

WAKE COUNTY, NC 791
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
09/28/2007 AT 15:25:47

BOOK:012772 PAGE:01872 - 01907

Box #88

Property Owner: Rose Mary Developments LLC
Recorded in Book ____, Page ____
Associated plat recorded in Plat Book ____, 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 28th day of September, 2007 by Rose Mary Developments LLC (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 consists of approximately 2.04 acres at 3101 Hillsborough Street, Raleigh, Wake County, North Carolina. The land was first developed in 1949 as the headquarters of North Carolina Equipment Company, a heavy equipment sales and service business. The Brownfields Property has been idle since December 2001. Groundwater contamination is present on the Brownfields Property, attributable, on information and belief, to past activities on or in the

vicinity of the tract. Prospective Developer intends to redevelop the Brownfields Property for office space and commercial uses, including retail sales.

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 the type and quantity of such substances:

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

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Maximum Concentration above Std. (µg/L)	Standard (µg/L)
Benzene	TW-3	4-10-06	34	1
Naphthalene	TW-2	4-10-06	192	21
2-Methylnaphthalene	TW-2	4-10-06	195	14

b. Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the standards for which are derived using the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section:

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
2-Methyl Naphthalene	TW-3	8 ft.	4-10-06	15.6	11.2

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 office, retail and other commercial purposes. For purposes of this restriction, the following definitions apply:

a. “Office” refers to the conduct or rendering of business or professional services.

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

c. “Commercial” refers to office, retail, wholesale or entertainment uses, plus related contiguous parking areas and service drives.

2. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance, the owner of any portion of the Brownfields Property where any building depicted on the plat component of this Notice is demolished shall be responsible for submittal to DENR, within 30 days after demolition, of documentation sufficient to demonstrate, to DENR’s written satisfaction, that such demolition was conducted 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.

3. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular buildings, no indoor space on the Brownfields Property may be used until mechanical ventilation with outdoor air is provided in compliance with the most current version of the Mechanical Ventilation section of the Ventilation chapter of the North Carolina State Building Code (“Code”), or another standard approved in writing in advance by DENR. If the choice is made to comply with the Code, the indoor space in question may not be used prior to compliance with a. or b. below, depending on the building:

a. This subparagraph applies to buildings on the Brownfields Property at the

time this Notice is recorded, as depicted on the plat component of this Notice:

i. A professional engineer licensed in North Carolina shall submit for written DENR approval a plan for inspection of the mechanical ventilation system of any building desired to be used.

A. The professional engineer shall implement the inspection plan, as approved in writing by DENR; provide DENR a report under seal within 30 days post-implementation that specifies any measures required to bring the mechanical ventilation system into compliance with the Code; and prepare construction documents for permitting regarding said measures.

B. A North Carolina heating, ventilation and air-conditioning contractor shall obtain required permits regarding, and shall implement, said measures.

C. An independent third party certified by the American Association of Balancing Contractors or the National Environmental Balancing Bureau shall perform testing, adjusting and balancing of the mechanical ventilation system when any work by the contractor is complete. Within seven (7) days after its issuance, a copy of the Certified Test and Balance Report shall be submitted to DENR.

D. The professional engineer shall provide DENR certification under seal that the ventilation system conforms to and is operating in compliance with the Code.

ii. A professional engineer licensed in North Carolina shall submit for written DENR approval a plan for inspecting the possible vapor entrances in any building desired to be used. The plan shall require, but not necessarily be limited to, inspection of sumps and floor drains, foundation cracks, holes in flooring, gaps around pipes and utility lines, and major cracks in walls.

A. The professional engineer shall implement said plan, as approved in writing by DENR, and shall provide DENR a report under seal within 30 days post-implementation that specifies measures for sealing each possible vapor entrance that are designed to protect public health by preventing migration of soil vapor into the building, and includes photographs of the possible entrances and a map indicating the location of each possible entrance.

