



Warner Norcross + Judd LLP

June 3, 2019

*Via Email (williams.tom@epa.gov)*

Thomas Williams, Esq.  
Associate Regional Counsel  
United States Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Re: **Wolverine Worldwide Actions at Former Tannery and House Street Sites**

Dear Mr. Williams:

We write in response to your May 3, 2019, correspondence and the April 29, 2019, correspondence (the “**Demand**”) regarding the former Wolverine tannery and House Street sites in which Jeffery Kimble, Federal On-Scene Coordinator (the “**OSC**”), directs Wolverine to conduct certain work under Unilateral Administrative Order No. V-W-18-C-004 (the “**UAO**”).

At the conclusion of our meeting with you and Mr. Kimble on April 17, we understood that Wolverine would prepare a written response to the EPA’s positions and proposals that were presented and discussed at that meeting. In reliance on that understanding, the Wolverine team expended considerable time and effort evaluating the numerous complex technical and logistical issues in play at the former tannery and House Street sites and preparing its response to the EPA. We were in regular communication with the EPA during that time, and we kept Mr. Kimble informed of our efforts in that regard. Given these communications, we were therefore surprised to receive the Demand less than two weeks after our meeting.

Nevertheless, as required under the UAO, Wolverine is submitting the workplans requested in the Demand under separate cover to Mr. Kimble. The workplans were prepared in good faith and reflect the level of completeness that was reasonably possible in the extremely short time period provided for in the Demand, as well as the fact that the data upon which EPA is relying was only recently provided to Wolverine. By submitting these workplans, Wolverine does not waive any right or defense, including the right to recover response costs from the United States under section 106(b)(2)(C)–(D) of the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”).

As you know from our meeting on April 17, some of the work in the Demand is consistent with work that Wolverine already proposed and was preparing to perform. But the remaining work in the Demand is unnecessary and unreasonable. For example, some of the items in the Demand direct Wolverine to prepare documents based on EPA data, some of which

the EPA did not show to Wolverine until May 20. More generally, the repeated instances of unlimited OSC discretion combined with the unnecessarily short deadlines that Mr. Kimble chose to impose seem designed to make it impossible to fully comply with the Demand. In short, the Demand is in several respects arbitrary and capricious.

Since receiving the Demand, Wolverine has been in regular contact with the EPA. Wolverine has repeatedly reached out to EPA to better understand the scope of the work outlined in the Demand and to ensure that Wolverine's submittals are reasonable and satisfy its obligations. During those discussions, Wolverine also explained its concerns with certain aspects of the Demand. More particularly, and as previously discussed, Wolverine objects to the following:

1. Item 4 in the Demand directs Wolverine to define, excavate, and remove contaminated soils at not only the two known areas of Toxicity Characteristic Leaching Procedure ("TCLP") "metals waste" at the Tannery (which Wolverine had already proposed to do) but also the five such areas at the House Street property. The work at House Street is unnecessary and unreasonable.

Wolverine is committed to reasonably and appropriately limiting exposure to unacceptable levels of contaminants on the House Street property. Removing soils is not necessary to achieve this goal, however, when the installation of a fence (as also directed in the Demand) will prevent direct contact with areas of TCLP soils at the House Street site. Removing soils in addition to installing a fence simply is not necessary, and certainly not on a time-critical basis.

As you know, under EPA policies, cost-effectiveness is a central factor in all remedy selection decisions. Here, the substantial cost of removing TCLP soils at the House Street property far exceeds any benefit that would result. The relevant exposure pathway at the House Street site will be addressed with a fence.

The only plausible reason for removing soils would be if they had an environmental impact because unacceptable concentrations of substances were leaching from these soils into groundwater and migrating from the site. But there is no data from either Wolverine or the EPA that shows either the presence of the TCLP substance at issue (chromium) in deep groundwater on the House Street property, or migration of exceedences of chromium from the House Street property. Moreover, TCLP is not a surrogate for determining whether contaminants are actually leaching or migrating. Particularly, as here, when data is available to confirm actual conditions.

