

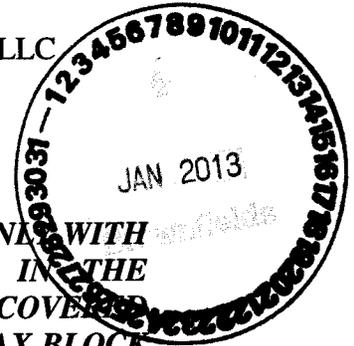
**Brownfields Project #:** 09046-05-34

**Brownfields Property:** Piedmont Triad Research Park Building 91, 401 East Fifth Street, Winston-Salem, NC (Tract 3 – Tax Block 19, Lot 301)

**Property Owner (In whole or part):** Wexford Winston-Salem Building 91, LLC

**LAND USE RESTRICTIONS (“LUR”) UPDATE**

***NOTE: THIS LAND USE RESTRICTIONS UPDATE IS SUBMITTED ONLY WITH RESPECT TO A PORTION OF THE PROPERTY INCLUDED IN THE BROWNFIELDS PROJECT REFERENCED ABOVE. THE PROPERTY COVERED BY THIS LAND USE RESTRICTIONS UPDATE IS IDENTIFIED AS TAX BLOCK 19, LOT 301, AND IS REFERRED TO AS “TRACT 3” IN THE BROWNFIELDS AGREEMENT, AND IS DESCRIBED ON EXHIBIT A HERETO (THE “PROPERTY”). THE STATEMENTS AND CERTIFICATIONS MADE HEREIN ARE MADE ONLY WITH RESPECT TO SUCH PORTION OF THE BROWNFIELDS PROPERTY. THE UNDERSIGNED OWNER MAKES NO STATEMENTS OR CERTIFICATIONS WITH REGARD TO ANY BROWNFIELDS PROPERTY OTHER THAN THE PROPERTY DESCRIBED ON EXHIBIT A.***



LUR 1: Without the Department of Environment and Natural Resources’ (“DENR’s”) advance written approval, no use may be made of the Brownfields Property other than for bio-technology research facilities, offices, retail outlets, public open areas, high-density residences, performance/concert halls, hotels, community centers, swimming pools, parking, schools and, if DENR issues prior written approval, any uses not listed above that are allowed by the Master Plan, North District of the Piedmont Triad Research Park, dated April 28, 2008. For purposes of this restriction, the following definitions apply:

- a. “Bio-technology research facilities”: facilities housing critical and exhaustive investigation, experimentation and education in the field of bio-technology, devoted to the discovery of new facts and their correct interpretation, the revision of accepted conclusions, theories or laws in light of newly discovered facts, and the practical applications of such new or revised conclusions, theories or laws.
- b. “Offices”: places where business or professional services are rendered.
- c. “Retail outlets”: businesses that sell goods directly to consumers; the term includes restaurants.
- d. “Public open areas”: golf courses, tennis courts, ball fields, ball courts, playgrounds and other unenclosed recreation sites that are approved in writing by DENR in advance, as well as landscaped or natural areas.

- e. "High-density residences": structural units used as permanent dwellings that are attached to each other with common walls (such as condominiums, apartments, group homes, dormitories or boarding houses) and whose occupants share privileges, and in some cases ownership, regarding property outside said units.
- f. "Performance/concert halls": indoor or outdoor facilities suitable for the presentation of artistic and or musical productions, which facilities may be constructed below the ground surface only with DENR's advance written approval.
- g. "Hotels": buildings containing more than four individual rooms that provide overnight lodging facilities and reservation, cleaning, utilities and on-site management and reception services for paying customers.
- h. "Community centers": structures, with associated public open areas as defined above, that are used for educational, civic, recreational, athletic, or other gatherings and activities that are approved in writing by DENR in advance.
- i. "Swimming pools": indoor or outdoor facilities designed to contain water for swimming and constructed in locations and in conformance with a design approved in writing in advance by DENR. Groundwater from the Brownfields Property shall not be used in swimming pools, and non-municipal water shall only be used in any swimming pool on the Brownfields Property with advance written DENR approval.
- j. "Parking": an area designed and designated for temporary accommodation of motor vehicles above- or below-ground, for a fee or as a service.
- k. "Schools": institutions providing elementary school, middle school, junior high school, high school, collegiate, graduate or post-graduate education, as well as pre-school/child daycare services if the location, layout and design of such services are approved in writing in advance by DENR.

