

**K&L GATES LLP**

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214 NORTH TRYON STREET  
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September 18, 2014

Christopher S. Walker  
chris.walker@klgates.com

T 704.331.7515  
F 704.353.3215

**By FedEx**

Ms. Shirley Liggins  
Public Information Assistant  
North Carolina Brownfields Program  
217 West Jones Street  
Raleigh, NC 27603



Re: Carolinas Auto Supply Warehouse (NCBP #17048-13-60)  
Trade & Graham Associates, LLC  
Certified Copies of Notice of Brownfields Property and Brownfields Plat

Dear Ms. Liggins:

For the referenced Brownfields project, I have enclosed (1) a certified copy of the Notice of Brownfields Property recorded September 17, 2014 in Book 29451, Page 216, Mecklenburg County Register of Deeds; and (2) a certified copy of the Brownfields plat recorded September 17, 2014 in Plat Book 56, Pages 833 and 834, Mecklenburg County Register of Deeds.

Thank you for your assistance with this matter. Please contact me if you have any questions or concerns.

Sincerely,

Christopher S. Walker

Enclosures

cc: Mr. James Rudder, P.G. (via e-mail)  
cc: David A. Franchina, Esq. (via e-mail)

J. David Granberry, Register of Deeds  
720 East Fourth Street  
Charlotte, NC 28202  
704-336-2443

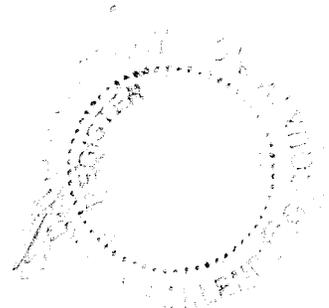
State of North Carolina  
County of Mecklenburg

I do hereby certify this to be a true copy of the attached document filed and recorded in the aforesaid county as evidenced in Instrument /Book Number 29451 Page Number 216, and ending with Page Number 252

Witness my hand and seal this 17<sup>th</sup> day of Sept, 2014.

J. David Granberry, Register of Deeds

By: *J. McClure*  
Assistant or Deputy Register of Deeds



FOR REGISTRATION  
J. David Granberry  
REGISTER OF DEEDS  
Mecklenburg County, NC  
2014 SEP 17 02:30:02 PM  
BK:29451 PG:216-252  
FEE:\$114.00  
INSTRUMENT # 2014108332

PHETSL



Property Owner: Trade & Graham Associates, LLC

Recorded in Book 29451, Page 216  
Associated plat recorded in Plat Book 56, Page 333

Return to K&L Gates LLP  
214 N. Tryon St., 28202  
Attn: David A. Franchina

### NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 17 day of September, 2014 by Trade & Graham Associates, LLC (hereafter "Prospective Developer").

This 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 the Prospective Developer's name.

The Brownfields Property is located in the central portion of the city of Charlotte, NC and includes one parcel (Tax ID 07311302) encompassing 1.442 acres. The Property has street addresses of 430 West 4<sup>th</sup> Street and 427 West Trade Street in Mecklenburg County, and is located in an area developed primarily as office buildings and parking. The Property is bordered to the north by the intersection of West Trade and South Graham Streets; to the southeast by the immediately adjacent Charles R. Jonas Federal Building and U.S. Courthouse; and to the northeast beyond West Trade Street is the City View Towers and associated at-grade parking areas. West of the Property is the intersection of South Graham and West 4<sup>th</sup> Streets, beyond which lie at-grade parking areas and the BB&T Ballpark. Previous uses of the Property included a gasoline station on its southwest corner near the intersection of

South Graham and West 4<sup>th</sup> Streets from about 1929 to at least 1969. The Property historically also contained an automotive maintenance facility in its approximate west central portion. The most recent historical development, prior to serving as two parcels of at-grade parking, included two two-story office buildings demolished in late 1998.

