Brownfields Project #: 09014-05-11
Brownfields Property: Asheville Mica, 75 Thompson Street
Property Owner (In whole or part): Mica Village, LLC

JAN 20
Brownfields

LAND USE RESTRICTIONS ("LUR") UPDATE

LUR 1: No use may be made of the Brownfields Property other than for residential, retail, office, common space, parking, pet park, and greenway mixed use purposes. For purposes of this restriction, the following definitions apply:

a. "Residential" refers to use for a permanent dwelling of a single family, detached, duplex, triplex, quadriplex, attached or multifamily dwelling.

b. "Retail" refers to the sale of goods, products, or merchandise directly to the consumer.

c. "Office" refers to the conducting or rendering of business or professional services.

d. "Mixed Use" refers to a project characterized by three or more significant revenue-producing uses that are mutually supporting, significant physical and functional integration of project components, and development of said components in conformance with a coherent plan.

e. "Common Space" refers to an area of open space, within a development site, that is designed and intended for the use and enjoyment of residents of the development or for the general public.

f. "Pet park" refers to an area within or adjacent to a residential development that is designed and used for the enjoyment of the residents' pets.

g. "Greenway" refers to a linear open space along a natural or constructed corridor, which may be used for pedestrian or bicycle passage. Greenways often link areas of activity, such as parks, cultural features or historic sites, with each other and with populated areas.

h. "Parking" is any designated area designed for temporary accommodation of motor vehicles, whether for a fee or as a service.

In compliance ✓ Out of compliance ____

Remarks: _____

JS

LUR 2: Soil in the area denominated "Boring 3" on the plat component of the Notice of Brownfields Property ("Notice") may not be disturbed unless and until the Department of Environment and Natural Resources ("DENR") approves in writing an excavation, grading, construction, and health and safety plan for the proposed disturbance that requires:

a. characterizing, removing, handling and disposing of, in accordance with applicable law, soil contaminated with Diesel Range Organics ("DRO") in excess of 40 milligrams per kilogram (soil containing less DRO may be redistributed on-site for grading purposes), then conducting sampling of the side walls and bottom of the excavation to confirm that no soil containing more than the subject DRO limit remains;

b. capping the area with sufficient impervious material, defined for this purpose as asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or another material approved in writing in advance by DENR, to prevent the absorption of surface water into the soil;

c. remediation of the area's contamination by an alternative option; or

d. eliminating access to the area with a secure fence at least six feet high; conducting soil sampling, by the most current version of U.S. Environmental Protection Agency ("EPA") Method 8015B, each November and May for two (2) consecutive years or until DRO concentrations do not exceed 40 milligrams per kilogram, whichever occurs first; and submitting for DENR approval of a plan that calls for the measures referenced in subparagraph 14.b.i. or ii. of the Brownfields Agreement ("Agreement") if the subject DRO limit is not achieved within two (2) years; and

e. submitting a report regarding implementation of the plan no later than thirty (30) days following conclusion of implementation, and correction of any deficiencies DENR identifies in the report or implementation of the plan within thirty (30) days after DENR provides written notice of such deficiencies.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 3: Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular buildings, no building on the Brownfields Property may be used until mechanical ventilation with outdoor air is provided in compliance with the most current version of the Mechanical Ventilation section of the Ventilation chapter of the North Carolina State Building Code, or another standard approved in writing in advance by DENR.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 4: Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular buildings, no ground floor of any building on the Brownfields Property may be used residentially.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 5: The ground floor of any building on the Brownfields Property not appearing on the plat component of the Notice may not be used unless and until a vapor barrier membrane system and, at DENR's discretion, a mechanical or passive vapor mitigation system is installed in accordance with a plan approved in writing in advance by DENR. Sheeting at least six (6) mils thick that is designed to prevent vapors from entering the building, a spray membrane liner system consisting of material resistant to the contaminants listed in paragraph 8 of the Agreement, or another vapor barrier system may be proposed for DENR approval. No vapor barrier shall be approved unless it is to be installed under the entire slab-on-grade foundation of the building, and sealed around any vertical pilings and other support structures underneath the slab, overlapped, and taped, glued or otherwise stabilized, so as to minimize air migration pathways. Within thirty (30) days after installation of the vapor barrier system and/or vapor mitigation system, DENR shall be provided certification of proper installation under seal of a

professional engineer licensed in North Carolina, as well as photographs illustrating the installation and a brief narrative describing it.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 6: No ground floor of any building appearing on the plat component of the Notice referenced may be used for parking unless and until:

a. a professional engineer licensed in North Carolina provides DENR under seal an assessment and air turnover requirements for the proposed parking area as they relate to vapor mitigation.

