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FOR REGISTRATION REGISTER OF DEED  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2013 AUG 20 10:25:58 AM  
BK 5763 PG 764-795 FEE \$90 00  
NS \$25.00  
INSTRUMENT # 2013030326

Property Owner: Sawmill Point Investors, LLC  
Recorded in Book 5659, Page 206  
Associated plat recorded in Plat Book 12, Page 3

**NOTICE OF BROWNFIELDS PROPERTY**

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by Arnold W. Carson, PLS (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 15 Cowan Street in Wilmington, New Hanover County, North Carolina and is 11.07 acres in size. The Property is the former site of Dean Hardwoods, Inc. which operated a sawmill on the property since approximately 1971. The site was developed along the southern property boundary until 1951 with a fertilizer warehouse. A lumber yard was also located on the property until 1910. The property was cleared and graded in 2007 in preparation for mixed-use redevelopment which was not completed. The property has been vacant since 2007. Sawmill Point Investors, LLC intends to redevelop or

sell for redevelopment for mixed-use purposes which will likely included residential and commercial uses, with the possibility of recreational use.

The Brownfields Agreement (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. The Brownfields Agreement's Exhibit 2 consists of one or more data tables reflecting the concentrations of and other information regarding the Property's regulated substances and contaminants.

Exhibit B to this Notice is a reduction, to 8 1/2" x 11", of the plat component of this Notice. The plat shows areas designated by DENR, has been prepared and certified by a professional land surveyor, and complies with NCGS § 130A-310.35(a)'s requirement that the Notice identify

(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

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 Property other than for i) mixed-use development or ii) any of the individual uses stated in the definition of mixed-use development. For purposes of this restriction, "mixed-use development" is defined as the development of property, which allows the mixing of residential, commercial, recreational, and industrial development. For purposes of this restriction, "residential" means multifamily residential use and is exclusive of detached single family homes. The planned development creates greater choices in living and working environments.

2. 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 reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written

conditions DENR imposes.

3. Soil at the Property at a depth greater than three (3) feet may not be disturbed without a minimum of seven (7) business days advance written notice to DENR, unless DENR states otherwise in writing in advance of the proposed activity. Said activity may only occur if conducted in accordance with any measures DENR necessary to ensure the Property will be suitable for the uses specified in Restriction 1 above while fully protecting public health and the environment.

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

- i. 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
- ii. 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.

5. None of the contaminants known to be present in the environmental media at the Property, including those appearing in Exhibit 2 to the 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.

6. The owner of any portion of the Property where any existing, or subsequently installed, 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.

7. Neither DENR, nor any party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into 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.

8. During January of each year after the year in which this Notice is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of New Hanover County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the New Hanover 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;

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 12.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; and

iv. Any abstracts of leases during the preceding year consistent as provided for under the provisions of paragraph 18 of the Agreement.

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 31.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 12<sup>th</sup> day of August, 2013

Sawmill Point Investors, LLC

By.   
Patrick Melton  
Manager

South  
NORTH CAROLINA  
Catawba 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.

Patrick Melton

Date 8/12/13

Walter Mann  
Official Signature of Notary

CELESTE K MARCECA  
Notary's printed or typed name, Notary Public  
My commission expires 10/24/16

(Official Seal)



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**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 [Signature]  
Linda M Culpepper  
Deputy Director, Division of Waste Management

July 5, 2013  
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 New Hanover County

By Tammy Theusch Beasley  
Name typed or printed By: Carolyn Cotton  
Deputy/Assistant Register of Deeds

August 29, 2013  
Date

## EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF Sawmill Point Investors, LLC

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re
BROWNFIELDS PROPERTY REUSE ACT	)	<u>Dean Hardwoods Site</u>
OF 1997, N C G S. § 130A-310 30, <u>et seq</u>	)	<u>15 Cowan Street</u>
Brownfields Project # 16009-12-65	)	<u>Wilmington, New Hanover County</u>

### I INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environment and Natural Resources (“DENR”) and Sawmill Point Investors, LLC (collectively the “Parties”) pursuant to the Brownfields Property Reuse Act of 1997, N C G S. § 130A-310 30, et seq. (the “Act”)

Sawmill Point Investors, LLC is a Delaware limited liability company formed on June 14, 2012 and registered in North Carolina on July 13, 2012. Its registered North Carolina Agent is Jordan Phillips, 1820 Cumberland Ave, Charlotte, North Carolina 28203. This agreement concerns 11.07 acres where the former Dean Hardwoods, Inc. operated a sawmill since approximately 1971. The site was developed along the southern property boundary from 1951 until at least 1898 with a fertilizer warehouse. A lumber yard was also located on the property from 1910 until at least 1898. The property was cleared and graded in 2007 in preparation for mixed-use redevelopment which was not completed. The property has been vacant since 2007. Sawmill Point Investors, LLC intends to redevelop or sell for redevelopment for mixed-use purposes which will likely include residential and commercial uses, with the possibility of recreational use. A map showing the location of the property which is the subject of this Agreement 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 Sawmill Point Investors, LLC for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit Sawmill Point Investors, 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 Sawmill Point Investors, LLC.