Indeed, there is nothing about the presence of decades-old substances contained on the House Street property that requires action within the next six months. There has been no disposal activity at House Street for at least 49 years. In other words, even if these actions were appropriate, there is no plausible reason for removing these soils on a time-critical basis.

2. Items 5 and 6 in the Demand direct Wolverine to map, excavate, and remove soils between 0 and 3 feet below ground that exceed EPA Removal Management Levels (“RMLs”) and/or Michigan’s Part 201 residential direct contact criteria at the former tannery and adjacent areas. This request arbitrarily mixes EPA and Michigan standards. Even if the EPA considers shallow soil for purposes of the RMLs to be 0-3 feet, shallow soil under Part 201 is 0-1 foot. When considering shallow soil, therefore, Part 201 criteria should not be applied to soil deeper than 1 foot.

Moreover, as we have repeatedly stated, applying the residential rather than nonresidential cleanup criteria is plainly incorrect. This error arises under Part 201, which specifically allows a person to utilize restrictive covenants as part of a remedy to limit the applicability of residential cleanup criteria. MCL 324.20121. As you know, the former tannery and House Street sites are not residential and Wolverine intends to record restrictive covenants limiting residential use (copies are attached).<sup>1</sup> Accordingly, the Part 201 residential criteria simply do not apply, and EPA’s reliance on them constitutes clear error.

3. Items 5 and 7 in the Demand arbitrarily direct Wolverine to remove soils and sediments at and adjacent to the former tannery wherever the On-Scene Coordinator deems them to show “visual evidence of Wolverine waste materials’ presence.” The Demand does not, however, require that this “visual evidence” actually contain any hazardous substances. Nor could it, since no data show a correlation between visual evidence of waste at the former tannery and the presence of hazardous substances in excess of the EPA RMLs or Part 201 cleanup criteria.

More generally, this directive utterly lacks precision and is egregiously untethered from data and objectivity. It far exceeds the scope of the EPA’s regulatory authority under CERCLA, which allows certain actions to be taken in response to the presence of designated levels of listed substances. It does not authorize the EPA to require a person to undertake costly and complex removal actions anywhere an On-Scene Coordinator claims to see “visual evidence” of “waste.”

---

<sup>1</sup> Mr. Kimble’s comments to Wolverine’s February 25, 2019, draft summary report regarding the House Street site instructed Wolverine to delete a reference to utilizing a restrictive covenant as part of the remedy at House Street to limit the applicability of the residential cleanup criteria. That comment contradicts applicable law, exceeded Mr. Kimble’s authority, and was arbitrary and capricious.

Thomas Williams, Esq.

June 3, 2019

Page 4

---

As we discussed by telephone on May 13, 2019, we look forward to receipt of the draft Administrative Order on Consent that you are preparing. We are hopeful that a consent agreement will allow Wolverine and the EPA to resolve the issues outlined above and reach consensus on reasonable and appropriate removal and remedial actions, as necessary, at the former tannery and House Street sites.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott Watson". The signature is fluid and cursive, with a large initial "S" and "W".

John V. Byl &  
Scott M. Watson

## **DECLARATION OF RESTRICTIVE COVENANT FOR A RESTRICTED NONRESIDENTIAL REMEDIAL ACTION**

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Kent County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 1855 House Street NE, Plainfield Township, Kent County, Michigan and legally described in Exhibit 1 attached hereto (Property).

The Property is associated with past disposal of tannery waste for which response activities were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. 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 due care requirements of Section 20107a of the NREPA.

The restrictions contained in this Restrictive Covenant, recorded pursuant to Section 20121(2) of the NREPA, are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the cleanup criteria as defined in the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

### Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

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

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, Michigan Administrative Code, 2013 AACS R 299.1 – R 299.50, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

### Summary of Response Activities and Environmental Contamination

Hazardous substances including but not limited to 1,2-Dichlorobenzene, 1,4-Dichlorobenzene, chloroform, tetrachlorethylene, benzo[a]pyrene, carbazole, fluoranthene, naphthalene, phenanthrene, aluminum, arsenic, boron, cadmium, chromium VI, cobalt, iron, magnesium,

perfluorooctyl sulfonate, mercury, molybdenum, perfluorooctanoic acid, selenium, and zinc have been released and/or disposed into the soil on the Property from historical tannery operations.