Groundwater assessments have reported Chromium, Lead, Naphthalene, and Tetrachloroethene (PCE) at concentrations above the North Carolina groundwater standard. Several Polycyclic Aromatic Hydrocarbon compounds associated with former gasoline tanks were reported at depths of about six to seven feet below grade. The residual soil compounds were covered with two additional feet of clean fill and will be covered with an impermeable surface.

The Property's intended re-development use is as mixed-use, multi-family residential, retail, office, and open space with associated automobile parking. Previous assessment activities and the installation of a vapor barrier beneath a portion of the structures indicate no risk from vapor intrusion exists at the Property.

**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 as Exhibit B to this Notice is a reduction, to 8 ½" x 11", of the survey plat component of this Notice. This plat shows areas designated by DENR, has been prepared and certified by a professional land surveyor, meets the requirements of NCGS § 47-30, 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.

Tables showing soil and groundwater contaminants and their concentrations in site soil and groundwater, and the appropriate standards are shown on the attached Exhibit B.

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: Mixed-use, Multi-Family Residential, Retail, Office, Open Space Development, and associated Automobile Parking. For purposes of this restriction, the following definitions apply:**

- A. "Mixed use" refers to the development of property, which allows the mixing of residential, commercial, and industrial development. The planned development creates greater choices in living and working environments.
  - B. "Multi-family residential" refers to high density housing consisting of permanent residential apartments or condominiums where the units are attached to each other with common walls and property outside the dwelling structure is common to the residents and not privately owned as part of the individual dwellings.
  - C. "Retail" refers to the sale of goods or services directly to consumers or businesses and includes restaurants and bars;
  - D. "Office" refers to the provision of business or professional services;
  - E. "Open Space" refers to land maintained in a natural or landscaped state and used for active or passive recreational purposes, natural resource protection, buffers, greenways and/or detention facilities for stormwater; and
  - F. "Parking" refers to the temporary accommodation of motor vehicles in an area designed for same.
2. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with PD's (Prospective Developer's) EMP (Environmental Management Plan), or, as to future redevelopment, an EMP, approved in writing by DENR in advance (and revised to DENR's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment in any other form, including without limitation:
- A. Soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;
  - B. Potential sources of the contamination referenced in paragraph 7 of the attached Exhibit A;
  - C. Surface soil sampling for any soil areas that are planned to be exposed after the planned development, and subsurface soil sampling as required by DENR;
  - D. Contingency plans for addressing newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields); and
  - E. Plans for the proper characterization of, and, as necessary, disposal of soils excavated during redevelopment.

For purposes of this paragraph, "physical redevelopment" shall be defined to include new building construction and the demolition and reconstruction of the improvements on the Property described in PD's EMP. "Physical redevelopment" shall not include activities that do not affect soil, groundwater, or possible vapor intrusion on the

Property, such as interior remodeling, exterior aesthetic improvements not affecting soil or groundwater, and parking lot improvements not affecting soil or groundwater.

3. Groundwater at the Property may not be used for any purpose without the prior written approval of DENR.
4. After conclusion of the redevelopment period referenced in subparagraph 15.b of the attached Exhibit A, as determined by DENR, no activity that disturbs soil on the Property may occur unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in paragraph 1 above while fully protecting public health and the environment, except in connection with mowing and pruning of above-ground vegetation, landscape plantings that do not exceed 18 inches in depth, and emergency repair of underground infrastructure, provided that DENR shall be given written notice (if only by email) of any such emergency repair no later than the next business day, and that any related assessment and remedial measures required by DENR shall be taken.
5. No building may be constructed on the Property until:
  - A. DENR determines in writing, based on submittals from the building's proponent, that the building's users, and public health and the environment, would not be at risk from the Property's volatile contaminant plume; or
  - B. Vapor mitigation measures are installed or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's seal on a report that includes photographs and a description of the installation and performance of said measures. All vapor mitigation measures shall be installed or implemented in accordance with a plan approved in writing by DENR in advance, including methodology(ies) for demonstrating performance of said measures. The redevelopment of the Property being undertaken by Prospective Developer at the time this Agreement became effective incorporates a plan for vapor mitigation measures and for demonstrating performance of such measures—the Vapor Barrier Plan dated April 16, 2014 and approved by DENR on the same date.
6. None of the contaminants known to be present in the environmental media at the Property, including those appearing in paragraph 7 of the attached Exhibit A, 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; in petroleum products used in the operation of motor vehicles and landscaping equipment; in functional components of buildings; in emergency generator fuel if stored and used in compliance with a plan approved in writing in advance by DENR; and in constituents of products customarily used or offered for sale in retail grocery stores, drug stores, photo processing operations, retail paint and wallpaper stores and other retail businesses, so long as such products are stored, used and disposed of in compliance with all applicable laws and regulations.
7. The Property may not be used for agriculture or grazing, without the prior written approval of DENR.
8. The Property may not be used as a playground, or for child care centers or schools, without the prior written approval of DENR.