## III STATEMENT OF FACTS

3. The Property comprises 11.07 acres. Prospective Developer has committed itself to redevelopment for no uses other than redevelop or to sell for redevelopment for mixed-use purposes or any individual use permitted under land use restrictions in paragraph 12a of this

agreement which will likely included residential and commercial uses, with the possibility of recreational use

4 The Property is bordered to the north by land used as the right-of-way for the on-ramp and off-ramp approaches for the Isabel Holmes Bridge over which U S Highway 74 crosses the Northeast Cape Fear River, to the south by properties owned by Riverfront Holdings II, LLC and River Ventures, LLC which are currently vacant but being prepared for mixed-use development, to the east by undeveloped properties owned by Paragon Financial Investors, LLC, and to the west by the Northeast Cape Fear River

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
Limited Soil Sampling Report	ECS Carolinas, LLP	November 20, 2012
Limited Phase II Environmental Site Assessment	Froehling & Robertson, Inc	March 7, 2011
Phase I Environmental Site Assessment	Froehling & Robertson, Inc	November 4, 2010
Phase II Environmental Site Assessment	Right Angle Engineering, P C	April 2006

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 has been developed/utilized since at least 1890,
- b A lumber yard operated on the site until 1910,
- c A fertilizer warehouse was present along the southern property boundary from 1898 until 1951,

d Aerial photographs from 1956 and 1966 suggest the site was cleared and undeveloped during that timeframe,

e The site was operated as a lumber import/export facility by various owners from 1971 until 2006,

f The site was purchased for redevelopment by Riverfront Holdings, LLC in 2006. Though the redevelopment was not completed, docks for a proposed marina were completed and are currently in use along the bank of the Northeast Cape Fear River;

g. The site was acquired by CRM Mid-Atlantic Properties, LLC, an affiliate of SunTrust Bank, by trustee's deed on July 21, 2011, pursuant to foreclosure of a deed of trust in favor of SunTrust Bank that was recorded April 30, 2009

h The Prospective Developer acquired the property on July 23, 2012

7 Pertinent environmental information regarding the Property includes the following

a. Groundwater at the site is contaminated with diesel range organic compounds at levels that exceed North Carolina groundwater standards. The contamination is attributed to a 2.5 million gallon oil release by CSX Railroad which occurred on an adjacent property to the south,

b Soil at or below the original pre-2007 grade are impacted with residual diesel range organic compounds, attributed to the 2.5 million gallon CSX oil release from the adjacent property to the south, at levels below the North Carolina Action Levels

c The site was covered by approximately eight (8) feet of fill in 2007 in preparation for the previous attempt to redevelop the site, and

d One or more data tables reflecting the concentrations of and other information

regarding the Property's regulated substances and contaminants appear in Exhibit 2 to this Agreement

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 Reports, preparing and submitting to DENR a Brownfields Letter of Intent dated July 3, 2012, and acquiring the property on July 23, 2012

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, unless a change is sought to a Brownfields document after it is in effect or additional services are required such as expedited review of a plan, in which case there shall be an additional fee of at least \$1,000.

#### 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, and continuation of, additional community redevelopment in the area and tax revenue for affected jurisdictions,
- c. additional residential, retail and office space for the area, and
- d. "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. By way of the Notice of Brownfields Property referenced below in paragraph 18, 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 1) mixed-use development or 11) any of the individual uses stated in the definition of mixed-use development. For purposes of this restriction, "mixed-use development" is defined as the development of property, which allows the mixing of residential, commercial, recreational, and industrial development. For purposes of this restriction, "residential" means multifamily residential use and is exclusive of detached single family homes. The planned development creates greater choices in living and working environments.

b. 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 reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

c. Soil at the Property at a depth greater than three (3) feet may not be disturbed without a minimum of seven (7) business days advance written notice to DENR, unless DENR states otherwise in writing in advance of the proposed activity. Said activity may only occur if conducted in accordance with any measures DENR necessary to ensure the Property will be

suitable for the uses specified in subparagraph 12.a above while fully protecting public health and the environment