**NOW THEREFORE,**

1. Declaration of Land Use or Resource Use Restrictions

Wolverine World Wide, as the Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. Activity and Use Limitations

Land Use: The Owner shall prohibit all residential land uses on the Property. Residential land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments where people live and sleep for significant periods of the time. The following uses allowed under the Plainfield Charter Township Zoning Ordinance, Chapter 6 "RP Rural Preservation" are prohibited: single-family dwellings; farm dwellings; home occupations; Family Day Care Homes; Foster Family Home; Foster Family Group Home; Adult Foster Care Family Home; and Group Day Care Homes. Cleanup criteria for land-use based response activities are located in the Government Documents Section of the State of Michigan Library.

Groundwater: The Owner shall prohibit the construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:

- (i.) Wells and other devices constructed as part of a response activity for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of hazardous substances into the environment are permitted, provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.
- (ii.) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

Vapor Intrusion Exposure: The Owner shall prohibit the construction and/or use of any buildings or any structures on the property unless the Owner complies with one of the following:

- (i.) The building or structure is an establishment used and classified for manufacturing use consistent with Section 31-33 – Manufacturing of the North American Industry Classification System, United States, 2012, and the Owner complies with all provisions of Section 20120a(18) of the NREPA.

- (ii.) The Owner performs an evaluation of the potential for hazardous substances to volatilize into indoor air that demonstrates the protection of persons who may be present within any building or structure and complies with Section 20107a of the NREPA.
- (iii.) The Owner installs appropriate engineering controls on any building or structure designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the building or structure at concentrations greater than applicable criteria.

Monitoring Well: The Owner shall prohibit any activity that would interfere with the function of or obstruct access to any monitoring wells and devices located on the Property. This includes, but is not limited to, removing, destroying, or altering any well or device in any way that renders it inoperable or incapable of functioning as intended.

Direct Contact Exposure Barrier: The 12-inch soil barrier overlying locations with direct contact exceedances, as identified in Exhibit 2, serves to prevent exposures to contaminated soils at the Property. The Owner shall prohibit the excavation or other intrusive activity that could affect the integrity of the soil barrier, 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 the removing, altering, or disturbing of the soil barrier, that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.

- b. Contaminated Soil Management The Owner shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Toxic Substances Control Act (TSCA), 15 USC 2601 *et seq.*; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. Running with the Land. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. Pursuant to Section 20121(5)(b) of the NREPA, the duration of this Restrictive Covenant is perpetual. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to regulated substances may result in the need to perform additional response activities by those parties responsible for performing response activity at the Property or to comply with Section 20107a of the NREPA.

3. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, Plainfield Township, and the United States Environmental Protection Agency may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

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

5. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

6. Additional Provisions. The provisions provided in the section below are not required for this restrictive covenant to be in compliance with Part 201 of the NREPA. These provisions were agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, the MDEQ may not enforce the Owner's obligations outlined in these provisions.

Conveyance of Property Interest: The Owner shall provide notice to the MDEQ of the Owner's intent to transfer any interest in the Property 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 Owner without adequate and complete provision for compliance with the applicable provisions of Section 20116 of the NRPEA. The notice required to be made to the MDEQ under this Paragraph shall be made to: Director, Remediation and Redevelopment Division, MDEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

MDEQ Access: The Owner grants to the MDEQ, Wolverine World Wide, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance, including the right to take samples, inspect the operation and maintenance of the response activity measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 201.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, I, Wolverine World Wide, the current and legal Owner of the Property, has caused this Restrictive Covenant to be executed on this **[enter the current day of the month]** day of **[enter the current month]**, **[enter the current year]**. [if necessary: **I authorize Warner Norcross + Judd LLP to file the Declaration of the Restrictive Covenant with the Kent County Register of Deeds for recording.**]

**Wolverine World Wide, Inc.**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF MICHIGAN  
COUNTY OF KENT

The foregoing instrument was acknowledged before me this **[date]** by **[name of officer//agent, title of officer//agent]** of Wolverine World Wide, a Delaware corporation, on behalf other corporation.