9. 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, unless compliance with this Land Use Restriction is waived in writing by DENR in advance.
10. 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.
11. 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 Mecklenburg 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 Mecklenburg County Register of Deeds office and that the land use restrictions are being complied with, and stating:
  - A. The name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year;
  - B. The transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Property during the previous calendar year.
  - C. Whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 15.e.ii. of the attached Exhibit A 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.
12. Any deed or other instrument conveying an interest in the Property executed by an owner of any 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 Mecklenburg County land records, Book 29457, Page 216 ." A copy of any such instrument shall be sent to the persons listed in Section XVI (Notices and Submissions) of the attached Exhibit A, though financial figures related to the conveyance may be redacted. In connection with residential and commercial leases of the Property, if standard form leases are used in every instance, copies of them may be sent in lieu of copies of actual leases if they are sent at least 30 days before their first use and the first use of any materially revised versions of them.

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 36.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 17<sup>th</sup> day of September, 2014.

By: Trade & Graham Associates, LLC  
Trade & Graham Development, LLC, its Operating Manager

By: [Signature]  
Stephen M. McClure  
Manager

NORTH CAROLINA  
MECKLENBURG COUNTY

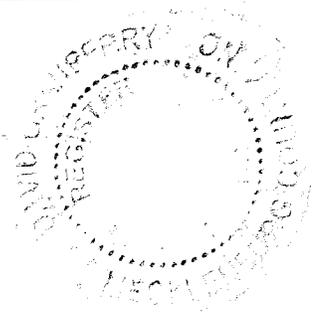
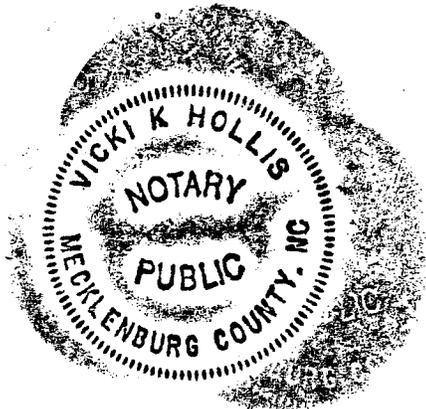
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

STEVE M. McCLURE  
Date: 9-17-14

[Signature]  
Official Signature of Notary

VICKI K. HOLLIS  
Notary's printed or typed name, Notary Public  
My commission expires: My Commission Expires 6-23-2016

(Official 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: Michael E. Scott  
Michael E. Scott, Deputy Director  
Division of Waste Management

9/10/14  
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 Mecklenburg 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: Trade & Graham Associates, LLC

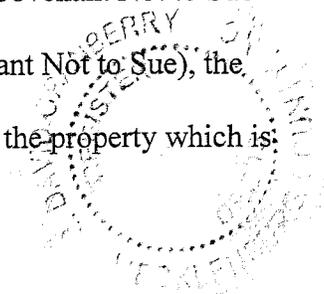
UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT	)	Carolinas Auto Supply Warehouse
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>	)	427 W. Trade St. and 430 W. 4 <sup>th</sup> St.
Brownfields Project # 17048-13-60	)	Charlotte, Mecklenburg County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environment and Natural Resources (“DENR”) and Trade & Graham Associates, LLC (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the “Act”).

