

FILED IN HENDERSON COUNTY REGISTER OF DEEDS
OFFICE. NEDRA W. MOLES, REGISTER *ll*

DATE: 12/1/10 TIME: 4:20 PM

EXCISE TAX STAMP: _____

BOOK: 1446 PAGE: 665

(c)

Property Owner: Jones Commercial Properties
Recorded in Book 1446, Page 665
Associated plat recorded in Plat Book 8200, Page _____

NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 1 day of December, 2010 by Jones Commercial Properties (hereinafter "Prospective Developer").

The Notice concerns contaminated property.

A copy of this Notice certified by the North Carolina Department of Environment and Natural Resources (hereinafter "DENR") is required to be filed in the Register of Deeds' Office in the county or counties in which the land is located, pursuant to North Carolina General Statutes (hereinafter "NCGS"), Section (hereinafter "§") 130A-310.35(b).

This Notice is required by NCGS § 130A-310.35(a), in order to reduce or eliminate the danger to public health or the environment posed by environmental contamination at a property (hereinafter the "Brownfields Property") being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 (hereinafter the "Act").

Pursuant to NCGS § 130A-310.35(b), the Prospective Developer must file a certified copy of this Notice within 15 days of Prospective Developer's receipt of DENR's approval of the Notice or Prospective Developer's entry into the Brownfields Agreement required by the Act, whichever is later. Pursuant to NCGS § 130A-310.35(c), the copy of the Notice certified by DENR must be recorded in the grantor index under the names of the owners of the land and, if Prospective Developer is not the owner, also under Prospective Developer's name.

The Brownfields Property is located at 619 Spartanburg Highway in Hendersonville, Henderson County, North Carolina. It comprises 0.21 acres. Among past activities on the Brownfields Property were the operations, from 1970-75, of a bulk fuel oil facility known as "Baxter Oil," and since then a series of restaurants and retail operations. The Property is currently vacant. Prospective Developer intends to sell the Brownfields Property for retail, office and, with prior written DENR approval, other commercial redevelopment, along with associated parking.

The Brownfields Agreement between Prospective Developer and DENR is attached hereto as

Exhibit A. It sets forth the use that may be made of the Brownfields Property and the measures to be taken to protect public health and the environment, and is required by NCGS § 130A-310.32.

Attached hereto as **Exhibit B** is a reduction, to 8 1/2" x 11", of the survey plat required by NCGS § 130A-310.35(a). It is a plat of areas designated by DENR that has been prepared and certified by a professional land surveyor and that meets the requirements of NCGS § 47-30. That plat contains the following information required by NCGS § 130A-310.35(a):

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location and quantity of regulated substances and contaminants known to exist on the Brownfields Property. The following table also sets forth that information:

Table 1

Groundwater contaminants in micrograms per liter (the equivalent of parts per billion):

Groundwater Contaminant	Sample Location	Date of Most Recent Sampling	Most Recent Concentration above Unrestricted Use Std. (for reference only) (µg/L)	Unrestricted Use Std. (for reference only) ¹ (µg/L)
Benzene	MW-1	11/23/2009	11	1.0
	MW-2	11/23/2009	770	
	MW-4	11/23/2009	1.2	
n-Butylbenzene	MW-2	11/23/2009	1.8	DL*
	MW-4	11/23/2009	1.4	
Sec-Butylbenzene	MW-4	11/23/2009	2.0	DL*
Isopropyl ether (IPE)	MW-2	11/23/2009	5.8	DL*
Naphthalene	MW-2	11/23/2009	97	6
	MW-4	11/23/2009	9.9	
n-Propyl benzene	MW-2	11/23/2009	9.1	DL*
	MW-4	11/23/2009	2.5	
2-Methylnaphthalene	MW-2	11/23/2009	55.0	30
C5-C8 Aliphatics	MW-2	11/23/2009	1400	400
C9-C22 Aromatics	MW-2	11/23/2009	1280	200

*"Detection Limit", which is the standard where no numerical one exists.

¹would apply if Property's use were not restricted

The unrestricted use standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (January 1, 2010 version)

Table 2

Soil Contaminant	Sample Location	Depth (ft)	Date of Max. Concentration Sampling	Maximum Concentration (mg/kg)	Unrestricted Use Std. (for reference only) ¹ (mg/kg)
C9-C18 Aliphatics (total)	SW-1	4.0	4/23/2010	2230	1500
	SW-2	4.0	4/23/2010	2430	
	EW-1	4.0	4/23/2010	1700	
	EW-3	4.0	4/23/2010	1641	
C9-C22 Aromatics (total)	SW-1	4.0	4/23/2010	1220	469
	SW-2	4.0	4/23/2010	1690	
	EW-1	4.0	4/23/2010	1070	
	EW-3	4.0	4/23/2010	1080	
	EW-4	4.0	4/23/2010	720	
	SSTS	4.0	4/23/2010	990	

¹would apply if Property's use were not restricted

The unrestricted use standards for which are derived using the Guidelines for the Investigation and Remediation from Non-UST Petroleum Releases (July 1, 2007 version) of DENR's Underground Storage Tank Section.

Attached hereto as **Exhibit C** is a legal description of the Brownfields Property that would be sufficient as a description of the property in an instrument of conveyance.