B. Within 30 days after sealing all vapor entrances in the subject building, the professional engineer shall provide DENR certification under seal that all vapor entrances identified in the inspection report have been sealed in accordance with the report.

b. As to buildings constructed on the Brownfields Property after this Notice is

recorded, defined as those not depicted on the plat component of this Notice:

i. A professional engineer licensed in North Carolina shall submit for written DENR approval design specifications for a passive vapor barrier system to be installed beneath the foundation of any building that will contain indoor air space, and shall, within 30 days after installation of the approved vapor barrier system, provide DENR certification under seal that said system was installed in accordance with the approved design specifications. No action may be taken that would alter, modify or impede the function of any vapor barrier system installed pursuant to this subparagraph, including but not limited to any penetration of said system, without DENR's prior written approval.

ii. Within 30 days after installation of mechanical ventilation in the building, a professional engineer shall provide DENR certification under seal that the ventilation system complies with the Code.

4. 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.

5. Soil beneath slab-on-grade foundations of buildings depicted on the plat component of this Notice, or beneath other impervious or hard pervious surfaces depicted on said plat, may not be exposed without a minimum of seven (7) business days advance written notice to DENR, unless DENR states otherwise in writing in advance. At the time such soil is exposed, DENR may inspect and sample, or require sampling of, the exposed soil for contaminants. If soil contamination is discovered that DENR determines would likely contaminate groundwater even if capped, or that may pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law, and any other actions that DENR reasonably requires to make the Brownfields Property suitable for the uses specified above in Land Use Restriction 1 while fully protecting public health and the environment shall be taken. If soil contamination is discovered that DENR determines would not likely contaminate groundwater if capped, or likely pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law or capped to the written satisfaction of DENR. For purposes of this land use restriction, these definitions apply:

a. “Impervious surface”: any structure or groundcover consisting of asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or other natural or man-made material that prevents the absorption of surface water into the soil.

b. “Hard pervious surface”: any structure or groundcover that allows absorption of surface water into the soil, but has a hard surface formed or cast in place that protects land users from exposure to potential contaminants in the soil. Pervious concrete and pervious tennis court materials are examples.

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 the groundwater and soil contaminant tables at paragraphs (2)a. and (2)b. above, and in paragraph 7 of Exhibit A hereto, 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 playground, or for child care centers or schools.

10. 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.

11. During January of each year after the year in which this 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 certifying that:

a. this Notice containing these Land Use Restrictions remains recorded at the Wake County Register of Deeds office;

b. the Land Use Restrictions are being complied with;

c. any mechanical ventilation systems subject to Land Use Restrictions 3.a.i. and 3.b.ii. continue to comply with the Code;

d. all seals installed pursuant to Land Use Restriction 3.a.ii. remain intact and in the condition they were in when certified; and

e. any vapor barrier system installed pursuant to Land Use Restriction 3.b.i. remains intact and in the condition it was in when certified.

The LURU shall be accompanied by:

f. 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

g. 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.

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 34.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.

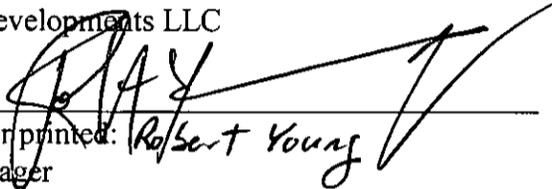
IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this

23 day of August, 2007.

Rose Mary Developments LLC

By:

Name typed or printed: Robert Young
Member/Manager



NORTH CAROLINA
WAKE COUNTY

I, Elizabeth C. Broadwater, a Notary Public of the county and state aforesaid, certify that Robert Young personally came before me this day and acknowledged that he/she is a Member of Rose Mary Developments LLC, a North Carolina limited liability corporation, and its Manager, and that by authority duly given and as the act of the corporation, the foregoing Notice of Brownfields Property was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this 23 day of August, 2007.

