamination with PCBs, VOCs, SVOCs, metals and cyanide. Prior to recording of this Restrictive Covenant and Easement, response activities have been undertaken to remove some of the hazardous substances from the Barrels Site and the adjacent parcel. Contaminated soils at the Barrels Site have been excavated and appropriately disposed of off-site and concentrations of contaminants remaining in soils on the Property are not believed to exceed nonresidential direct contact exposure and protection of groundwater cleanup criteria under MDEQ's Part 201. However, some soils at the Property contain PCBs above the high-occupancy criteria of 40 CFR Part 761. Those soils left in place at the Property are the subject of a previously recorded Restrictive Covenant and Easement referenced above. Groundwater beneath the Barrels Site is impacted with VOCs attributed to an upgradient source; therefore, no active remediation of groundwater has been performed at the

Property. The additional restrictions on land and resource use imposed by this Restrictive Covenant and Easement are intended to assure further protection of the public health, safety, and welfare, and the environment.

DEFINITIONS

“Barrels Site” shall mean the Barrels, Inc. NPL site;

“Grantee” shall mean the MDEQ, its successor entities, and those persons or entities acting on its behalf;

“Grantor” shall mean the title holder of the Property at the time this Restrictive Covenant and Easement is executed or any future title holder of the Property or some relevant sub-portion of the Property;

“MDEQ” shall mean the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf;

“NREPA” shall mean the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq.;

“Part 201” shall mean Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 et seq.;

“Property” shall mean the real property legally described in Exhibit 1, a parcel located on-site of the Barrels Site;

“Response Activities” shall mean, consistent with Section 101(25) of CERCLA, 42 U.S.C. Section 9601(25), such actions as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. Sections 9601(23) and 9601(24), on the Property and/or at the Barrels Site, including enforcement activities related thereto;

“USEPA” shall mean the United States Environmental Protection Agency, its successor entities and those persons or entities acting on its behalf; and

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201; or the Part 201 Administrative Rules (“Part 201 Rules”), 2013 AACR R 299.1 – 299.50, as amended, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of execution of this Restrictive Covenant and Easement.

NOW THEREFORE,

For valuable consideration of less than \$100.00, the receipt of which is hereby acknowledged, the Grantor, on behalf of itself, its successors and assigns, hereby covenants and declares that the Property shall be subject to the restrictions set forth below, for the benefit of the Grantee, and grants and conveys to the Grantee, and its assigns and representatives, the perpetual right to enforce said restrictions. The Grantor further, on behalf of itself, its successors and assigns, does grant and convey to the Grantee and its representatives an environmental protection easement of the nature, character, and purposes set forth below with respect to the property, and the right to enforce said easement.

1. Restrictions on Land Use and Resource Use:

The Grantor shall prohibit activities on the Property as described as follows:

(a) Direct contact exposure restriction:

Surficial soils were excavated to meet Part 201 non-residential Direct Contact (DC) criteria or drinking water protection criteria (default and site-specific). All unexcavated shallow soils (less than 3 feet below ground surface) meet the DC criteria for non-residential land use. The only soils that may be above the non-residential DC criteria are found at depths of greater than 3 feet at the Property. Any excavation or other intrusive activity across the Property shown in Exhibit 2 that could result in soils deeper than 3 feet below ground surface being brought to the surface is prohibited, except during short-term construction or repair projects or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the surficial soils and fill, that could bring soils to the surface from deeper than 3 feet, must include removal and off-site disposal of the excavated soils, testing to demonstrate that the soils to be left at the surface meet non-residential DC criteria in the upper 3 feet, or be covered with at least 3 feet of clean fill as a barrier within 30 days of completion of the excavation work. Construction of a barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is not necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.

(b) Vapor intrusion exposure restriction:

The construction of new structures on the Property shown in Exhibit 2 is prohibited unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the new structure at concentrations greater than applicable criteria; or, unless prior to construction of any structure, an evaluation of the potential for any hazardous substances to volatilize into indoor air assures the protection of persons who may be present in the buildings and is in compliance with Section 20107a of the NREPA.