LAND USE RESTRICTIONS

NCGS 130A-310.35(a) also requires that the Notice identify any restrictions on the current and future use of the Brownfields Property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the Brownfields Property and that are designated in the Brownfields Agreement. **The restrictions shall remain in force in perpetuity unless canceled by the Secretary of DENR (or its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e). All references to DENR shall be understood to include any successor in function. The restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No use may be made of the Brownfields Property other than for retail, office, other commercial uses if DENR issues prior written approval, and associated parking. For purposes of this restriction, the following definitions apply:

- a. **"Retail" refers to the sale of goods directly to the consumer.**
- b. **"Office" refers to the rendering of business or professional services.**

c. “Commercial” refers to an enterprise carried on for profit by the owner, lessee or licensee.

d. “Parking” refers to the temporary accommodation of motor vehicles in a designated area designed for same.

2. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular buildings, no existing building on the Brownfields Property may be used, nor any new building constructed, until a vapor intrusion control system has been approved in writing by DENR, as designed and as installed.

3. Unless DENR makes an advance written exception in a particular instance, soil in the area designated “Area of Soil Contamination” on the plat component of this Notice, and soil underlying paved and other impervious surfaces and buildings at the Brownfields Property, may not be disturbed below a depth of three (3) feet unless and until DENR approves in writing a plan with a schedule, and implementation of said plan, that requires:

a. sampling each excavation to determine whether soil contaminated in excess of the most recent Protection of Groundwater Soil Remediation Goals of DENR’s Inactive Hazardous Sites Branch, or Maximum Soil Contaminant Concentrations of DENR’s Underground Storage Tank Section, is present; and, if the sampling reflects such contamination,

b. a risk assessment for the area subject to the plan, completed and certified by a North Carolina-licensed professional engineer whose work is principally environmental, that evaluates whether, without remediation or measures to manage the contamination, the area will be suitable for the uses specified in Land Use Restriction 1 above and public health and the environment will be fully protected; and, if said assessment reaches a negative conclusion regarding that matter, or in lieu of the assessment,

c. remediation of the contamination or measures to manage it by means approved in writing by DENR in advance.

4. No use of the Brownfields Property may occur after the 30th day following recordation of this Notice, unless DENR receives by that date a written plan for groundwater monitoring at the Brownfields Property through sampling and analysis, and Brownfields Property use shall terminate unless any deficiencies DENR identifies in the plan are corrected to DENR’s satisfaction within time periods established by DENR.

a. At a minimum, the groundwater monitoring plan shall require:

i. sampling pursuant to the plan of the wells designated “MW-1” and “MW-2” on the plat component of this Notice;

ii. sampling of the designated wells for volatile organic compounds and Massachusetts Department of Environmental Protection (“MDEP”) volatile petroleum hydrocarbons (“VPH”) and extractable petroleum hydrocarbons (“EPH”) at least once each year, during the same seven-day period;

iii. analysis of the samples by the most current version of U.S. Environmental Protection Agency Method 8260 and the most current MDEP protocols for VPH and EPH;

iv. provision of the sampling analyses to DENR in writing within 30 days after sampling; and

v. replacement of any of the designated wells if DENR determines it warranted due to redevelopment activities.

b. When the plan requires sampling, analysis, reporting or replacement of a well installed pursuant to the plan, the then owner of the affected portion(s) 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 detected volatile organic compounds, and MDEP VPH and EPH, declining for a minimum of two (2) consecutive years.

5. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) 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.

6. No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

7. 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.

8. None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Tables 1 and 2 above, 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.

9. The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

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

11. The owner of any portion of the Brownfields Property where any existing or later

DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR.

12. 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, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Brownfields Property.

13. During January of each year after the year in which this Notice is recorded, the owner of any part of the Brownfields Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR certifying that, as of said January 1st, the Notice remains recorded at the Henderson County Register of Deeds office and that the Land Use Restrictions are being complied with, and stating:

a. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Brownfields Property during the previous calendar year; and

b. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Brownfields Property during the previous calendar year.

c. whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restrictions 2 and 3 above are performing as designed, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

For purposes of the Land Use Restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 35.a. of Exhibit A hereto, at the address stated therein.

ENFORCEMENT

The above land use restrictions shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. The land use restrictions shall be enforced by any owner of the Brownfields Property. The land use restrictions may also be enforced by DENR through the remedies provided in NCGS 130A, Article 1, Part 2 or by means of a civil action; by any unit of local government having jurisdiction over any part of the Brownfields Property; and by any person eligible for liability protection under the Brownfields Property Reuse Act who will lose liability protection if the restrictions are violated. Any attempt to cancel any or all of this Notice without the approval of the Secretary of DENR (or its successor in function), or his/her delegate, shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS

When any portion of the Brownfields Property is sold, leased, conveyed or transferred, pursuant to NCGS § 130A-310.35(d) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the Brownfields Property has been classified and, if appropriate, cleaned up as a brownfields property under the Brownfields Property Reuse Act.

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this 1 day of December, 2010.

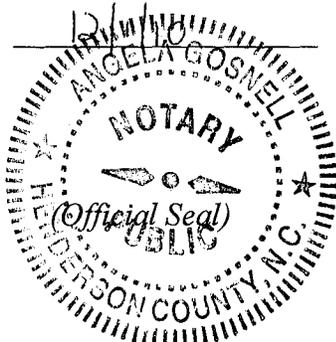
Jones Commercial Properties
By: *Gary Jones*
Gary Jones
Sole Proprietor

NORTH CAROLINA
HENDERSON COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Gary Jones.