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

i. 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

ii. 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

e. None of the contaminants known to be present in the environmental media at the Property, including those appearing in Exhibit 2 to 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

f. The owner of any portion of the Property where any existing, or subsequently installed, 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

g Neither DENR, nor any party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into 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

h During January of each year after the year in which the Notice referenced below in paragraph 17 is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of New Hanover County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the New Hanover 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,

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 12.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, and

iv Any abstracts of leases during the preceding year consistent as provided for under the provisions of paragraph 18 of this agreement

A joint LURU may be submitted for multiple owners by a duly constituted board or association, or another entity approved in advance by DENR. Such joint LURU shall include the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the entity submitting the joint LURU as well as for each of the owners on whose behalf the joint LURU is submitted

13 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

14 The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are, as to field procedures and laboratory testing, the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, as embodied in their most current version

15 The consequence of achieving the desired results will be that the property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment. The consequence of not achieving the desired results will be that modifications to land use restrictions and/or remediation in some form may be necessary to fully protect public health and/or the environment

## VI ACCESS/NOTICE TO SUCCESSORS IN INTEREST

16 In addition to providing access to the Property pursuant to subparagraph 12.f 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

17 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 New Hanover 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

18. 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 New Hanover County land records, Book 58, Page 176 " 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. If Prospective Developer uses a standard form for every residential lease of the Property, it may, in lieu of sending copies of actual leases, send the standard form lease if it does so at least 30 days before such lease's first use or any change thereto Prospective Developer may provide DENR abstracts of commercial and office leases with each land use restriction update submitted under provisions in paragraph 12 h. of this agreement, rather than full copies of said leases, to satisfy the obligations of this Section

19 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

20 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 that is owned, used or controlled by the Prospective Developer, 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 143-215.85, 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

21. 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 3, 2012 by which it applied for this Agreement or the uses permitted by this Agreement. That use is mixed-use development or any individual use permitted under land use restrictions in paragraph 12.a of this agreement. 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

22. 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

23 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

24 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

25 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

26 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.

XII DISCLAIMER

27. 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.

28 Except for the Land Use Restrictions set forth in paragraph 12 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

29 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

30 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

31 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

Mr Samuel P Watson  
N C Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

b for Prospective Developer

Mr. Patrick Melton  
Sawmill Point Investors, LLC  
1820 Cumberland Ave.  
Charlotte, NC 28203

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

32. 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

33. 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

34. 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

35 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.

36 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

37. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following 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 a newspaper of general circulation serving the area in which the Property is located, conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property 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