In compliance  X  Out of compliance \_\_\_\_\_

Remarks: The Property has been renovated for use as a Biotechnology research facility with limited retail outlets and is being used as such.

LUR 2: Any soil contamination discovered on the Brownfields Property prior to, during or after redevelopment, as defined by DENR, shall be assessed by an individual who DENR determines is qualified as a Registered Site Manager pursuant to North Carolina Administrative Code, Title 15A, Subchapter 13C, Rule .0304. If DENR determines that additional sampling is necessary, such sampling shall be conducted in a manner and to an extent approved in writing in advance by DENR in general accordance, as determined by DENR, with field procedures and laboratory testing methodologies described in the most current version of Appendices A and B of the Guidelines for Assessment and Cleanup of the Inactive Hazardous Sites Program of DENR's Superfund Section (unless otherwise provided herein), and soil assessment reports satisfactory to DENR shall be submitted to DENR not more than 30 days following completion of such assessment activities.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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LUR 3: Any soil contamination discovered on the Brownfields Property prior to, during or after redevelopment, as defined by DENR, that DENR determines requires remediation based on review of soil assessment reports, shall, prior to when DENR determines redevelopment of the affected portion(s) of the Brownfields Property is complete, be remediated in a manner approved by, and to the written satisfaction of, DENR, in general accordance, as determined by DENR, with field procedures and laboratory testing methodologies described in the most current version of the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, and soil remediation reports satisfactory to DENR shall be submitted to DENR not more than 60 days following completion of such remediation activities.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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LUR 4: Contamination on the Brownfields Property that falls within the jurisdiction of DENR's Underground Storage Tank ("UST") Section shall be addressed in accordance with the applicable provisions of law and the Guidelines of the UST Section, and copies of all reports and correspondence relating to such contamination, including any No Further Action letters issued by the UST Section, shall be submitted to DENR within seven (7) days after the date of the report or correspondence.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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LUR 5: No buildings containing indoor space may be constructed on the Brownfields Property until DENR has been consulted regarding the proximity of the planned building to groundwater contamination at the Brownfields Property. If DENR determines that the footprint of a building proposed to be constructed on the Brownfields Property would fall within 100 feet of such contamination, it may not be constructed without:

- a. a vapor barrier system and sub-slab vapor venting system, or other vapor mitigation system, approved in advance in writing by DENR, within 30 days after installation of which 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; or
- b. an assessment of the risk posed by soil gas to potential users of the building that demonstrates to DENR's written satisfaction that no vapor barrier, sub-slab venting nor mitigation system is required.

In compliance  Out of compliance

Remarks: No new building has been constructed on the Property; however, see the remarks in LUR 6 below with respect to compliance with vapor mitigation requirements in connection with the renovation of the existing building.

LUR 6: No building appearing on the plat component of the Notice of Brownfields Property ("Notice") that contains indoor space may be used until DENR receives a report, sealed by a professional engineer licensed in North Carolina, regarding an inspection in accordance with a plan approved in writing in advance by DENR that evaluates the possibility of vapor entering the building and whether any heating, ventilation and air conditioning ("HVAC") system in the building complies 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. If the inspection finds the possibility of vapor entering the building, the report shall identify the possible entrances, such as sumps, floor drains, foundation cracks, holes in flooring, gaps around pipes and utility lines, and cracks in walls. If DENR determines that the possible entrances need to be addressed, the proponent of the building's use shall submit a plan to DENR for same, which plan shall also require that the building's HVAC system comply with the most current version of the Mechanical Ventilation Section of the Ventilation Chapter of the North Carolina State Building Code (or another standard if DENR has approved one) and, upon DENR's written approval, shall implement the plan to DENR's written satisfaction. If the report determines that any HVAC system in the building is not compliant with the most current version of the Mechanical Ventilation section of the Ventilation chapter of the North Carolina State Building Code, or another standard if DENR has approved one, the proponent of the building's use shall, subject to DENR's written approval, take the actions necessary to achieve compliance.

In compliance  Out of compliance

Remarks: Please see the attached letter dated June 30, 2011 from Kibart Consulting Engineers to Tony Duque of NC DENR. The remedial measures described in the letter have been completed as part of the renovation of the existing building on the Property.