Trade & Graham Associates, LLC is a Delaware-chartered, manager-managed limited liability company created on June 14, 2013 for the purpose of redeveloping and managing land in Charlotte, North Carolina that is the subject of this Agreement. The land comprises one parcel totaling approximately 1.4424 acres. 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 Trade & Graham Associates, LLC for contaminants at the property which is the subject of this Agreement.



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

The resolution of this potential liability, in exchange for the benefit Trade & Graham Associates, LLC shall provide to DENR, is in the public interest.

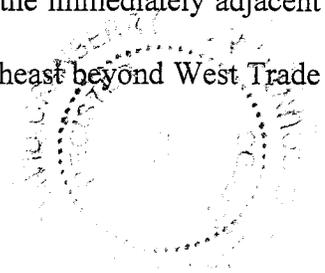
## II. DEFINITIONS

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 Trade & Graham Associates, LLC.

## III. STATEMENT OF FACTS

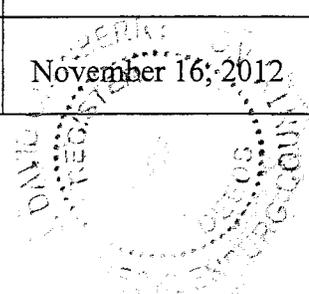
3. The Property comprises 1.4424 acres. Prospective Developer has committed itself to redevelopment for no uses other than for mixed-use, multi-family residential, retail, office, and open space development and associated automobile parking.
4. The Property is located near the center of the city of Charlotte within an area developed primarily as office buildings and parking. The Property consists of one parcel currently developed as at-grade paved parking areas. The Property is bordered to the north by the intersection of West Trade and South Graham Streets, beyond which lies the currently vacant James K. Polk Building. The Property is bounded to the southeast by the immediately adjacent Charles R. Jonas Federal Building and U.S. Courthouse, and to the northeast beyond West Trade



Street is located the City View Towers and associated at-grade paved parking areas. West of the Property is located the intersection of South Graham and West 4<sup>th</sup> Streets, beyond which lies at-grade paved parking areas, to the northwest beyond South Graham Street is located at-grade paved parking areas, and to the southwest beyond West 4<sup>th</sup> Street is the BB&T Ballpark.

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

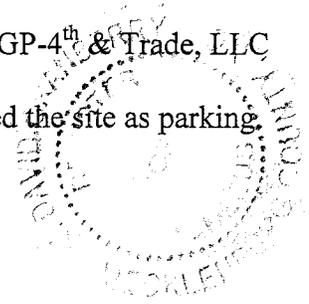
Title	Prepared by	Date of Report
Brownfields UST Management Report, 427 West Trade St. and 430 West 4 <sup>th</sup> St., Charlotte, Mecklenburg Co., NC	ECS Carolinas, LLP	June 27, 2014
Vapor Barrier Plan, The Mint Apartments (Former Carolina Auto Supply Warehouse), West Trade and South Graham Streets, Charlotte, NC	ECS Carolinas, LLP	April 16, 2014
Environmental Management Plan, Proposed Trade and Graham Apartments, 427 West Trade St. and 430 West 4 <sup>th</sup> St., Charlotte, Mecklenburg Co., NC	ECS Carolinas, LLP	January 13, 2014
Phase II Environmental Site Assessment Report, Proposed Trade and Graham Apartments, 427 West Trade St. and 426 West 4 <sup>th</sup> St., Charlotte, Mecklenburg Co., NC	ECS Carolinas, LLP	August 28, 2013
Phase I Environmental Site Assessment, Proposed Development – The Mint, 427 W. Trade St. and 430 W. 4 <sup>th</sup> St., Charlotte, Mecklenburg Co., NC	Blackstone Consulting, LLC	August 1, 2013
Draft Report, Limited Phase II Environmental Site Assessment, Proposed	Dominion Due Diligence Group	November 16, 2012