\_\_\_\_\_  
Notary Public Signature  
**[Stamp Name of the Notary Public]**

Prepared by:  
**[John V. Byl]**

When recorded return to:  
**[Enter the address to return the document to once recorded with the Register of Deeds]**

## EXHIBIT 1

### LEGAL DECIPTION OF PROPERTY

The south 1/2 of the Southeast 1/4 of the Northwest 1/4; ALSO the West 2/3 of the East 3/4 of the North 1/2 of the South 1/2 of Section 4, Town 8 North, Range 11 West, Plainfield Township, Kent County, Michigan. Except commencing at the South 1/4 corner; thence North 89°10'03" West 418.85 feet; thence North 42°16'46" East 1771.42 feet; thence North 89°16'44" West 1100 feet to the point of beginning of this description; thence North 0°43'16" East to 40.0 feet; thence North 74°16'49" East 278.64 feet; thence North 50°26'52" East 1527.46 feet; thence North 19°00'13" East to the East-West 1/4 line; thence Easterly to the Northeast corner of the Northwest 1/4 of the Southeast 1/4; thence Southerly to the Southeast corner of the Northwest 1/4 of the Southeast 1/4; thence Westerly along the South 1/8 line to beginning. Further excepting that part of the remainder lying within the following description: the South 660 feet of the East 660 feet of the West 928.8 feet of the Northwest 1/4 of the Southeast 1/4.

## **DECLARATION OF RESTRICTIVE COVENANT FOR A RESTRICTED NONRESIDENTIAL REMEDIAL ACTION**

This Declaration of Restrictive Covenant (Restrictive Covenant) has been recorded with the Kent County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the properties located at 171, 183, 191, 215, 217, and 227 N. Main St. NE, and 33 and 35 Courtland St. NE, Rockford, Kent County, Michigan and legally described in Exhibit 1 attached hereto (Property).

The Property is associated with past tannery and related industrial use for which response activities were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA. 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 due care requirements of Section 20107a of the NREPA.

The restrictions contained in this Restrictive Covenant, recorded pursuant to Section 20121(2) of the NREPA, are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the cleanup criteria as defined in the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

### Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

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

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, Michigan Administrative Code, 2013 AACS R 299.1 – R 299.50, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

### Summary of Environmental Contamination

Hazardous substances including but not limited to 1,1,1-trichloroethane; 1,1,2,2-tetrachloroethane; 1,1,2-trichloroethane; 1,1-dichloroethane; 1,1-dichloroethylene; 1,1-dichloroethane; benzene; chloroform; chloromethane; cis-1,2-dichloroethylene; ethylbenzene; methylene chloride; tetrachloroethylene; toluene; trans-1,2-dichloroethylene; trichloroethylene; xylenes; 1,4-dichlorobenzene; 2-methylnaphthalene; acenaphthene; acenaphthylene; anthracene; benzo(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; bis(2-chloroethyl)ether; carbazole; dibenzofuran; fluoranthene; fluorine; indeno(1,2,3-c,d)pyrene; naphthalene; phenanthrene; aluminum; antimony; arsenic; barium; boron; cadmium; hexavalent chromium; trivalent chromium; cobalt; copper; iron; lead; magnesium; mercury; molybdenum; selenium; silver; vanadium; zinc; chloride (soluble); cyanide – total; cyanide – available; phosphorus; sulfate (soluble); unionized ammonia; perfluorooctanesulfonate; and perfluoro-n-octanoic acid have been released into the soil on the Property from historical tannery operations.

## **NOW THEREFORE,**

### **1. Declaration of Land Use or Resource Use Restrictions**

Wolverine World Wide, as the Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

#### **a. Activity and Use Limitations**

Land Use: The Owner shall prohibit all residential land uses on the Property. Residential land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments where people live and sleep for significant periods of time. Cleanup criteria for land-use based response activities are located in the Government Documents Section of the State of Michigan Library.