(c) Nonaqueous-phase liquids at the Property:

Residual (or mobile) Light Nonaqueous-Phase Liquid (LNAPL), which may include gasoline, diesel or other oils may remain in place within the Property as shown in Exhibit 2 below the ground surface at a depth of approximately thirty (30) feet. The restrictions otherwise provided for in this Restrictive Covenant and Easement and in the Restrictive Covenant and Easement previously made on September 17, 2015 and recorded on September 23, 2015, Instrument Number 2015-035651 among the land records of the Ingham County, Michigan Register of Deeds, serve to prevent unacceptable exposure to hazardous substances as a result of the conditions created by the potential presence of the LNAPL soil and/or groundwater contaminant concentrations that exceed the non-residential criteria under Section 20120a of the NREPA.

2. Management of Contaminated Soil, Media, and Debris: The Grantor shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of Part 201, MCL 324.20120c and Part 111, Hazardous Waste Management, of the NREPA, MCL 324.11101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the TSCA, 15 U.S.C. 2601 et seq.; administrative rules promulgated thereunder; and all other relevant state and federal laws and regulations.

3. **Access:** The Grantor grants the Grantee and its representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with this Restrictive Covenant and Easement, including the right to take samples, inspect the operation of the Response Activities, if any, and inspect any records relating thereto; and to perform any actions necessary to maintain compliance with Part 201.

Nothing in this Restrictive Covenant and Easement shall limit or otherwise affect the Grantee's right of entry and access, or authorities to take Response Activities as defined in this Restrictive Covenant and Easement, as well as in NREPA, and any successor statutory provisions, or other state or federal law.

4. **Term:** This Restrictive Covenant and Easement shall run with the land and shall be binding on the Grantor, including persons as set forth in Paragraph 12(e), Successors.

5. **Third Party Beneficiary:** The Grantor, on behalf of itself and its successors, transferees, and assigns, hereby agrees that the United States, acting by and through the USEPA, its successors and assigns, shall be a third party beneficiary ("Third Party Beneficiary") of all the benefits and rights set out in the restrictions, covenants, easements, exceptions, notifications, conditions, and agreements herein, and that the Third Party Beneficiary shall have the right to enforce the restrictions described herein as if it was a party hereto. No other rights in third parties are intended by this Restrictive Covenant and Easement, and no other person or entity shall have any rights or authorities hereunder to enforce these restrictions, terms, conditions, or obligations beyond the Grantor, the Grantee, their successors and assigns, and the Third Party Beneficiary.

6. **Enforcement:** The State of Michigan, through the MDEQ; and the United States of America, through the USEPA as a Third Party Beneficiary, may enforce the restrictions and grant of easement set forth in this Restrictive Covenant and Easement by legal action in a court of competent jurisdiction.

7. **USEPA Entry, Access, and Response Authority:** Nothing in this Restrictive Covenant and Easement shall limit or otherwise affect the USEPA's right of entry and access, or authority to undertake Response Activities as defined in this Restrictive Covenant and Easement, as well as in CERCLA, the National Contingency Plan, 40 Code of Federal Regulations Part 300, and any successor statutory provisions, or other state or federal law. The Grantor consents to officers, employees, contractors, and authorized representatives of the USEPA entering and having continued access to this Property for the purposes described in Paragraph 4, above, subject to the same conditions and agreements upon entry in Paragraph 4 above.

8. **Modification/Release/Rescission:** The Grantor may request in writing to the MDEQ and USEPA, at the addresses provided in Paragraph 11, below, modifications to, or release or rescission of, this Restrictive Covenant and Easement. This Restrictive Covenant and Easement may be modified, released, or rescinded only with the written approval of the MDEQ and the USEPA. Any approved modification to, or release or rescission of, this Restrictive Covenant and Easement shall be filed with the appropriate county Register of Deeds by the Grantor and a certified copy shall be returned to the MDEQ and the USEPA at the addresses provided in Paragraph 11, below.