Elizabeth C. Broadwater

Name typed or printed: Elizabeth C. Broadwater
Notary Public

My Commission expires: 12 March 2008

[Stamp/Seal]



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

August 2, 2007
Date

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 Wake County

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

Date

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Rose Mary Developments LLC

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Former N.C. Equipment Co. Site
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	3101 Hillsborough Street
NCBP Project No. 10056-06-92)	Raleigh, Wake County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environment and Natural Resources (“DENR”) and Rose Mary Developments LLC (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.

Rose Mary Developments LLC is a North Carolina limited liability company whose offices are located at 860 Aviation Parkway, Suite 300, Morrisville, NC 27560. Rose Mary Developments LLC desires to purchase for redevelopment approximately 2.04 acres of land and improvements located at 3101 Hillsborough Street, Raleigh, Wake County, North Carolina. The land was first developed in 1949 as the headquarters of North Carolina Equipment Company, a heavy equipment sales and service business. The property has been idle since December 2001. Groundwater contamination is present from past activities conducted on or in the vicinity of the property. Rose Mary Developments LLC intends to redevelop it for office space and commercial uses, including retail sales. 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 Rose Mary Developments LLC for contaminants at the property which is the subject of this Agreement.

The Parties agree that Rose Mary Developments LLC's entry into this Agreement, and the actions undertaken by Rose Mary Developments LLC in accordance with the Agreement, do not constitute an admission of any liability by Rose Mary Developments LLC .

The resolution of this potential liability, in exchange for the benefit Rose Mary Developments LLC 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 Rose Mary Developments LLC .

III. STATEMENT OF FACTS

3. The Property comprises 2.04 acres. Prospective Developer has committed itself to redevelopment of the Property for no uses other than office space and commercial uses, including retail sales. The Property contains an office building and a warehouse building which formerly served as the headquarters for North Carolina Equipment Company, a heavy equipment sales and service business. The Property has not been used for equipment sales and service since

December 2001 and has been idle since that time. Groundwater contamination is present from past activities conducted on or in the vicinity of the Property.

4. The Property is bordered to the north by Hillsborough Street, to the south by Stanhope Avenue, to the east by Concord Street, and to the west by single- and multi-family residences and a cellular tower. Other land uses surrounding the Property include commercial retail to the north and east, and single-family residential to the south.

5. Prospective Developer commissioned *Soil/Groundwater Evaluation and Site Review, Former NC Equipment Company Site, 3101 Hillsborough Street, Raleigh, North Carolina*, which was prepared by Babb & Associates, P.A. and dated July 12, 2006. It is hereinafter referred to as the "Environmental Report."

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 Property was first developed in approximately 1949 for use as the headquarters of North Carolina Equipment Company, a heavy equipment sales and service business. The office building, constructed of brick on a concrete slab foundation and containing approximately 9,000 square feet, was used for offices, file storage, and retail parts sales and storage. The warehouse area, which contains approximately 15,000 square feet and is connected to the office building, is constructed of concrete blocks on a concrete slab floor and was used primarily for storing replacement parts for heavy equipment. Three small rooms in the warehouse area were used for engine rebuilding, a machine shop and steam cleaning. The remainder of the Property, west and south of the site structures, was improved with gravel and used for parking and storage of heavy equipment for sale and awaiting repair. Portions of the

parking area were covered by a canopy.

b. DENR records indicate there were five underground storage tanks (“USTs”) at the Property, all used for vehicle fuel storage. Three USTs were installed in March 1971 and permanently closed in July 1990; two were installed in April 1974 and permanently closed in June 1990.

c. Two fuel oil USTs, with capacities of 500 and 1,000 gallons respectively, are currently located at the Property. They were used to store fuel oil for on-site boilers.

d. Three above-ground storage tanks (“ASTs”) that were used for vehicle fuel storage at the Property have been removed.

e. North Carolina Equipment Company, which ceased activities at the Property in approximately 2002, sold it to Prospective Developer during the first half of 2007.