Trade and Graham Apartments, 427 West Trade St. and 426 West 4 <sup>th</sup> St., Charlotte, NC		
Draft Report, Phase I Environmental Site Assessment, Proposed Trade and Graham Apartments, 427 West Trade St. and 426 West 4 <sup>th</sup> St., Charlotte, NC	Dominion Due Diligence Group	November 16, 2012

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

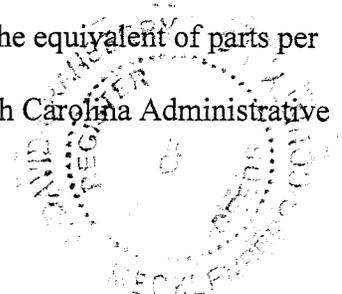
a. The Property consists of one parcel with tax identification number 07311302 (formerly tax identification numbers 07311302 and 07311305, which were combined as of January 23, 2014) comprising 1.4424 acres in the central portion of the city of Charlotte, North Carolina. The Property historically contained a former gasoline station on its southwest corner near the intersection of South Graham and West 4<sup>th</sup> Streets from about 1929 to at least 1969. The Property also historically contained an automotive maintenance facility in its approximate west central portion. The latest development prior to the current parking lots was with two two-story office buildings demolished in late 1998. According to the reports cited above the immediately adjacent C. R. Jonas Federal Building was a RCRA conditionally exempt small quantity generator starting December 8, 1993. The former Trailways Bus Terminal (currently the City View Towers location) was reported to have a 12,000 gallon diesel UST that was removed in 1987, and the James K. Polk Building was reported to have had two leaking diesel underground storage tanks and to have had a release to groundwater from a historical former on-site gasoline station. The Property was purchased in November 1998 by LGP-4<sup>th</sup> & Trade, LLC who then promptly demolished the on-site office buildings and redeveloped the site as parking.



b. The Property's soil contains semi-volatile organic compounds that exceed the IHSB (NCDENR's Inactive Hazardous Sites Branch) PSRGs (Preliminary Soil Remediation Goals (January 2014) in an area from which an underground storage tank was encountered and removed during redevelopment activities. This area is covered by clean fill and an impervious surface within the building footprint as described in the Brownfields UST Management Report dated June 27, 2014. Groundwater is primarily contaminated with tetrachloroethene (PCE), naphthalene, chromium, and lead at concentrations above the applicable 15 NCAC 02L.202 Groundwater Quality Standards (April 2013). Chromium, lead, and naphthalene are slightly above the groundwater quality standards. Chlorinated solvents are also noted to be a potential for vapor intrusion at concentrations in groundwater above the residential use screening levels of DENR's Inactive Hazardous Sites Branch.

7. The most recent environmental sampling at the Property reported in the Environmental Reports occurred on August 13, 2013 and in March 2014. The March 2014 data was derived from the removal of four USTs discovered during site grading activities occurring as part of the redevelopment. During the UST removal activities 57.34 tons of petroleum-containing soil and 69 gallons of liquid were removed from the site and disposed of at a licensed off-site facility. The following tables set forth, for contaminants present at the Property above applicable standards or screening levels, the concentration found at each sample location and the applicable standard or screening level. Screening levels and groundwater standards are shown for reference only and are not set forth as cleanup levels for the purposes of this Agreement.

a. 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(2L), (April 2013 version); or the 2L Groundwater Interim

Maximum Allowable Concentration (IMACs), (January 1, 2010 version):

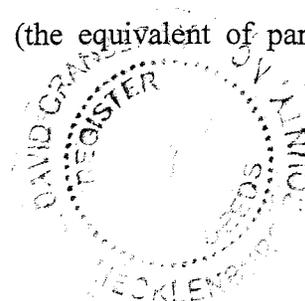
Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	2L Groundwater Quality Standard (µg/L)
Chromium	GW-1	08/13/2013	310	10
Chromium	SB-2GW	08/13/2013	23	10
Chromium	SB-3GW	08/13/2013	2,600	10
Lead	GW-1	08/13/2013	58	15
Lead	SB-2GW	08/13/2013	31	15
Lead	SB-3GW	08/13/2013	86	15
Naphthalene	SB-2GW	08/13/2013	8.7	6
Tetrachloroethene	GW-1	08/13/2013	330	0.7
Tetrachloroethene	SB-3GW	08/13/2013	110	0.7

b. Groundwater contaminants with potential for vapor intrusion (VI) in micrograms per liter (the equivalent of parts per billion), the vapor intrusion screening levels for which are derived from the Residential Vapor Intrusion Screening Levels of the DENR's Division of Waste Management (January, 2014 version):