9. **Transfer of Interest:** The Grantor shall provide notice at the addresses provided in this document to the MDEQ and to the USEPA of the Grantor's intent to transfer any interest in the Property, or any portion thereof, at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Grantor without adequate and complete provision for compliance with the

terms and conditions of this Restrictive Covenant and Easement and the applicable provisions of Section 201.16 of the NREPA. The Grantor shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT AND ENVIRONMENTAL PROTECTION EASEMENT, DATED [month, day, year], AND RECORDED WITH THE INGHAM COUNTY REGISTER OF DEEDS, INSTRUMENT NUMBER _____.

10. **Notices:** Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Restrictive Covenant and Easement shall be made in writing; include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant and Easement; include the MDEQ Site ID number and reference number; parcel number; and shall be served either personally, or sent via first class mail, postage prepaid, as follows:

For the Grantor:

Dan Dyer, Manager – Environmental Remediation
CSX Transportation, Inc.
31 E. Georgia Street
Indianapolis, Indiana 46204

For the Grantee:

Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926

For the Third Party Beneficiary:

Director
Superfund Division (SR-6J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Chief
Remediation and Reuse Branch
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

11. Miscellaneous:

(a) Controlling Law. The interpretation and performance of this Restrictive Covenant and Easement shall be governed by the laws of the United States and by the laws and regulations of the State of Michigan for all other purposes hereunder (without reference to choice of laws and principles thereof). The right to enforce the conditions and restrictions in this Restrictive Covenant and Easement are in addition to other rights and remedies that may be available, including, but not limited to, administrative and judicial remedies under CERCLA, TSCA or Part 201 of the NREPA.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant and Easement shall be liberally construed to achieve the purpose of this Restrictive Covenant and Easement and the policy and purpose of CERCLA and TSCA and the land use restrictions and prospective use limitations required by Part 201. If any provision of this Restrictive Covenant and Easement is found to be ambiguous, an interpretation consistent with the purpose of this Restrictive Covenant and Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Restrictive Covenant and Easement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof, and all other provisions shall continue unimpaired and in full force and effect.

(d) Entire Agreement. This Restrictive Covenant and Easement and its attachments and appendices supersedes all prior discussions, negotiations, understandings, or agreements between the undersigned relating to the matters addressed herein, all of which are merged herein.

(e) Successors. The covenants, terms, conditions, and restrictions of this Restrictive Covenant and Easement shall be binding upon, and inure to the benefit of, the Grantor and Grantee and their agents, successors, lessees, and assigns and any subsequent title holders, occupants or other persons acquiring an interest in the Property or a relevant sub-portion of the Property, and their respective agents, successors and assigns. The rights, but not the obligations or authorities, of the USEPA are freely assignable to any public entity, subject to notice to the Grantor, its successors and assigns, as their interests appear in the public title records kept and maintained by the Ingham County Register of Deeds.

12. Exhibits: The following exhibits are incorporated into this Restrictive Covenant and Easement:

Exhibit 1 – Legal Description of the Property

Parcel Tax Identification Number: 33-01-01-09-281-011

Exhibit 2 – Survey of the Property

Figure E2-1, Survey of Parcel

13. Authority to Execute Restrictive Covenant and Easement: The undersigned person executing this Restrictive Covenant and Easement represents and certifies that he or she is duly authorized and has been empowered to execute this Restrictive Covenant and Easement.

In WITNESS WHEREOF, CSXT, the Grantor, has caused this Restrictive Covenant and Easement to be executed on this 5th day of September, 2017.

Shantel N. Davis

Signature

Shantel N. Davis (Shantel N. Davis)

Printed Name

VP, Real Estate & Facility Mgmt

Title

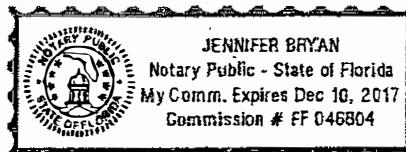
STATE OF Florida

ss

COUNTY OF Duval

Acknowledged before me in Duval County, State of Florida, on September 5, 2017
by Jennifer Bryan

Jennifer Bryan
Notary Public, State of Florida
County of Duval
My commission expires: 12/10/2017
Acting in the County of Duval



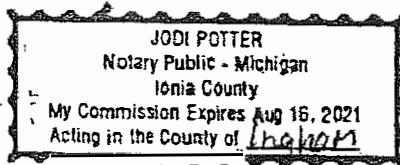
The MDEQ approves the form and content of this Restrictive Covenant and Easement on this
16th day of August 2017.