Date: 12/1/10

Angela Gosnell
Official Signature of Notary



Notary's printed or typed name, Notary Public
My commission expires: 02-19-12

APPROVAL AND CERTIFICATION OF NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

The foregoing Notice of Brownfields Property is hereby approved and certified.

North Carolina Department of Environment and Natural Resources

By: *Linda M. Culpepper*
Linda M. Culpepper
Deputy Director, Division of Waste Management

November 23, 2010
Date

β 1446 # 072

CERTIFICATION OF REGISTER OF DEEDS

The foregoing documentary component of the Notice of Brownfields Property, and the associated plat, are certified to be duly recorded at the date and time, and in the Books and Pages, shown on the first page hereof.

Register of Deeds for Henderson County

By:

Name typed or printed: _____ Date _____
Deputy/Assistant Register of Deeds

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Jones Commercial Properties

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Former Baxter Oil Site
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	619 Spartanburg Highway
Brownfields Project # 09036-05-45)	Hendersonville, Henderson County

I. INTRODUCTION

This Brownfields Agreement ("Agreement") is entered into by the North Carolina Department of Environment and Natural Resources ("DENR") and Jones Commercial Properties (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the "Act"), and constitutes an order within the meaning of N.C.G.S. § 130A-22.

Jones Commercial Properties is a real estate company which is a sole proprietorship owned by Mr. Gary Jones of Hendersonville, North Carolina. Its office is located at 1111-B Asheville Highway, Hendersonville, North Carolina 28791. This Agreement addresses Jones Commercial Properties' plan to sell property in Hendersonville, North Carolina for retail, office and, with prior written DENR approval, other commercial redevelopment, with associated parking. A map showing the location of the property is attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the potential liability of Jones Commercial Properties for contaminants at the property which is the subject of this Agreement.

The Parties agree that Jones Commercial Properties' entry into this Agreement, and the actions undertaken by Jones Commercial Properties in accordance with the Agreement, do not constitute an admission of any liability by Jones Commercial Properties.

The resolution of this potential liability, in exchange for the benefit Jones Commercial Properties, shall provide to DENR, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Act or elsewhere in N.C.G.S. 130A, Article 9 shall have the meaning assigned to them in those statutory provisions, including any amendments thereto.

1. "Property" shall mean the Brownfields Property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean Jones Commercial Properties.

III. STATEMENT OF FACTS

3. The Property comprises 0.21 acres and is located at 619 Spartanburg Highway, Hendersonville, Henderson County, North Carolina. Prospective Developer has committed itself to redevelopment of the Property for no uses other than retail, office and, with prior written DENR approval, other commercial uses, along with associated parking.

4. The Property is bordered to the north by Spartanburg Highway, beyond which are vacant lots set in a commercial area; to the south by a former miniature golf course, Joel Wright Drive and multi-tenant offices and buildings housing retail businesses; to the east by an Ingles grocery store and its access drives and parking lot; and to the west by a vacant commercial property and various commercial/retail businesses.

5. Prospective Developer obtained or commissioned the following reports, referred to hereinafter as the "Environmental Reports," regarding the Property:

Title	Prepared by	Date of Report
Report of Phase I Environmental Site Assessment	Rindt-McDuff Associates, Inc.	December 2005
Preliminary Investigation Report	Rindt-McDuff Associates, Inc.	August 2006
Additional Phase II Environmental Assessment	Rindt-McDuff Associates, Inc.	April 2007
Aggressive Fluid Vapor Recovery Event Report	Martin & Slagle Geosciences, PA	July 2007
Brownfields Additional Environmental Assessment Report	Martin & Slagle Geosciences, PA	January 2008
Brownfields Site Remediation Report	Martin & Slagle Geosciences, PA	August 2010

6. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to use and ownership of the Property:

- a. The site has been occupied since 1970, when "Baxter Oil" opened its bulk fuel oil facility there. It operated on the Property until 1975.
- b. From 1981 to 1987, a restaurant operated on the Property was used.
- c. From 1987 to 1999, the Property was home to a video rental store and the office for the adjacent miniature golf course.
- d. "The Pool Source" operated at the Property from 1999 until 2004.
- e. On February 22, 2006, Prospective Developer purchased the property.
- f. In 2006, Prospective Developer upgraded the Property's building and began leasing it to the "Curves" exercise franchise, which no longer operates there.

7. On information and belief, a spill from above-ground oil storage tanks on the Property occurred during Baxter Oil's 1970-75 tenure there. In August 2005, DENR's Aquifer Protection Section assigned a groundwater incident number (87432) to the site.

8. Under the direction of DENR's Brownfields Program, Prospective Developer conducted aggressive fluid vapor recovery at the Property on June 13-14, 2007. It involved removing free product via monitoring well "MW-2." A vacuum truck recovered 71 gallons of contaminated groundwater and disposed of it as non-hazardous waste in accordance with applicable regulations.

9. With the approval of DENR's Brownfields Program, in March of 2010 Prospective Developer removed, and disposed of in accordance with applicable regulations, 526.34 tons of contaminated soil from an area of the Property 42 feet by 36 feet by 7 feet. Due to its location in the subject area, monitoring well "MW-2" was properly abandoned in connection with the soil removal. Its replacement was installed on September 16, 2010 and is shown on the plat component of the Notice referenced in paragraph 20 below.