Groundwater Contaminant With Potential for Vapor Intrusion (VI)	Sample Location	Date of Sampling	Concentration Exceeding Screening Level (µg/L)	Residential VI Screening Level <sup>1</sup> (µg/L)
1,2,4-Trimethylbenzene	SB-2GW	08/13/2013	83	5.8
Ethylbenzene	SB-2GW	08/13/2013	140	30.2
Tetrachloroethene	GW-1	08/13/2013	330	11.5
Tetrachloroethene	SB-3GW	08/13/2013	110	11.5
Trichloroethene	GW-1	08/13/2013	2.1	1.04

<sup>1</sup>Screening levels displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for a 1.0E-5 lifetime incremental cancer risk.

c. Soil contaminants in milligrams per kilograms (the equivalent of parts per



million), the screening levels for which are derived from the IHSB PSRGs (January 2014 version):

Soil Contaminant	Sample Location	Depth (ft.)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	IHSB Residential PSRG <sup>1</sup> (mg/kg)
Benzo(a)anthracene	S-1	7	03/21/2014	0.31 J	0.15
Benzo(a)anthracene	S-2	7	03/21/2014	2.8	0.15
Benzo(a)anthracene	S-4	7	03/21/2014	0.58	0.15
Benzo(a)anthracene	S-5	7.5	03/21/2014	62	0.15
Benzo(a)pyrene	S-1	7	03/21/2014	0.31 J	0.015
Benzo(a)pyrene	S-2	7	03/21/2014	2.7	0.015
Benzo(a)pyrene	S-4	7	03/21/2014	0.55	0.015
Benzo(a)pyrene	S-5	7.5	03/21/2014	51	0.015
Benzo(b)fluoranthene	S-1	7	03/21/2014	0.42	0.15
Benzo(b)fluoranthene	S-2	7	03/21/2014	3.3	0.15
Benzo(b)fluoranthene	S-4	7	03/21/2014	0.71	0.15
Benzo(b)fluoranthene	S-5	7.5	03/21/2014	68	0.15
Benzo(k)fluoranthene	S-5	7.5	03/21/2014	24	1.5
Chrysene	S-5	7.5	03/21/2014	65	15
Dibenzo(a,h)anthracene	S-2	7	03/21/2014	0.39 J	0.015
Dibenzo(a,h)anthracene	S-5	7.5	03/21/2014	9.6	0.015
Indeno(1,2,3-cd)pyrene	S-1	7	03/21/2014	0.23 J	0.15
Indeno(1,2,3-cd)pyrene	S-2	7	03/21/2014	1.8	0.15
Indeno(1,2,3-cd)pyrene	S-4	7	03/21/2014	0.38 J	0.15
Indeno(1,2,3-cd)pyrene	S-5	7.5	03/21/2014	39	0.15

<sup>1</sup>Screening levels displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for a 1.0E-6 lifetime incremental cancer risk.

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 some of the Environmental Reports, preparing and submitting to DENR a Brownfields Property Application dated October 21, 2013, and commencing redevelopment of the Property in consultation with DENR pursuant to Prospective Developer's Environmental Management Plan dated January 13, 2014 and approved by DENR on January 15, 2013.