7. The most recent environmental sampling at the Property reported in the Environmental Report occurred on April 10, 2006. That sampling indicated there may have been a release from the 500-gallon fuel oil UST and from one or more of the ASTs. The following tables set forth, for contaminants present at the Property above unrestricted use standards, 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 standards for which are in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202:

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Maximum Concentration above Std. (µg/L)	Standard (µg/L)
Benzene	TW-3	4-10-06	34	1

Naphthalene	TW-2	4-10-06	192	21
2-Methylnaphthalene	TW-2	4-10-06	195	14

b. Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the standards for which are derived using the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section:

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
2-Methyl Naphthalene	TW-3	8 ft.	4-10-06	15.6	11.2

8. 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 Report; preparing and submitting to DENR a Brownfields Letter of Intent dated September 27, 2006; contracting, on August 17, 2006, to purchase the Property; entering into contract amendments on September 15th and December 12, 2006 that extended the purchase deadline; and purchasing the Property during the first half of 2007.

9. 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.

10. Prospective Developer has paid the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of \$3,500 at the time Prospective Developer and DENR enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that the second payment shall constitute, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DENR and the North Carolina Department of Justice of all activities related to this Agreement.

IV. BENEFIT TO COMMUNITY

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

a. a return to productive use of the Property;

b. a spur to additional community redevelopment, through improved

neighborhood appearance and otherwise;

c. approximately 75 jobs;

d. increased tax revenue for affected jurisdictions;

e. additional office and retail 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

12. Prospective Developer shall address contamination from the possible release of fuel oil from the 500-gallon UST referenced above in paragraph 6.c. to the satisfaction of DENR’s UST Section. Within 180 days after the effective date of this Agreement and at intervals not exceeding 180 days thereafter, until Prospective Developer submits to DENR documentation from the UST Section indicating its final satisfaction regarding the UST contamination, Prospective Developer shall state in writing to DENR that Prospective Developer is continuing to work with the UST Section to achieve full compliance with the legal requirements applicable to USTs.

13. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DENR’s Covenant Not to Sue and Reservation of Rights), DENR is not requiring Prospective Developer to perform any active remediation at the Property.

14. 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 office, retail and other commercial purposes. For purposes of this restriction, the following definitions apply:

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

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

iii. "Commercial" refers to office, retail, wholesale or entertainment uses, plus related contiguous parking areas and service drives.

b. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance, the owner of any portion of the Property where any building depicted on the plat component of the Notice referenced in paragraph 19 below is demolished shall be responsible for submittal to DENR, within 30 days after demolition, of documentation sufficient to demonstrate, to DENR's written satisfaction, that such demolition was conducted 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.

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

advance by DENR. If the choice is made to comply with the Code, the indoor space in question may not be used prior to compliance with i. or ii. below, depending on the building:

i. This subparagraph applies to buildings on the Property at the time this Agreement becomes effective, as depicted on the plat component of the Notice referenced in paragraph 19 below:

A. A professional engineer licensed in North Carolina shall submit for written DENR approval a plan for inspection of the mechanical ventilation system of any building desired to be used.

I. The professional engineer shall implement the inspection plan, as approved in writing by DENR; provide DENR a report under seal within 30 days post-implementation that specifies any measures required to bring the mechanical ventilation system into compliance with the Code; and prepare construction documents for permitting regarding said measures.

II. A North Carolina heating, ventilation and air-conditioning contractor shall obtain required permits regarding, and shall implement, said measures.

III. An independent third party certified by the American Association of Balancing Contractors or the National Environmental Balancing Bureau shall perform testing, adjusting and balancing of the mechanical ventilation system when any work by the contractor is complete. Within seven (7) days after its issuance, a copy of the Certified Test and Balance Report shall be submitted to DENR.

IV. The professional engineer shall provide DENR

certification under seal that the ventilation system conforms to and is operating in compliance with the Code.

B. A professional engineer licensed in North Carolina shall submit for written DENR approval a plan for inspecting the possible vapor entrances in any building desired to be used. The plan shall require, but not necessarily be limited to, inspection of sumps and floor drains, foundation cracks, holes in flooring, gaps around pipes and utility lines, and major cracks in walls.