10. The most recent environmental sampling at the Property reported in the Environmental Reports occurred in April, 2010. The following tables set forth, for contaminants present at the Property above unrestricted use standards and/or screening levels, the maximum concentration found at each sample location and the applicable standard:

a. Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the unrestricted use standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (January 1, 2010 version):

Groundwater Contaminant	Sample Location	Date of Most Recent	Most Recent Concentration	Unrestricted Use Std. (for
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		Sampling	above Unrestricted Use Std. (for reference only) (µg/L)	reference only) ¹ (µg/L)
Benzene	MW-1	11/23/2009	11	1.0
	MW-2	11/23/2009	770	
	MW-4	11/23/2009	1.2	
n-Butylbenzene	MW-2	11/23/2009	1.8	DL*
	MW-4	11/23/2009	1.4	
Sec-Butylbenzene	MW-4	11/23/2009	2.0	DL*
Isopropyl ether (IPE)	MW-2	11/23/2009	5.8	DL*
Naphthalene	MW-2	11/23/2009	97	6
	MW-4	11/23/2009	9.9	
n-Propyl benzene	MW-2	11/23/2009	9.1	DL*
	MW-4	11/23/2009	2.5	
2-Methylnaphthalene	MW-2	11/23/2009	55.0	30
C5-C8 Aliphatics	MW-2	11/23/2009	1400	400
C9-C22 Aromatics	MW-2	11/23/2009	1280	200

* "Detection Limit," which is the standard where no numerical one exists
¹would apply if Property's use were not restricted

b. Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the unrestricted use standards for which are derived using the Guidelines for the Investigation and Remediation from Non-UST Petroleum Releases (July 1, 2007 version) of DENR's Underground Storage Tank Section:

Soil Contaminant	Sample Location	Depth (ft)	Date of Max. Concentration Sampling	Maximum Concentration (mg/kg)	Unrestricted Use Std. (for reference only) ¹ (mg/kg)
C9-C18 Aliphatics (total)	SW-1	4.0	4/23/2010	2230	1500
	SW-2	4.0	4/23/2010	2430	
	EW-1	4.0	4/23/2010	1700	
	EW-3	4.0	4/23/2010	1641	

C9-C22 Aromatics (total)	SW-1	4.0	4/23/2010	1220	469
	SW-2	4.0	4/23/2010	1690	
	EW-1	4.0	4/23/2010	1070	
	EW-3	4.0	4/23/2010	1080	
	EW-4	4.0	4/23/2010	720	
	SSTS	4.0	4/23/2010	990	

would apply if Property's use were not restricted

11. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Letter of Intent dated July 5, 2005, and purchasing the Property on February 22, 2006.

12. Prospective Developer has provided DENR with information, or sworn certifications regarding that information on which DENR relies for purposes of this Agreement, sufficient to demonstrate that:

a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);

b. as a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;

d. Prospective Developer has or can obtain the financial, managerial and

technical means to fully implement this Agreement and assure the safe use of the Property; and

e. Prospective Developer has complied with all applicable procedural requirements.

13. Prospective Developer has paid a \$2,000 fee to the Program in satisfaction of a Prospective Developer's obligations under N.C.G.S. 130A-310.39(a).

IV. BENEFIT TO COMMUNITY

14. The redevelopment of the Property proposed herein would provide the following public benefits:

- a. an increase in the Property's productivity;
- b. a spur to additional community redevelopment, through improved neighborhood appearance and otherwise;
- c. an increase in jobs;
- d. tax revenue for affected jurisdictions;
- e. additional retail/office space for the area; and
- f. "smart growth" through use of land in an already developed area, which avoids development of land beyond the urban fringe ("greenfields").

V. WORK TO BE PERFORMED

15. By way of the Notice of Brownfields Property referenced below in paragraph 19, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. All references to DENR shall be understood to include any successor in function.

a. No use may be made of the Property other than for retail, office, other commercial uses if DENR issues prior written approval, and associated parking. For purposes of this restriction, the following definitions apply:

i. "Retail" refers to the sale of goods directly to the consumer.

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

iii. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

iv. "Parking" refers to the temporary accommodation of motor vehicles in a designated area designed for same.

b. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular buildings, no existing building on the Property may be used, nor any new building constructed, until a vapor intrusion control system has been approved in writing by DENR, as designed and as installed.

c. Unless DENR makes an advance written exception in a particular instance, soil in the area designated "Area of Soil Contamination" on the plat component of the Notice referenced in paragraph 20 below, and soil underlying paved and other impervious surfaces and buildings at the Property, may not be disturbed below a depth of three (3) feet unless and until DENR approves in writing a plan with a schedule, and implementation of said plan, that requires:

i. sampling each excavation to determine whether soil contaminated in excess of the most recent Protection of Groundwater Soil Remediation Goals of DENR's Inactive Hazardous Sites Branch, or Maximum Soil Contaminant Concentrations of DENR's

Underground Storage Tank Section, is present; and, if the sampling reflects such contamination,

ii.. a risk assessment for the area subject to the plan, completed and certified by a North Carolina-licensed professional engineer whose work is principally environmental, that evaluates whether, without remediation or measures to manage the contamination, the area will be suitable for the uses specified in subparagraph 15.a. above and public health and the environment will be fully protected; and, if said assessment reaches a negative conclusion regarding that matter, or in lieu of the assessment,

iii. remediation of the contamination or measures to manage it by means approved in writing by DENR in advance.

d. No use of the Property may occur after the 30th day following recordation of the Notice referenced below in paragraph 20, unless DENR receives by that date a written plan for groundwater monitoring at the Property through sampling and analysis, and Property use shall terminate unless any deficiencies DENR identifies in the plan are corrected to DENR's satisfaction within time periods established by DENR.