July 5, 2013

Linda M. Culpepper

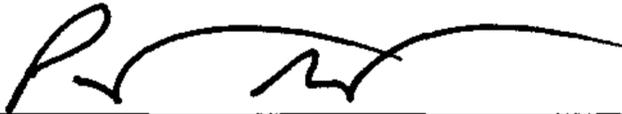
Date

Deputy Director, Division of Waste Management

IT IS SO AGREED

Sawmill Point Investors, LLC

By



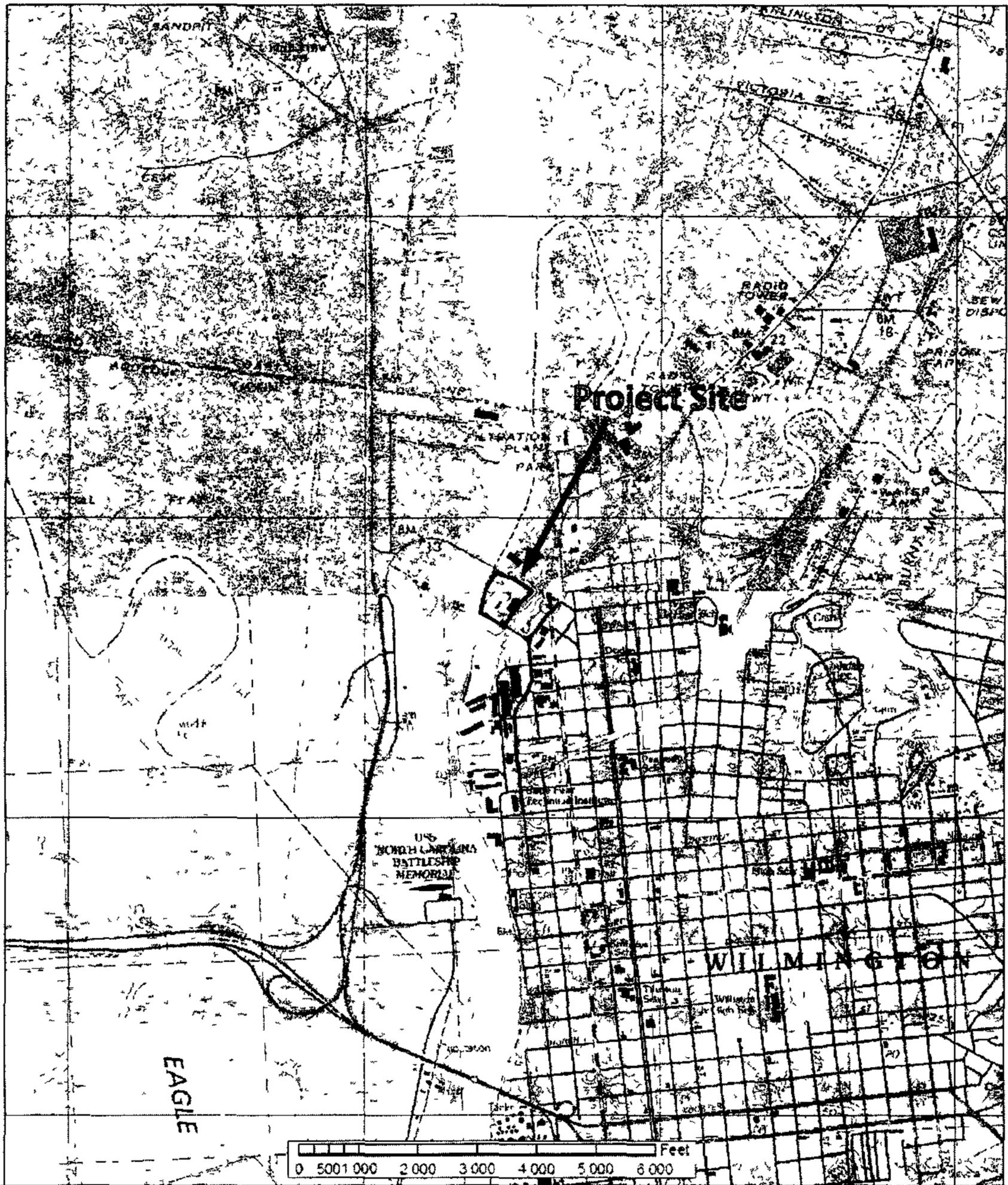
August 12, 2013

Name typed or printed. Patrick Melton

Date

Title typed or printed Authorized Agent

EXHIBIT 1



**SITE VICINITY MAP**

North ↑



**FROEHLING & ROBERTSON, INC.**  
 ENGINEERING • ENVIRONMENTAL • GEOTECHNICAL  
 310 Hubert Street

Raleigh, North Carolina 27603-2302 | USA

919-828-3445 | 919-828-5751

**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**

Client	SunTrust Bank - REVAL
Project	Sawmill Point #11-000869-01-1
Location	Wilmington, New Hanover County, NC
F&R Project No	66M 0017-0037
7.5 Topo Quad	"Castlehayne, NC" & "Wilmington, NC" 1985
Date	March 2011
	Scale As Shown
	Figure 1

## EXHIBIT 2

Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule 0202 (April 2011 update of January 2010 version)

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Max Concentration above Unrestricted Use Std. ( $\mu\text{g/L}$ ) <sup>1</sup>	Unrestricted Use Std. ( $\mu\text{g/L}$ ) (for reference only)
Total Petroleum Hydrocarbons – Diesel Range Organics (TPH-DRO)	B-2	2/25/2011	5000	NS*
TPH-DRO	B-4	2/25/2011	430	NS
TPH-DRO	B-5	2/25/2011	200	NS
TPH-DRO	B-6	2/25/2011	47	NS
TPH-DRO	B-7	2/25/2011	1300	NS
TPH-DRO	B-8	2/25/2011	160	NS

\* - NS = Not Specified

<sup>1</sup> – 15A NCAC 02L 0202(c) specifies that “substances which are not naturally occurring and for which no standard is specified shall not be permitted in concentrations at or above the practical quantitation limit in Class GA or Class GSA groundwaters”