LUR 7: Surface water at the Brownfields Property may not be used for any purpose without the prior written approval of DENR, with the exception of stormwater collected on the Brownfields Property by a stormwater collection and management system approved by DENR.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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LUR 8: 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.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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LUR 9: 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  Out of compliance

Remarks: \_\_\_\_\_  
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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: \_\_\_\_\_  
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LUR 11: No contaminant known to be present in the environmental media at the Brownfields Property, including those listed in the Tables A and B of the Notice, may be used or stored at the Brownfields Property other than in *de minimis* amounts for cleaning and other routine housekeeping activities. Provided, that such contaminants may be used or stored at the Brownfields Property as constituents of materials present in conjunction with the uses permitted by LUR 1 above, if DENR has approved a spill containment plan for such contaminant, and any other measures required by law in connection with the proposed use, storage or disposal are implemented.

In compliance  Out of compliance

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

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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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, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Brownfields Property.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
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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 ("LURU") to DENR providing the name, mailing address, telephone and facsimile numbers, and e-mail address of the party submitting the LURU if said party acquired any part of the Brownfields Property during the previous calendar year; and the transferee's name, mailing address, telephone and facsimile numbers, and e-mail address, if the party submitting the LURU transferred any part of the Brownfields Property during the previous calendar year; and certifying that:

- a. the Notice of Brownfields Property containing these land use restrictions remains recorded at the Forsyth County Register of Deeds office;
- b. these land use restrictions are being complied with;
- c. any vapor barrier and venting systems installed at the Brownfields Property remain intact and are performing as designed (in connection with which certification any measures taken to maintain such performance shall be reported); and
- d. any heating, ventilation and air conditioning systems installed at the Brownfields Property continue to comply with the North Carolina State Building Code (or another standard if DENR has approved one).

Alternatively, the obligations of this LUR 14 may be discharged on behalf of some or all owners by an association that accepts responsibility for same in a notarized instrument satisfactory to DENR. The Brownfields Property's master development association and master development association documents shall suffice as the required instrument and association, respectively. The instrument shall include the name, mailing address, telephone and facsimile numbers, and e-mail address of each owner on whose behalf the LURU is submitted. Failure to provide facsimile numbers and e-mail addresses for particular parties shall be excused if DENR determines that the association has used its best reasonable efforts to obtain same.

In compliance  Out of compliance

Remarks: The Owner makes the following certifications with respect to the Property in response to LUR 14 (a) – (d):

- (a) The notice of Brownsfields Property containing these land use restrictions remains recorded at the Forsyth County Resgister of Deeds office;
- (b) The land use restrictions are being complied with on the Property, subject to the information contained in this Land Use Restrictions Update;
- (c) The vapor barrier and venting systems installed at the Property remain intact and are performing as designed; and

(d) The heating, ventilation and air conditioning systems installed at the Property continue to comply with the North Carolina State Building Code.

*[Remainder of page intentionally left blank]*



EXHIBIT A

Legal Description of Property

TRACT 3:

BEGINNING on an iron pipe marking the intersection of the southern margin of the right-of-way of East Sixth Street and the eastern margin of the right-of-way of North Patterson Avenue and runs thence from said established Beginning Point and with the southern margin of the right-of-way of Sixth Street North  $89^{\circ} 58' 06''$  East 203.11 feet to a railroad spike set at the intersection of the southern margin of the right-of-way of Sixth Street and the western margin of the right-of-way of Vine Street; thence with the western margin of the right-of-way of Vine Street South  $0^{\circ} 54' 06''$  East 475.58 feet to a iron pipe in the northern margin of the right-of-way of East Fifth Street; thence with the northern margin of the right-of-way of East Fifth Street the following two (2) calls: South  $86^{\circ} 46' 16''$  West 106.46 feet to a railroad spike and South  $83^{\circ} 38' 57''$  West 99.24 feet to a iron pipe in the eastern margin of the right-of-way of North Patterson Avenue; thence with the eastern margin of the right-of-way of North Patterson Avenue North  $0^{\circ} 39' 37''$  West 492.42 feet to the point of BEGINNING and being all of Tax Block 19, Lot 301 as shown on survey entitled Exhibit B to Notice of Brownfields Property by Sgroi Land Survey dated September 22, 2008, reference to said survey being made in aid of description. The above-described property is also known locally as 401 East Fifth Street.