b. any measures necessary to meet the air turnover requirements are implemented;

c. a professional engineer licensed in North Carolina certifies to DENR under seal that the measures have been properly implemented and are functioning as intended.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 7: No use of the Brownfields Property may occur prior to receipt of written approval from DENR of a plan for groundwater monitoring at the Brownfields Property through sampling and analysis. The plan must require:

a. designation of at least one (1) existing monitoring well upgradient from buildings in use and at least one (1) downgradient from such buildings as those to be sampled pursuant to the plan;

b. at a minimum, sampling of all wells designated for volatile organic compounds ("VOCs") during the same seven-day period each year;

c. analyses of all VOC samples collected at the Brownfields Property by the most current version of EPA Method 8260;

d. written reporting of the sampling analyses to DENR within thirty (30) days after sampling; and

e. provisions for replacing the monitoring wells if indicated due to redevelopment activities.

When the plan requires sampling, analysis, reporting or replacement of a well installed pursuant to the plan, the then owner of the affected portion of the Brownfields Property shall be responsible for compliance. The plan shall be available from DENR and may be amended with DENR's prior written approval. Permission to cease required monitoring may be requested of DENR if sampling pursuant to the plan shows the concentrations of any and all VOCs detected declining for a minimum of three (3) consecutive years.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 8: No activities that remove, use or may encounter, expose, groundwater or surface water (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that may encounter water) may occur on the Brownfields Property without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results disclose to DENR contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the prior written approval of DENR on such conditions as DENR imposes, including at a minimum compliance with plans and procedures, approved pursuant to applicable law, to protect public health and the environment during the proposed activities.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 9: If soil contamination is discovered that DENR determines would likely contaminate groundwater even if capped, or that may pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be

removed and disposed of in accordance with applicable law, and any other actions that DENR reasonably requires to make the Brownfields Property suitable for the uses specified in this Agreement while fully protecting public health and the environment shall be taken. If soil contamination is discovered that DENR determines would not likely contaminate groundwater if capped, or likely pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law or capped to the written satisfaction of DENR.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 10: No basements may be constructed on the Brownfields Property unless they are, as determined in writing by DENR, vented in conformance with applicable building codes.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 11: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in paragraph 8 of the Agreement, may be used or stored at the Brownfields Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

In compliance ✓ Out of compliance ____

Remarks: _____

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LUR 12: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 13: No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 14: During January of each year after the year in which the Notice is recorded, the then current owner of any part of the Brownfields Property shall submit a notarized Land Use Restrictions Update to DENR certifying that the Notice remains recorded at the Buncombe County Register of Deeds office, and that the land use restrictions are being complied with.

In compliance ✓ Out of compliance ____

Remarks: _____

Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that this Notice remains recorded at the BUNCOMBE County Register of Deeds office and that the Land Use Restrictions are being complied with.

This Land Use Restrictions Update is certified by Jonathan Sheintal, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: Jonathan Sheintal

JS

[use for LLCs]

[Name of LLC] MICA VILLAGE, LLC

By: JONATHAN SHEINTAL MBR/MGR
Name typed or printed:
Member/Manager

STATE OF FLORIDA
~~NORTH CAROLINA~~
SARASOTA COUNTY

I, Todd Blackwell, a Notary Public of the county and state aforesaid, certify that JONATHAN SHEINTAL personally came before me this day and acknowledged that he/she is a Member of MICA VILLAGE, LLC, a NORTH CAROLINA (state) limited liability company, and its Manager, and that by authority duly given and as the act of the company, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this 8th day of January, 2015

Name typed or printed: Todd Blackwell
Notary Public

My Commission expires: 2/20/16

[Stamp/Seal]

NOTARY PUBLIC
TODD BLACKWELL
Notary Public, State of Florida
Commission# EE 171480
My comm. expires Feb. 20, 2016

Name typed or printed of party making certification: JONATHAN SHEINTAL

In the case of owners that are entities:

Signature of individual signing: Jonathan Sheintal
Name typed or printed: JONATHAN SHEINTAL
Title: MICA VILLAGE, LLC MANAGER MEMBER

In the case of all owners:

Date: 9/02/2015

NOTARY PUBLIC
TODD BLACKWELL
Notary Public. State of Florida
Commission# EE 171480
My comm. expires Feb. 20, 2016