Groundwater: The Owner shall prohibit the construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:

- (i.) Wells and other devices constructed as part of a response activity for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of hazardous substances into the environment are permitted, provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.
- (ii.) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

Vapor Intrusion Exposure: The Owner shall prohibit the construction and/or use of any buildings or any structures on the property unless the Owner complies with one of the following:

- (i.) The building or structure is an establishment used and classified for manufacturing use consistent with Section 31-33 – Manufacturing of the North American Industry Classification System, United States, 2012, and the Owner complies with all provisions of Section 20120a(18) of the NREPA.
- (ii.) The Owner performs an evaluation of the potential for hazardous substances to volatilize into indoor air that demonstrates the protection of persons who may be present within any building or structure and complies with Section 20107a of the NREPA.
- (iii.) The Owner installs appropriate engineering controls on any building or structure designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the building or structure at concentrations greater than applicable criteria.

Monitoring Well: The Owner shall prohibit any activity that would interfere with the function of or obstruct access to any monitoring wells and devices located on the Property. This includes, but is not limited to, removing, destroying, or altering any well or device in any way that renders it inoperable or incapable of functioning as intended.

Direct Contact Exposure Barrier: The 12-inch soil barrier overlying locations with direct contact exceedances, as identified in Exhibit 2, serves to prevent exposures to contaminated soils at the Property. The Owner shall prohibit the excavation or other intrusive activity that could affect the integrity of the soil barrier, 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 the removing, altering, or disturbing of the soil barrier, that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 201 of the NREPA.

- b. Contaminated Soil Management The Owner shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Toxic Substances Control Act (TSCA), 15 USC 2601 *et seq.*; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. Running with the Land. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. Pursuant to Section 20121(5)(b) of the NREPA, the duration of this Restrictive Covenant is perpetual. Improper modification or rescission of any restriction necessary to prevent

unacceptable exposure to regulated substances may result in the need to perform additional response activities by those parties responsible for performing response activity at the Property or to comply with Section 20107a of the NREPA.

3. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, the City of Rockford Township, and the United States Environmental Protection Agency may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

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

5. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

6. Additional Provisions. The provisions provided in the section below are not required for this restrictive covenant to be in compliance with Part 201 of the NREPA. These provisions were agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, the MDEQ may not enforce the Owner's obligations outlined in these provisions.

Conveyance of Property Interest: The Owner shall provide notice to the MDEQ of the Owner's intent to transfer any interest in the Property 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 Owner without adequate and complete provision for compliance with the applicable provisions of Section 20116 of the NRPEA. The notice required to be made to the MDEQ under this Paragraph shall be made to: Director, Remediation and Redevelopment Division, MDEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

MDEQ Access: The Owner grants to the MDEQ, Wolverine World Wide, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance, including the right to take samples, inspect the operation and maintenance of the response activity measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 201.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, I, Wolverine World Wide, the current and legal Owner of the Property, has caused this Restrictive Covenant to be executed on this **[enter the current day of the month]** day of **[enter the current month]**, **[enter the current year]**. [if necessary: **I authorize Warner Norcross + Judd LLP to file the Declaration of the Restrictive Covenant with the Kent County Register of Deeds for recording.**]

**Wolverine World Wide, Inc.**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF MICHIGAN  
COUNTY OF KENT

The foregoing instrument was acknowledged before me this **[date]** by **[name of officer//agent, title of officer//agent]** of Wolverine World Wide, a Delaware corporation, on behalf other corporation.

\_\_\_\_\_  
Notary Public Signature  
**[Stamp Name of the Notary Public]**

Prepared by:  
**[John V. Byl]**

When recorded return to:  
**[Enter the address to return the document to once recorded with the Register of Deeds]**

## EXHIBIT 1

### LEGAL DESCRIPTION OF PROPERTIES

#### **227 N. Main Street NE ~ (41-06-36-328-001):**

Part of Outlot 4, Plat of the Village (now City) of Rockford, Kent County, Michigan, as recorded in Liber 19 of Plats, Page 5, described as: Commencing on centerline of Rum Creek 30 feet Westerly from and perpendicular to centerline of the Pennsylvania Railroad right of way; thence Southerly parallel to centerline of said right of way 272 feet to a point 652.11 feet Northerly along Westerly line of said right of way from the produced North line of Courtland Street; thence Northwesterly perpendicular to said right of way 350 feet, more or less, to the centerline of Rogue River; thence Northerly on the centerline of said river 385 feet, more or less, to the centerline of Rum Creek; thence Easterly on the centerline of said creek 338.5 feet, more or less, to beginning, being part of Outlot 5.