i. At a minimum, the groundwater monitoring plan shall require:

A. sampling pursuant to the plan of the wells designated "MW-1" and "MW-2" on the plat component of the Notice referenced in paragraph 20 below;

B. sampling of the designated wells for volatile organic compounds and Massachusetts Department of Environmental Protection ("MDEP") volatile petroleum hydrocarbons ("VPH") and extractable petroleum hydrocarbons ("EPH") at least once each year, during the same seven-day period;

C. analysis of the samples by the most current version of U.S.

Environmental Protection Agency Method 8260 and the most current MDEP protocols for VPH and EPH;

D. provision of the sampling analyses to DENR in writing within 30 days after sampling; and

E. replacement of any of the designated wells if DENR determines it warranted due to redevelopment activities.

ii. When the plan requires sampling, analysis, reporting or replacement of a well installed pursuant to the plan, the then owner of the affected portion(s) of the 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 detected volatile organic compounds, and MDEP VPH and EPH, declining for a minimum of two (2) consecutive years.

e. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the 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.

f. No mining may be conducted on or under the Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

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

h. None of the contaminants known to be present in the environmental media at the Property, including those listed in paragraph 10 of this Agreement, may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

i. The Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

j. The Property may not be used as a playground, or for child care centers or schools.

k. The owner of any portion of the Property where any existing or later DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR.

l. No party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Property.

m. During January of each year after the year in which the Notice referenced below in paragraph 20 is recorded, the owner of any part of the Property as of January 1st of that

year shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Henderson County Register of Deeds office and that the land use restrictions are being complied with, and stating:

i. the name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

ii. the transferee’s name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address, if said owner transferred any part of the Property during the previous calendar year.

iii. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 15.b and c. above are performing as designed, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

16. The desired result of the above-referenced land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

17. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are the Guidelines of the Inactive Hazardous Sites Branch of DENR’s Superfund Section, as embodied in their most current version.

18. The consequences of achieving or not achieving the desired results will be that the uses to which the Property is put are or are not suitable for the Property while fully protecting

public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

19. In addition to providing access to the Property pursuant to subparagraph 15.1. above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective Developer owns the Property, DENR shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DENR at the Property. Notwithstanding any provision of this Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

20. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, inter alia, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Property. Pursuant to N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the Henderson County, North Carolina register of deeds' office. Within three (3) days thereafter, Prospective Developer shall furnish DENR a copy of the documentary component of the Notice containing a certification by the register of deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

21. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Henderson County land records, Book ____, Page ____." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

22. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement 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 (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound & Transfer/Assignment Notice) of this Agreement.

VII. DUE CARE/COOPERATION

23. The Prospective Developer shall exercise due care at the Property with respect to regulated substances and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S.

130A-310.1 and 143-215.84, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

VIII. CERTIFICATION

24. By entering into this agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Letter of Intent dated July 5, 2005 by which it applied for this Agreement. That use is retail, office, other commercial uses if DENR issues prior written approval, and associated parking. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any regulated substances at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

IX. DENR'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

25. Unless any of the following apply, Prospective Developer shall not be liable to DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement:

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such

risk of harm to public health or the environment.

c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.

d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the Property or (ii) the failure of remediation to mitigate risks to the extent

required to make the Property fully protective of public health and the environment as planned in this Agreement.

g. The Department obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

26. Except as may be provided herein, DENR reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act, including those regarding petroleum underground storage tanks pursuant to Part 2A, Article 21A of Chapter 143 of the General Statutes.

27. This Agreement does not waive any applicable requirement to obtain a permit, license or certification, or to comply with any and all other applicable law, including the North Carolina Environmental Policy Act, N.C.G.S. § 113A-1, et seq.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

28. In consideration of DENR's Covenant Not To Sue in Section IX of this Agreement and in recognition of the absolute State immunity provided in N.C.G.S. § 130A-310.37(b), the Prospective Developer hereby covenants not to sue and not to assert any claims or causes of action against DENR, its authorized officers, employees, or representatives with respect to any action implementing the Act, including negotiating, entering, monitoring or enforcing this Agreement or the above-referenced Notice of Brownfields Property.

XI. PARTIES BOUND & TRANSFER/ASSIGNMENT NOTICE

29. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

30. No later than 14 days prior to any transfer or assignment by Prospective Developer of any interest in the Property, Prospective Developer shall provide in writing to DENR the transferee or assignee's name, mailing address, telephone and facsimile numbers, and e-mail address.

XII. DISCLAIMER

31. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

32. Except for the Land Use Restrictions set forth in paragraph 15 above and N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

XIII. DOCUMENT RETENTION

33. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to

operations at the Property, for ten years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR.

XIV. PAYMENT OF ENFORCEMENT COSTS

34. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

35. Unless otherwise required by DENR or a Party notifies the other Party in writing of a change in contact information, all notices and submissions pursuant to this Agreement shall be sent by prepaid first class U.S. mail, as follows:

a. for DENR:

Tracy L. Wahl
N.C. Division of Waste Management
Brownfields Program
401 Oberlin Road, Suite 150
Raleigh, NC 27605

b. for Prospective Developer:

Mr. Gary Jones
Jones Commercial Properties
1111-B Asheville Highway
Hendersonville, NC 28791

Prospective Developer shall also send any and all notices and submissions this Agreement

requires it to send to the chief public health and environmental officials of the county where the Property lies. Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

XVI. EFFECTIVE DATE

36. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving it, signed, from DENR. Prospective Developer shall sign the Agreement within seven (7) days following such receipt.