# EXHIBIT C

## Legal Description of the Property

LYING AND BEING SITUATED IN THE CITY OF WILMINGTON, NEW HANOVER COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT A POINT IN THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF COWAN STREET AT ITS INTERSECTION WITH THE WESTERN MARGIN OF THE RIGHT-OF-WAY OF NORTH FRONT STREET, AS SHOWN ON THE OFFICIAL PLAN OF THE CITY OF WILMINGTON, NORTH CAROLINA AS PREPARED BY JAMES AND BROWN IN 1870 AND MORE PARTICULARLY SHOWN ON "MAP 1 OF 3, PROJECT BOUNDARY AND PROJECT DISPOSAL MAP, WATERFRONT URBAN RENEWAL AREA" RECORDED IN MAP BOOK 12, PAGE 3, AND RUNNING THENCE FROM THE BEGINNING POINT ALONG AND WITH THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF COWAN STREET

1 N51°00'45"W 317.0' TO AN EXISTING IRON, THENCE

2 S38°59'15"W 33.0' TO A POINT IN THE ORIGINAL CENTERLINE OF COWAN STREET (NOW CLOSED), THENCE ALONG AND WITH SAID CENTERLINE

3 N51°00'45"W 126.81' TO A POINT IN THE NEW (PRESENT) HARBOR LINE ON THE EASTERN SIDE OF THE CAPE FEAR RIVER, THENCE WITH SAID NEW (PRESENT) HARBOR LINE THE FOLLOWING THREE BEARINGS AND DISTANCES

4 N14°19'00"E 242.49' TO HARBOR LINE POINT 11-17-A, THENCE

5 N26°03'15"E 149.41' TO HARBOR LINE POINT 11-18, THENCE

6 N32°09'00"E 356.19' TO A POINT ON THE SOUTHERN MARGIN OF THE RIGHT-OF-WAY LINE OF OLD HIGHWAY #'S 17, 74, AND 421, WHICH POINT IS 49.5' FROM THE CENTERLINE OF THE BRIDGE THEREOF, THENCE CONTINUING ALONG AND WITH THE SOUTHERLY MARGIN OF THE RIGHT-OF-WAY LINE OF OLD HIGHWAY #'S 17, 74 AND 421

7 S61°11'00"E 425.29' TO THE POINT OF CURVATURE OF A CURVED LINE TO THE RIGHT, THENCE WITH SAID CURVED LINE TO THE RIGHT

8 SAID CURVED LINE HAVING A RADIUS OF 697.83' AS IT CURVES TO THE RIGHT 203.09' IN AN EASTWARDLY DIRECTION TO A POINT OF CURVATURE OF A CURVED LINE TO THE RIGHT, SAID POINT BEING AN INTERSECTION WITH THE WESTERN MARGIN OF THE RIGHT-OF-WAY LINE OF NORTH FRONT STREET (SAID POINT BEING THE COMMON CORNER OF TRACTS RECORDED IN BOOK 5577, PAGE 842 AND 5577, PAGE 850), THE CHORD OF THE PREVIOUS COURSE BEING S52°50'46"E 202.37', THENCE, CONTINUING ALONG SAID SOUTHERN MARGIN OF THE RIGHT-OF-WAY OF SAID OLD HIGHWAY #S 17, 74, AND 421 A CURVED LINE TO THE RIGHT

9 SAID CURVED LINE HAVING A RADIUS OF 697.83' AS IT CURVES TO THE RIGHT 104.20' IN AN EASTWARDLY DIRECTION TO A POINT (AN EXISTING IRON) IN THE EASTERN MARGIN OF THE NOW ABANDONED SEABOARD COAST LINE RAILROAD COMPANY RIGHT OF WAY (SAID POINT BEING THE COMMON CORNER SAID TRACT RECORDED IN BOOK 5577, PAGE 850 AND THAT TRACT RECORDED IN BOOK 5636, PAGE 1798 IN SAID REGISTRY), THE CHORDS OF THE PREVIOUS COURSE BEING S41°45'45"E 66.87', AND

10 S37°29'05"E 37.31' FROM THE PRECEDING POINT, THENCE, ALONG SAID EAST LINE OF THE SEABOARD COAST LINE RAIL ROAD (100' RW NOW ABANDONED) AS IT CURVES (ALSO BEING THE COMMON LINE OF SAID TRACT RECORDED IN BOOK 5577, PAGE 850 AND SAID TRACT RECORDED IN BOOK 5636, PAGE 1798 OF SAID REGISTRY) THE FOLLOWING COURSES AND DISTANCES TO AN EXISTING IRON AT ITS INTERSECTION WITH THE EASTERN MARGIN OF THE RIGHT-OR-WAY LINE OF SAID NORTH FRONT STREET (NOW ABANDONED)