BY: 

David Kline, Section Manager
Superfund Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

STATE OF Michigan))ss
COUNTY OF Ingham)

Acknowledged before me in Ingham County, Michigan, on August 16, 2017
by David Kline, Section Manager, Superfund Section, Remediation and Redevelopment Division,
Michigan Department of Environmental Quality.



Jodi Potter
Notary Public, State of Michigan
County of Ionia
My commission expires: 8-16-2021
Acting in the County of Ingham

Prepared by and when recorded return to:

Steven C. Kohl
Warner Norcross & Judd, LLP
2000 Town Center, Ste. 2700
Southfield, Michigan 48075-1318

Exhibit 1

CSXT Property

Parcel Tax Identification Number: 33-01-01-09-281-011

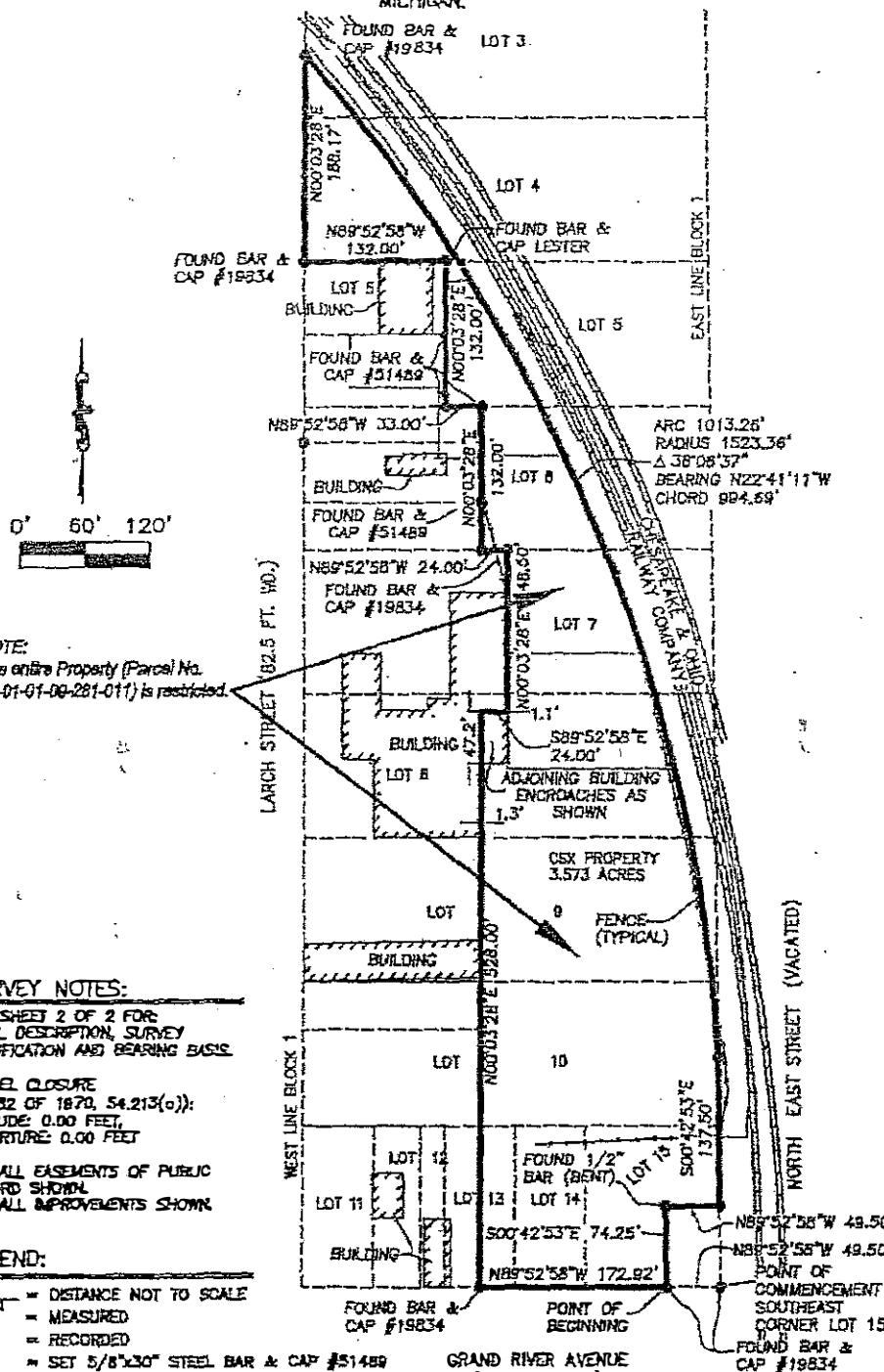
A part of Block 1, being a part of Lot 3, a part of Lot 4, a part of Lot 5, a part of Lot 6, a part of Lot 7, a part of Lot 8, a part of Lot 9, a part of Lot 10, a part of Lot 13, all of Lot 14, and part of Lot 15 of "The Original Plat of the Town of Michigan, now City of Lansing", a subdivision as recorded in Liber 7 of Deeds, Page 593, Ingham County Records, more particularly described by Darrell Hughes, Michigan Registered Land Surveyor No. 19834, as beginning at a point on the southerly line of Lot 15, being also the northerly line of East Grand River Avenue, 79.86 feet wide, said point being distant North 89 degrees 52 minutes 58 seconds West 49.50 feet, along the southerly line of Lot 15 and northerly line of East Grand River Avenue, from the Southeast corner of Lot 15; proceeding thence, from said point of beginning, North 89 degrees 52 minutes 58 seconds West 172.92 feet, along part of the southerly line of Lot 15, all of the southerly line of Lot 14 and part of the southerly line of Lot 13, all being also the northerly line of East Grand River Avenue; thence North 00 degrees 03 minutes 28 seconds East 528.00 feet, parallel with the easterly line of Larch