XVII. TERMINATION OF CERTAIN PROVISIONS

37. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the 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).

XVIII. CONTRIBUTION PROTECTION

38. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DENR or any other person in relation to the Property.

39. The Prospective Developer agrees that, with respect to any suit or claim for

contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

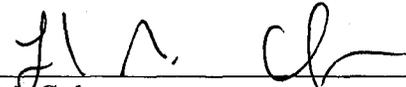
40. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify DENR in writing within 10 days of service of the complaint on it.

XIX. PUBLIC COMMENT

41. This Agreement shall be subject to a public comment period of at least 30 days starting the day after publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in the North Carolina Register, or the day after publication of the same in a newspaper of general circulation serving the area in which the Property is located, whichever occurs later. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By:  November 23, 2010
Linda M. Culpepper Date
Deputy Director, Division of Waste Management

IT IS SO AGREED:

Jones Commercial Properties

By:  12-1-2010
Gary Jones Date
Sole Proprietor

- NOTES**
1. REFERENCES - BROW FIELD MAP, PAGE 473
PLAT COUNTY, N.C. 2001
 2. AREA DETERMINED BY GEOMETRIC CONSTRUCTION
 3. MAP IS FOR INFORMATION
 4. NEIGHBORLY PROPERTY IS SHOWN FROM PUBLIC RECORDS UNLESS OTHERWISE NOTED
 5. NEIGHBOR SERVICES
ELECTRIC - POWER CO-1
GAS - POWER CO-1
 6. THIS MAP IS NOT GUARANTEED AND MAY NOT BE USED FOR CONSTRUCTION OR FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN APPROVAL OF THE SURVEYOR. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE DATA PROVIDED FOR THE USE OF THE PUBLIC RECORDS.
 7. THE BOUNDARY OF THE PROPERTY AND THE LOCATION OF ALL UTILITIES ARE APPROXIMATE UNLESS OTHERWISE NOTED FROM THE DATA AVAILABLE AT THE TIME OF PLAC.

- LEGEND**
- L.P. SET - IRON PIPE SET
 - L.I.P. - EXISTING IRON PIPE
 - L.I.S. - EXISTING IRON SCALE
 - L.C.M. - EXISTING CONCRETE MARKER
 - P.C. - NAIL MARKER
 - X-X- - APPROXIMATE FORCE LOCATION
 - Q - CENTER LINE (ROAD, STREET, STREAM, ETC.)
 - W/S - WALKWAY
 - P/P - POWER POLE AND/OR TELEPHONE POLE
 - R/R - RAILROAD
 - R - RADII
 - L - LENGTH OF CURVE
 - D.I. - DROP INLET
 - R.O.M. - RIGHT OF WAY
 - ⊙ - MONITORING WELL - MW
 - S-S- - APPROXIMATE SEWER MAIN LOCATION
 - - - - - APPROXIMATE RIGHT OF LOCATION
 - - - - - APPROXIMATE UNSURVEYED BOUNDARY
 - SURVEYED BOUNDARY

RES - RAILROAD SPIKE
 Ⓢ 5575 Southside Soil Test Sample
 STATION WASH NORTHING 178229.336; EASTING 295190.115
 COMBINED FACTOR 0.9998730
 CORNER COOR: X=698769.50 Y=504470.41

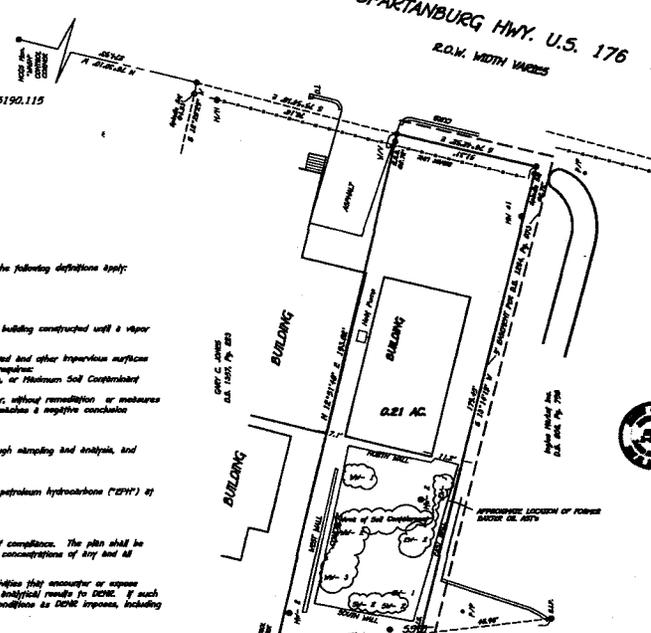
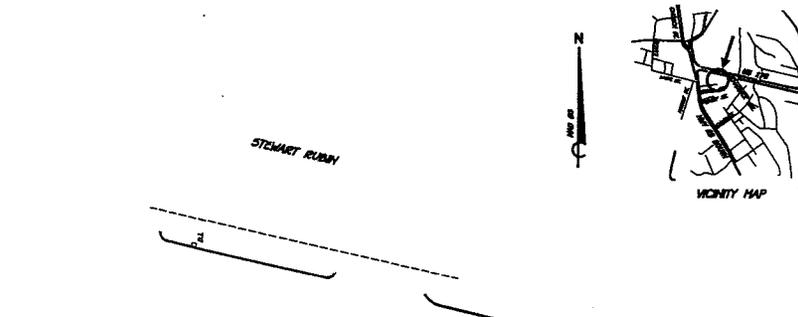
Table 1
 Table 1.1
 Table 1.2