11 S56°44'00"W 24.35' TO AN EXISTING IRON, THENCE,

12 S49°14'00"W 98.00' TO AN EXISTING IRON, THENCE,

13 S48°04'00"W 72.35' TO AN EXISTING IRON, THENCE, FROM THE PRECEDING POINT AND CONTINUING ALONG SAID EASTERN MARGIN OF THE RIGHT-OF-WAY OF NORTH FRONT STREET (NOW ABANDONED) TO AN EXISTING IRON AT ITS INTERSECTION WITH THE EASTERN MARGIN OF THE NOW ABANDONED SEABOARD COAST LINE RAILROAD COMPANY RIGHT-OF-WAY

14 S38°59'15"W 325.95' TO AN EXISTING IRON, THENCE, CONTINUING ALONG SAID EAST LINE OF THE SEABOARD COAST LINE RAIL ROAD (100' RW NOW ABANDONED) AS IT CURVES (ALSO BEING THE COMMON LINE OF SAID TRACT RECORDED IN BOOK 5577, PAGE 850 AND SAID TRACT RECORDED IN BOOK 5636, PAGE 1798 OF SAID REGISTRY) THE FOLLOWING THREE (3) COURSES AND DISTANCES TO A POINT (AN EXISTING IRON) AT ITS INTERSECTION WITH THE AFORESAID NORTHERN MARGIN OF THE RIGHT-OF-WAY OF COWAN STREET

15 S28°47'00"W 84 34' TO AN EXISTING IRON, THENCE,

16 S23°20'00"W 99 66' TO AN EXISTING IRON, THENCE,

17 S19°11'00"W 56.05' TO AN EXISTING IRON,, THENCE, RUNNING ALONG AND WITH THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF COWAN STREET

17 N51°00'45"W 126 82' TO THE POINT OF BEGINNING, CONTAINING 11 13 AC± (EOC=0 0094')

THE ABOVE DESCRIBED PROPERTY BEING ALL OF PARCEL NO 123 AS SHOWN BY "MAP 1 OF 3, PROJECT BOUNDARY AND PROPERTY DISPOSAL MAPS, WATERFRONT URBAN RENEWAL AREA, AS RECORDED IN MAP BOOK 12, PAGE 3, IN THE NEW HANOVER COUNTY REGISTRY TO WHICH REFERENCE IS MADE FOR A MORE PARTICULAR DESCRIPTION, AND ALL THAT CERTAIN PROPERTY DESCRIBED IN DEED BOOK 869, PAGE 435 IN THE CONVEYANCE FROM SEABOARD COAST LINE RAILROAD COMPANY (GRANTOR) TO REDEVELOPMENT COMMISSION OF THE CITY OF WILMINGTON (SAID DESCRIPTION BEGINNING ON PAGE 436) AND AS FURTHER SHOWN ON MAP BOOK 12, PAGE 3, TOGETHER WITH ALL THAT CERTAIN PROPERTY DESCRIBED IN QUITCLAIM DEED FROM CITY OF WILMINGTON TO CHARLES D DEAN, JR AND MARY K DEAN IN BOOK 4890, PAGE 106

AND BEING THE SAME AS THE CERTAIN PROPERTY CONVEYED TO CRM MID-ATLANTIC PROPERTIES, LLC BY THOSE CERTAIN TWO (2) TRUSTEE'S DEEDS FROM JERRY A MANNEN, JR , SUBSTITUTE TRUSTEE, DATED JULY 21, 2011, AND RECORDED RESPECTIVELY IN BOOK 5577, PAGES 842-847 AND IN BOOK 5577, PAGES 850-854, NEW HANOVER COUNTY REGISTRY

THIS DESCRIPTION IS TAKEN FROM AN ALTA SURVEY PREPARED BY ARNOLD W CARSON, PLS (#L-3267) DATED 06/29/2012, FOR SOUTH STREET PARTNERS NC, LLC CONSISTING OF THREE SHEETS ENTITLED "SURVEY OF THE LOWER PORTION OF THE DEAN HARDWOODS SITE"



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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**Filed For Registration: 08/20/2013 10:25:58 AM**

**Book: RE 5763 Page: 764-795**

**Document No.: 2013030326**

**32 PGS \$90.00**

**NS \$25.00**

**Recorder: JOHNSON, CAROLYN**

**State of North Carolina, County of New Hanover**

**PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.**

**\*2013030326\***

**2013030326**