Street, 82.50 feet wide; thence South 89 degrees 52 minutes 58 seconds East 24.00 feet; thence North 00 degrees 03 minutes 28 seconds East 148.50 feet; thence North 89 degrees 52 minutes 58 seconds West 24.00 feet, along the line between Lot 6 and Lot 7; thence North 00 degrees 03 minutes 28 seconds East 132.00 feet; thence North 89 degrees 52 minutes 58 seconds West 33.00 feet, along the line between Lot 5 and Lot 6; thence North 00 degrees 03 minutes 28 seconds East 132.00 feet; thence North 89 degrees 52 minutes 58 seconds West 132.00 feet, along the line between Lot 4 and Lot 5; thence North 00 degrees 03 minutes 28 seconds East 188.17 feet, along all of the westerly line of Lot 4 and part of the westerly line of Lot 3, being also the easterly line of Larch Street, to their intersection with the westerly line of the CSX Railroad right of way, 66 feet wide, thence 1013.26 feet, along the arc of a 1523.36 feet radius curve to the right, not tangent with previous course, having a central angle of 38 degrees 06 minutes 37 seconds, whose chord measures 94.69 feet and bears South 22 degrees 41 minutes 11 seconds East; thence South 00 degrees 42 minutes 52 seconds East 137.50 feet, not tangent with previous course, along a part of the easterly line of Lot 10 and a part of the easterly line of Lot 15; thence North 89 degrees 52 minutes 58 seconds West 49.50 feet; thence South 00 degrees 42 minutes 52 seconds East 74.25 feet, to the point of beginning, containing 3.573 acres.

Exhibit 2

Survey of the Property

Figure E2-1: Survey of Property Restricted



PREPARED FOR:
Progressive E & GCERTIFIED BOUNDARY SURVEY
A PART OF BLOCK 1, ORIGINAL PLAT
CITY OF LANSING, INGHAM COUNTY,
MICHIGAN.

GEODETIC DESIGNS INCORPORATED
2300 N. GRAND RIVER AVE
LANSING, MI 48906
PHONE: (517) 908-0008
FAX: (517) 908-0009
www.gdtdesigns.com



FIGURE E2-1
FIELD: DJV DRAWN BY: RW
DATE: AUGUST 4, 2015
FILE: S131-2015
SHEET 1 OF 2