

Brownfields Project #: 09044-05-60

Brownfields Property: Willard Lead Facility, 101 New Bern Street

Property Owner (In whole or part): Fountains at NewBern Station, LLC

LAND USE RESTRICTIONS (“LUR”) UPDATE

LUR 1: No use may be made of the Brownfields Property other than for high-density residential, retail and, with the Department of Environment and Natural Resources’ (“DENR”) prior written approval, other commercial purposes. For purposes of this Land Use Restriction, the following definitions apply:



- a. “High-density residential” refers to permanent dwellings such as condominiums, apartments, group homes, dormitories or boarding houses where residential units are attached to each other with common walls and any property outside of dwelling structures is not owned by any particular resident but, absent a written arrangement to the contrary, is usable by all residents.
- b. “Commercial” refers to an enterprise carried on for profit by the owner, lessee or licensee.
- c. “Retail” refers to an activity, the principal use or purpose of which is the sale of goods, products or merchandise directly to the consumer.

In compliance X Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 2: Unless compliance with this Land Use Restriction is waived in writing by DENR in advance, no use of the Brownfields Property may occur prior to demolition of all buildings on the Brownfields Property depicted on the plat component of the Notice of Brownfields Property (“Notice”), in accordance with applicable legal requirements, including without limitation those administered by the Lead and Asbestos Abatement Program of DENR’s Division of Public Health. During building demolition activities, the asphalt parking lot depicted on the plat component of the Notice, and the existing building foundations, may not be disturbed without DENR’s prior written approval.

In compliance X Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 3: No building may be constructed on the Brownfields Property until DENR has been consulted regarding the proximity of the planned building to the Brownfields Property's volatile contaminant plume. If DENR determines that the footprint of a building proposed to be constructed on the Brownfields Property would fall within one hundred (100) feet of said plume, it may not be constructed without a vapor barrier system and/or mechanical or passive vapor barrier mitigation system, or other effective vapor mitigation system approved by DENR. Within thirty (30) days following installation of the 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. With DENR's prior written approval, additional investigation activities including, without limitation, soil gas samples, performed to DENR's written satisfaction, may be conducted, and installation of a mitigation system possibly excused, so long as the proponent makes a written commitment to install a mitigation system if DENR so requires based on review of a report of the investigation activities.

In compliance Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 4: Underground water at the Brownfields Property may not be used for any purpose without the prior written approval of DENR.

In compliance Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 5: Neither landscaping nor swimming pools may be placed on the Brownfields Property unless five feet of clean fill, or another cover approved in writing in advance by DENR, are installed on the area(s) in question, to DENR's written satisfaction and as delineated to DENR's written satisfaction as "Approved for Landscaping or Swimming Pools" areas on the plat component of this Notice, and only for so long as said areas are maintained to DENR's satisfaction and remain undisturbed absent DENR's written approval.

In compliance Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 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.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 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.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 8: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in tables (2) a., b. and c. of the Notice, 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 X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 9: The Brownfields Property may not be used as a playground, or for child care centers or schools without the prior written approval of DENR.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 10: The Brownfields Property may not be used for kennels or horse-riding, nor may it be used for private animal pens except in areas where five feet of clean fill, or another cover approved in writing in advance by DENR, are installed to DENR's written satisfaction, delineated to DENR's written satisfaction as "Approved for Private Animal Pen" areas on the plat component of the Notice, maintained, and left undisturbed other

than through normal private animal pen use. This provision does not preclude legal household pets kept in compliance with law.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 11: 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.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 12: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

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 X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 14: Soil, landscaping and contours at the Property may not be disturbed without the prior written approval of DENR, except for mowing and pruning of above-ground vegetation.

In compliance X Out of compliance _____

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 15: The owner(s) of each portion of the Property containing material that functions as a cap, including without limitation asphalt parking areas, areas covered by clean fill and building foundations, shall be responsible for maintaining said material. Other than post-demolition disturbance of the building foundations referenced in Land Use Restriction 2 above, no such material may be disturbed without prior sampling and analysis to DENR's written satisfaction, and submittal of the analytical results to DENR. If such results disclose contamination in excess of the standards DENR determines to be applicable, the material may not be disturbed 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 activities that would disturb the material.

In compliance Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

LUR 16: 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:

- a. the Notice remains recorded at the Mecklenburg County Register of Deeds office;
- b. the Land Use Restrictions are being complied with; and
- c. any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 3 above are performing as designed, and the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have not changed (unless they have changed, in which case a certified update of uses shall be submitted).
- d. any clean fill or other cover installed pursuant to Land Use Restrictions 5 or 10 above, and any material referenced in Land Use Restriction 15 above, is being properly maintained.

In compliance Out of compliance

Remarks: Fountains at NewBern Station, LLC makes this certification upon its best information and belief after reasonable investigation. Fountains at NewBern Station, LLC has no knowledge of any violations of this land use restriction.

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

This Land Use Restrictions Update is certified by Fountains at NewBern Station, LLC, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: Fountains at NewBern Station, LLC

In the case of all owners:

Date: 1/31/13

FOUNTAINS AT NEWBERN STATION, LLC
By: Proffitt Dixon Partners, LLC, its manager

By: [Signature]
Name typed or printed: Stuart Proffitt
Manager

NORTH CAROLINA
Mecklenburg COUNTY

I, Shelley Rice, a Notary Public of the county and state aforesaid, certify that Stuart Proffitt personally came before me this day and acknowledged that he is a manager of Proffitt Dixon Partners, LLC, the manager of Fountains at NewBern Station, LLC, a North Carolina limited liability company, 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.

WITNESS my hand and official stamp or seal, this 31 day of January, 2013.

[Signature]
Name typed or printed: Shelley Rice
Notary Public

My Commission expires: 6/30/16

[Stamp/Seal]