I. The professional engineer shall implement said plan, as approved in writing by DENR, and shall provide DENR a report under seal within 30 days post-implementation that specifies measures for sealing each possible vapor entrance that are designed to protect public health by preventing migration of soil vapor into the building, and includes photographs of the possible entrances and a map indicating the location of each possible entrance.

II. Within 30 days after sealing all vapor entrances in the subject building, the professional engineer shall provide DENR certification under seal that all vapor entrances identified in the inspection report have been sealed in accordance with the report.

ii. As to buildings constructed on the Property after the effective date of this Agreement, defined as those not depicted on the plat component of the Notice referenced in paragraph 19 below:

A. A professional engineer licensed in North Carolina shall submit for written DENR approval design specifications for a passive vapor barrier system to be

installed beneath the foundation of any building that will contain indoor air space, and shall, within 30 days after installation of the approved vapor barrier system, provide DENR certification under seal that said system was installed in accordance with the approved design specifications. No action may be taken that would alter, modify or impede the function of any vapor barrier system installed pursuant to this subparagraph, including but not limited to any penetration of said system, without DENR's prior written approval.

B. Within 30 days after installation of mechanical ventilation in the building, a professional engineer shall provide DENR certification under seal that the ventilation system complies with the Code.

d. 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.

e. Soil beneath slab-on-grade foundations of buildings depicted on the plat component of the Notice referenced in paragraph 19 below, or beneath other impervious or hard pervious surfaces depicted on said plat, may not be exposed without a minimum of seven (7)

business days advance written notice to DENR, unless DENR states otherwise in writing in advance. At the time such soil is exposed, DENR may inspect and sample, or require sampling of, the exposed soil for contaminants. If soil contamination is discovered that DENR determines would likely contaminate groundwater even if capped, or that may pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law, and any other actions that DENR reasonably requires to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment shall be taken. If soil contamination is discovered that DENR determines would not likely contaminate groundwater if capped, or likely pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law or capped to the written satisfaction of DENR. For purposes of this land use restriction, these definitions apply:

i. "Impervious surface": any structure or groundcover consisting of asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or other natural or man-made material that prevents the absorption of surface water into the soil.

ii. "Hard pervious surface": any structure or groundcover that allows absorption of surface water into the soil, but has a hard surface formed or cast in place that protects land users from exposure to potential contaminants in the soil. Pervious concrete and pervious tennis court materials are examples.

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 7 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 playground, or for child care centers or schools.

j. 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.

k. During January of each year after the year in which the Notice referenced below in paragraph 19 is recorded, the then current owner of any part of the Property shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR certifying that:

- i. the Notice of Brownfields Property containing these land use restrictions remains recorded at the Wake County Register of Deeds office;
- ii. the land use restrictions are being complied with;
- iii. any mechanical ventilation systems subject to subparagraphs 14.c.i.A. and c.ii.B. above continue to comply with the Code;
- iv. all seals installed pursuant to subparagraph 14.c.i.B. above remain intact and in the condition they were in when certified; and

v. any vapor barrier system installed pursuant to subparagraph 14.c.ii.A. above remains intact and in the condition it was in when certified.

The LURU shall be accompanied by:

vi. 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

vii. 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.

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

16. 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.

17. 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

18. In addition to providing access to the Property pursuant to subparagraph 14.j. 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.

19. 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 Wake 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.

20. 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 Wake 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.

21. 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

22. 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. DENR agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Prospective Developer's operations by 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

23. 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 September 27, 2006 by which it applied for this Agreement. That use is for office space and commercial uses, including retail sales. 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

24. 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.

25. 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.

26. 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

27. 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

28. 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.

29. 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

30. 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.

31. Except for 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

32. 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

33. 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

34. 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:

Tony Duque
N.C. Division of Waste Management
Brownfields Program
401 Oberlin Road, Suite 150
Raleigh, NC 27605

b. for Prospective Developer:

Doug Rye
393 Main Street
Second Floor
Hamilton, ON L8N 1J7
CANADA

Prospective Developer shall also send any and all notices and submissions this Agreement requires it to send to any and all other state and federal agencies regulating any matters pertaining to the Property's environment, and 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

35. 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

36. 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

37. 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.