Corner	Symbol	Depth	Material	Unrecovered	Unrecovered
Corner	Symbol	Depth	Material	Unrecovered	Unrecovered
1	W	1200	W	1200	1200
2	W	1200	W	1200	1200
3	W	1200	W	1200	1200
4	W	1200	W	1200	1200
5	W	1200	W	1200	1200
6	W	1200	W	1200	1200
7	W	1200	W	1200	1200
8	W	1200	W	1200	1200
9	W	1200	W	1200	1200
10	W	1200	W	1200	1200
11	W	1200	W	1200	1200
12	W	1200	W	1200	1200
13	W	1200	W	1200	1200
14	W	1200	W	1200	1200
15	W	1200	W	1200	1200
16	W	1200	W	1200	1200
17	W	1200	W	1200	1200
18	W	1200	W	1200	1200
19	W	1200	W	1200	1200
20	W	1200	W	1200	1200

Table 2
 Table 2.1
 Table 2.2

Corner	Symbol	Depth	Material	Unrecovered	Unrecovered
1	W	1200	W	1200	1200
2	W	1200	W	1200	1200
3	W	1200	W	1200	1200
4	W	1200	W	1200	1200
5	W	1200	W	1200	1200
6	W	1200	W	1200	1200
7	W	1200	W	1200	1200
8	W	1200	W	1200	1200
9	W	1200	W	1200	1200
10	W	1200	W	1200	1200
11	W	1200	W	1200	1200
12	W	1200	W	1200	1200
13	W	1200	W	1200	1200
14	W	1200	W	1200	1200
15	W	1200	W	1200	1200
16	W	1200	W	1200	1200
17	W	1200	W	1200	1200
18	W	1200	W	1200	1200
19	W	1200	W	1200	1200
20	W	1200	W	1200	1200

1. No use may be made of the Property other than for retail office, after commercial use if DDMC issues prior written approval, and associated parking. For purposes of this restriction, the following definitions apply:
 a. "Retail" refers to the sale of goods directly to the consumer.
 b. "Office" refers to the rendering of business or professional services.
 c. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.
 d. "Parking" refers to the temporary accommodation of motor vehicles in a designated area designed for same.
2. Unless compliance with this Land Use Restriction is waived in writing by DDMC in advance in regard to particular buildings, no existing building on the Property may be used, nor any new building constructed until a vapor mitigation control system has been approved in writing by DDMC, as detailed and as follows:
 a. Unless DDMC makes an advance written exception in a particular instance, all of the designated "Area of Soil Contamination" on the plat component of this Notice, and all underlying plenum and other impervious surfaces and buildings of the Property, may not be occupied below a depth of five (5) feet unless and until DDMC approves in writing a plan with a schedule and implementation of said plan, that requires:
 A. Sampling such excavation to determine whether soil contamination in excess of the most recent Protection of Groundwater and Remediation Goals of DDMC's Inactive Hazardous Site Branch, or Maximum Soil Contaminant Concentrations of DDMC's Underground Storage Tank Section, is present; and if the sampling reflects such contamination.
 B. A soil assessment for the area subject to the plan, completed and certified by a North Carolina-licensed professional engineer whose work is principally environmental, that evaluates whether, without remediation or measures to mitigate the contamination, the area will be suitable for the uses specified in subparagraph 1 above and public health and the environment will be fully protected; and, if said assessment reflects a negative conclusion regarding the matter; or in lieu of the assessment.
 C. Remediation of the contamination or measures to mitigate it by means approved in writing by DDMC in advance.
3. No use of the Property may occur after the 30th day following recording of this Notice, unless DDMC receives by that date a written plan for groundwater monitoring at the property through sampling and analysis, and the Property use shall terminate unless any deficiency DDMC identifies in the plan are corrected to DDMC's satisfaction within time periods established by DDMC.
 A. If a minimum, the groundwater monitoring plan shall require:
 1. Sampling pursuant to the plan of the water designated "Tier 1" AND "Tier 2" on the plat component of this Notice;
 2. Sampling of the designated wells for volatile organic compounds and Massachusetts Department of Environmental Protection ("MDP") volatile petroleum hydrocarbons ("VPH") and extractable petroleum hydrocarbons ("EPH") at least once each year, during the same on-site period.
 B. Analysis of the samples by the most current version of U.S. Environmental Protection Agency Method 8260 and the most current NCEP protocols for VPH and EPH.
 C. Provision of the sampling analysis to DDMC in writing within 30 days after sampling; and
 D. Submission of any of the data obtained in writing to DDMC in any form prepared for such activities and retention of the analytical results to DDMC. If such results disclose to DDMC contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the prior written approval of DDMC on such conditions as DDMC imposes, including at a minimum compliance with plans and procedures, approved pursuant to the applicable law, to protect public health and the environment during the proposed activities.
4. No mining may be conducted on or under the Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.
5. No buildings may be constructed on the Property unless they are, as determined in writing by DDMC, vested in compliance with applicable building codes.
6. None of the covenants known to be present in the environmental deeds of the Property, including those listed in Tables 1 and 2 of this Notice, may be used or stored at the Property without the prior written approval of DDMC, except to the minimum necessary for cleaning and other routine housekeeping activities.
7. The Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DDMC.
8. The Property may not be used as a playground, or for child care centers or schools.
9. The owner of any portion of Property whose any existing or later DDMC-approved monitoring well is damaged shall be responsible for repair of any such well to DDMC's written satisfaction and within a time period acceptable to DDMC.
10. No party conducting environmental assessment or remediation of the Property at the direction of, or pursuant to a permit or order issued by, DDMC may be denied access to the Property for purposes of conducting such assessment or remediation activities or reasonable efforts to maintain compliance with applicable laws and regulations of DDMC in any form prepared for such activities and retention of the analytical results to DDMC. If such results disclose to DDMC contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the prior written approval of DDMC on such conditions as DDMC imposes, including at a minimum compliance with plans and procedures, approved pursuant to the applicable law, to protect public health and the environment during the proposed activities.
11. The owner, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LLUU if said owner acquired any part of the Property during the previous calendar year; and
 A. The predecessor's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LLUU if said owner acquired any part of the Property during the previous calendar year; and
 B. Whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 2 and 3 above are performing as designed, and whether the use of the ground floor of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.
 For purposes of the Land Use Restriction set forth above, the DDMC point of contact shall be the DDMC official referenced in paragraph 32.A. of DDMC A herein, at the address stated therein.