#### **182 N. Main Street NE ~ (41-06-36-328-002):**

All that part of Outlot 5, Plat of the Village (now City) of Rockford, Kent County, Michigan, as recorded in Liber 19 of Plats, Page 5, described as: Commencing 272 feet Southwesterly along the Westerly line of the Pennsylvania Railroad right of way, (said Westerly line being 30 feet Westerly of measure perpendicular to centerline of main track of said railroad) from the centerline of Rum Creek; thence Southwesterly along the Westerly line of said right of way 306 feet; thence Northwesterly perpendicular to said right of way to the centerline of Rogue River; thence Northerly along said centerline to a line extending Northwesterly from beginning and perpendicular to said right of way; thence Southeasterly to beginning.

#### **33 Courtland Street NE ~ (41-06-36-328-003):**

Part of the Southwest 1/4 of Section 36, Town 9 North, Range 11 West, City of Rockford, Kent County, Michigan and being part of Outlot 5, Plat of the Village (now City) of Rockford, Kent County, Michigan, as recorded in Liber 19 of Plats, Page 5, bounded and described as follows, viz: Beginning at an interior point distant 30 feet measured Westwardly at right angles from the centerline of the main track of the railroad of Pennel Company known as the Grand Rapids Branch, said beginning point being at the distance of 50 feet measured Northwardly along a line parallel with and 30 feet measured Westwardly at right angles from said centerline of the main track of the railroad from the centerline of Courtland Street (66 feet wide), if extended Westwardly; extending from said beginning point the following four courses and distances, the first two thereof being by remaining land of said Pennel Company; (1) Northwardly parallel with said centerline of the main track of the railroad, forming an interior angle of 96°05' with the fourth or closing course herein, 329.30 feet to an iron stake; (2) Westwardly, at right angles to the last described course, passing through an iron stake 100 feet from the beginning of the course being described, 250 feet, more or less, to the centerline of Rogue River; (3) Southwardly, along the same 345 feet, more or less, and (4) Eastwardly, being by remaining land of said Pennel Company, parallel with said centerline of Courtland Street, if extended, 178 feet, more or less, to the place of beginning.

**181 N. Main Street NE ~ (41-06-36-401-001):**

Lots 2, 3, 4 and 5 and that part of Lot 6 and of Outlot 5, Plat of the Village (now City) of Rockford, Kent County, Michigan, as recorded in Liber 19 of Plats, Page 5 and that part of Section 36, Town 9 North, Range 11 West, City of Rockford, Kent County, Michigan, described as: Commencing on the Westerly line of Main Street, 150 feet Northerly along said street line from the East and West 1/4 line; thence Southerly along said street line, 150 feet to the East and West 1/4 line; thence South along said street line to the Southeast corner of Lot 2; thence West 101 feet; thence North to a point 192 feet North of the North line of Courtland Street; thence West to the Easterly line of the Penn Railroad right of way; thence Northerly along said right of way to Rum Creek; thence Westerly along said Creek to Rogue River; thence Northerly along said river to a line which is parallel with the East and West 1/4 line and 396 feet Northerly measured along the Westerly line of the railroad right of way from the East and West 1/4 line; thence East to said right of way; thence Southerly along said right of way to a line which extends Northwesterly at right angles from the beginning; thence Southeasterly to beginning. EXCEPT: The Penn Railroad right of way.