38. 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.

39. 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

40. 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: L. M. Culpepper August 2, 2007
Date

Linda M. Culpepper
Deputy Director, Division of Waste Management

IT IS SO AGREED:

Rose Mary Developments LLC

By: [Signature] 23 August 2007
Date

Name typed or printed: Robert Young
Title typed or printed: member/manager

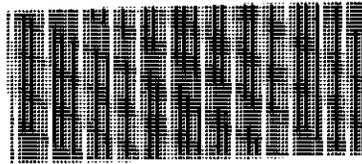
Exhibit C: Legal Description of the Brownfields Property

Parcel 1:

Beginning at a point, said point being the following four calls from N.C. Grid Monument "Dan Allen" having N.C. Grid coordinates $Y=742,260.67'$, $X=2,096,582.60'$: 1) $N 73^{\circ} 59' 15'' W 1107.53'$ 2) $N 74^{\circ} 05' 58'' W 69.60'$ 3) $N 72^{\circ} 58' 33'' W 25.12'$ 4) $N 72^{\circ} 29' 53'' W 48.27'$ and being the Northeast corner of Lot 34, College Crest Subdivision as recorded in Map Book 1920, Page 165 Wake County Registry; thence $S 22^{\circ} 54' 15'' W 147.10'$ to a point; thence $N 67^{\circ} 15' 14'' W 7.72'$ to a point; thence $N 67^{\circ} 15' 14'' W 42.28'$ to a point; thence $N 22^{\circ} 54' 15'' E 146.05'$ to a point in the right of way of Hillsborough Street; thence along said right of way and with a curve to the left having a radius of $696.51'$, an arc length of $50.03'$ and a chord $S 68^{\circ} 27' 17'' E 50.02'$ to the point and place of beginning containing 0.168 Acre (7314 sq. ft.) and being all of Lots 33 and 34, College Crest Subdivision as recorded in Map Book 1920, Page 165, Wake County Registry.

Parcel 2:

Beginning at a point, said point being $N 73^{\circ} 59' 15'' W 1107.53'$ from the N.C. Grid Monument "Dan Allen" having N.C. Grid coordinates $Y=742,260.67'$, $X=2,096,582.60'$; thence with the Western right of way of Concord Street $S 00^{\circ} 30' 54'' W 464.12'$ to a point; thence with a curve to the right having a radius of $17.34'$, an arc length of $34.31'$ and a chord $S 57^{\circ} 12' 22'' W 28.98'$ to a point in the Northern right of way of Stanhope Avenue; thence with said right of way $N 66^{\circ} 06' 54'' W 191.73'$ to a point; thence leaving said right of way $N 00^{\circ} 29' 53'' E 250.08'$ to a point; thence $N 00^{\circ} 17' 27'' E 50.02'$ to a point; thence $N 00^{\circ} 18' 41'' E 10.50'$ to a point; thence $S 67^{\circ} 15' 14'' E 7.72'$ to a point; thence $N 22^{\circ} 54' 15'' E 147.10'$ to a point in the Southern right of way of Hillsborough Street; thence along said right of way and with a curve to the left having a radius of $696.51'$, an arc length of $48.28'$ and a chord $S 72^{\circ} 29' 53'' E 48.27'$ to a point; thence $S 72^{\circ} 58' 33'' E 25.12'$ to a point; thence $S 74^{\circ} 05' 58'' E 69.60'$ to the point and place of beginning containing 2.062 Acres (89,823 sq. ft.) and being Lots A, B, C, D and E of College Crest Subdivision as recorded in Map Book 1920, Page 222 and Lots 43-50 of College Crest Subdivision as recorded in Map Book 1920, Page 165, Wake County Registry.



BOOK:012772 PAGE:01872 - 01907

**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
36 # of Pages