PLAT NUMBER 10117
 BY ORDER OF HENDERSON COUNTY BOARD OF COUNTY COMMISSIONERS
 I, JAMES H. JONES, County Surveyor, do hereby certify that this plat was prepared in accordance with the provisions of Chapter 160A, Article 1, of the General Statutes of North Carolina, and that the information on which it is based is true and correct to the best of my knowledge and belief.
 JAMES H. JONES
 County Surveyor
 Henderson County, N.C.

For the purposes of N.C.G.S. 160A-101, 160A-102
 I, JAMES H. JONES, County Surveyor, do hereby certify that this plat was prepared in accordance with the provisions of Chapter 160A, Article 1, of the General Statutes of North Carolina, and that the information on which it is based is true and correct to the best of my knowledge and belief.
 JAMES H. JONES
 County Surveyor
 Henderson County, N.C.

I, Gary C. Jones, P.E., certify that this plat was prepared in accordance with the provisions of Chapter 160A, Article 1, of the General Statutes of North Carolina, and that the information on which it is based is true and correct to the best of my knowledge and belief.
 GARY C. JONES
 Registered Professional Engineer
 License No. 16-1693
 State of North Carolina
 For the purposes of the Land Use Restriction set forth above, the DDMC point of contact shall be the DDMC official referenced in paragraph 32.A. of DDMC A herein, at the address stated therein.

CORNER COOR: X=698769.50 Y=504470.41

EXHIBIT B to the Notice of Brownfields Property

SURVEY PLAT

MAP OF SURVEY made for OWNER
GARY C. JONES
 and wife,
CINDY C. JONES
 1111 ASHVILLE HWY
 HENDERSONVILLE, N.C. 28791
 Property Address:
 619 Spartanburg Highway
 HENDERSONVILLE, N.C. 28792



JOB NO. 10-117 (REVISED)

HENDERSONVILLE TWP.		HENDERSON COUNTY, N.C.	
LAUGHTER, AUSTIN AND ASSOCIATES, P.A. 131 FOURTH AVENUE EAST HENDERSONVILLE, NORTH CAROLINA 28792 (828) 692-9089			
CREW CHIEF	JRL	CHECKED BY	DATE
DRAWN BY	TPW	SCALE	1" = 30 FT.
CURS. FILE	05060	REVISED FILE	10117(REVISED)
FLOOD MAP PANEL NUMBER	370128 0004 B	TAX PARCEL NUMBER	9568-84-7540

This MAP is NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL Government Agency for compliance with ANY APPLICABLE Land Development Regulations.

AL1446 P094

B1446 P 695

Exhibit C
Legal Description
Baxter Oil

BEGINNING AT A POINT IN THE SOUTH MARGIN OF THE RIGHT OF WAY OF US 176, SAID POINT BEING LOCATED THE FOLLOWING TWO CALLS SOUTH 75 DEGREES 54 MINUTES 18 SECONDS EAST, 76.16 FEET AND NORTH 76 DEGREES 30 MINUTES 10 SECONDS WEST, 274.93 FEET FROM A NCGS MONUMENT NAMED "**WASH**"; THENCE WITH THE SOUTH MARGIN OF THE RIGHT OF WAY OF US 176 SOUTH 76 DEGREES 42 MINUTES 52 SECONDS EAST, 51.31 FEET; THENCE, LEAVING THE RIGHT OF WAY OF US 176 AND WITH THE WEST MARGIN OF FIVE FEET WIDE EASEMENT, REFERENCE D.B. 1264, PAGE 073, SOUTH 13 DEGREES 14 MINUTES 15 SECONDS WEST, 175.45 FEET TO AN IRON STAKE; THENCE SOUTH 83 DEGREES 07 MINUTES 43 SECONDS WEST, 53.29 FEET TO AN EXISTING IRON PIPE; THENCE NORTH 12 DEGREES 51 MINUTES 48 SECONDS EAST 193.82 FEET TO THE **BEGINNING. POINT**, CONTAINING 0.21 ACRES MORE OR LESS.