**35 Courtland Street NE ~ (41-06-36-503-008):**

Part of the Plat of the Village (now City) of Rockford, Kent County, Michigan, as recorded in Liber 19 of Plats, Page 5 and part of Section 36, Town 9 North, Range 11 West, City of Rockford, Kent County, Michigan, described as: Commencing at the South 1/4 corner of Section 36; thence North 00°09'01" East 1291.40 feet along the North-South 1/4 line; thence South 90°00' West 96.17 feet along the extended North line of Courtland Street to the place of beginning of this description; thence South 90°00' West 10.06 feet along said extended line; thence North 6°05' East 676.66 feet along a line which is parallel with and 30 feet Westerly of the main track of the Penn Central Railroad; thence Northerly 666.86 feet parallel with the centerline of main track on a curve to the right, whose radius is approximately 2758 feet, and the chord of which bears North 12°20'23" East 665.24 feet; thence North 89°53'44" East 10.60 feet along the East-West 1/4 line of Section 36; thence Southerly 668.07 feet along a line which is parallel with and 20 feet Westerly from the centerline of said main track on a curve to the left, whose radius is approximately 2748 feet, and the chord of which bears South 12°22'30" West 666.43 feet; thence South 6°05' West 675.59 feet parallel with the centerline of said main track to the place of beginning.

**171 and 217 N. Main Street NE ~ (41-06-36-503-007 and 41-06-36-503-010):**

Part of the Plat of the Village (now City) of Rockford, Kent County, Michigan, as recorded in Liber 19 of Plats, Page 5 and part of Section 36, Town 9 North, Range 11 West, City of Rockford, Kent County, Michigan, described as: Beginning at a point on the North-South 1/4 line of Section 36, which is North 00°09'01" East 1430.62 feet from the South 1/4 corner; thence South 90°00' West 40.6 feet parallel with the North line of Courtland Street to a point which is North 06°05' East 140.0 feet from said North line; thence North 6°05' East 445.50 feet along a line which is parallel with and 8 feet Easterly from the spur track of the Penn Central Railroad; thence Northerly 137.49 feet parallel with said spur track on a curve to the left, whose radius is approximately 1145 feet, the chord of which bears North 2°39'50" East 137.41 feet; thence Northerly 620.46 feet on a line which is 12 feet Easterly of and parallel with the centerline of the main track of said railroad on a curve to the right, whose radius is approximately 2716 feet, the chord of which bears North 12°57'36" East 619.11 feet to the East-West 1/4 line of Section 36; thence continuing 320.67 feet along said curve, the chord of which bears North 22°48'30" East

320.48 feet; thence South 62°01' East 38.0 feet; thence Southerly 301.47 feet along a line which is parallel with and 50 feet Easterly of the centerline of the main track of said railroad on a curve to the left, whose radius is approximately 2678 feet and the chord of which bears South 22°55'20" West 301.31 feet; thence South 89°53'44" West 21.29 feet along the East-West 1/4 line of Section 36; thence Southerly 432.52 feet along a line which is parallel with and 30 feet Easterly of the centerline of said main track on a curve to the left, whose radius is approximately 2698 feet, the chord of which bears South 15°00'52" West 432.06 feet; thence South 84°20" East 20.0 feet along the centerline of Rum Creek; thence Southerly 241.71 feet along a line which is parallel with and 50 feet Easterly of the centerline of said main track on a curve to the left, whose radius is approximately 2678 feet, the chord of which bears South 8°09'50" West 241.63 feet; thence South 6°05' West 418.80 feet parallel with the centerline of said main track; thence South 00°09'01" West 108.71 feet along the North-South 1/4 line of Section 36 to the place of beginning.

**215 N. Main Street NE ~ (41-06-36-503-006):**

That part of the Northeast 1/4 of Section 36, Town 9 North, Range 11 West, City of Rockford, Kent County, Michigan, described as: Beginning at a point on the East-West 1/4 line of Section 36, which is South 89°53'44" West 2558.82 feet from the East 1/4 corner; thence South 89°53'44" West 31.77 feet along the East-West 1/4 line; thence Northeasterly 129.80 feet along a line which is parallel with and 50 feet Northwesterly from the centerline of the main track of the Penn Central Railroad on a curve to the right, whose radius is approximately 2778 feet, the chord of which bears North 20°18'40" East 129.79 feet; thence North 89°53'44" East 32.33 feet; thence Southwesterly 130.0 feet along a line which is parallel with and 20 feet Northwesterly from the centerline of said railroad on a curve to the left, whose radius is approximately 2748 feet, the chord of which bears South 20°32'40" West 129.99 feet to the place of beginning.