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);

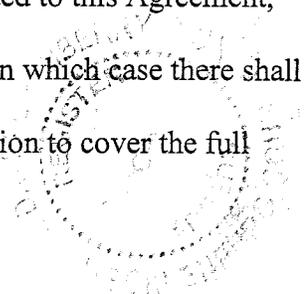
b. As a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

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. The Parties agree that a \$30,000 "Redevelopment Now" fee Prospective Developer has paid suffices as the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and, 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, in which case there shall be an additional fee of at least \$1,000 but up to \$5,000 at DENR's discretion to cover the full



cost to DENR and DOJ, or more than \$5,000, if further negotiated between the parties.

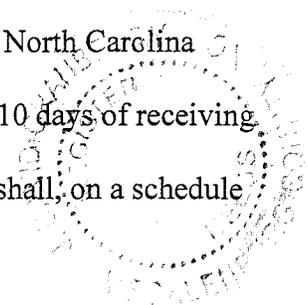
#### IV. BENEFIT TO COMMUNITY

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

- a. a return to highest and best use of the Property;
- b. Urban Land Institute calculations indicate redevelopment will result in the production of 208 temporary construction jobs and 17 permanent jobs;
- c. an increase in tax revenue for affected jurisdictions;
- d. the redevelopment will provide needed multi-family residential units in uptown Charlotte;
- e. an increase in productive use of the Property;
- f. the redevelopment will be compatible with surrounding redevelopment activities and will provide a spur to additional community redevelopment; and
- g. “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. Within 30 days after the effective date of this Agreement, Prospective Developer shall notify DENR that it is ready to effect the abandonment of all groundwater monitoring wells, injection wells, recovery wells, piezometers and other man-made points of groundwater access at the Property in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code. Unless DENR notifies Prospective Developer within 10 days of receiving such notification to refrain from such abandonment, Prospective Developer shall, on a schedule

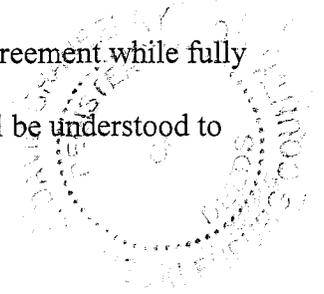


acceptable to DENR, effect said abandonment and, within 30 days after doing so, provide DENR a report, subject to DENR approval, setting forth the procedures and results.

13. In redeveloping the Property, Prospective Developer shall make reasonable efforts to evaluate applying sustainability principles at the Property, which may include using the nine (9) areas incorporated into the U.S. Green Building Council Leadership in Energy and Environmental Design certification program (Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, Locations & Linkages, Awareness & Education, Innovation in Design and Regional Priority), or a similar program.

14. 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 other than remediation that may be required pursuant to Prospective Developer's Environmental Management Plan dated January 13, 2014 and approved by DENR on January 15, 2013 ("PD's EMP"), or, as to future redevelopment activities on the Property, a subsequent DENR-approved EMP. Any subsequent EMP shall set forth procedures and methodologies for evaluating and handling contaminated or potentially contaminated environmental media (e.g., soils, groundwater, building materials, containers) during redevelopment activities at the Property.

15. By way of the Notice of Brownfields Property referenced below in paragraph 20, 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 mixed-use, multi-family residential, retail, office, open space development and associated automobile parking. For purposes of this restriction, the following definitions apply:

i. "Mixed use" refers to the development of property, which allows the mixing of residential, commercial, and industrial development. The planned development creates greater choices in living and working environments.

ii. "Multi-family residential" refers to high density housing consisting of permanent residential apartments or condominiums where the units are attached to each other with common walls and property outside the dwelling structure is common to the residents and not privately owned as part of the individual dwellings.

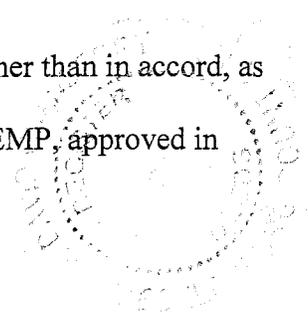
iii. "Retail" refers to the sale of goods or services directly to consumers or businesses and includes restaurants and bars;

iv. "Office" refers to the provision of business or professional services;

v. "Open Space" refers to land maintained in a natural or landscaped state and used for active or passive recreational purposes, natural resource protection, buffers, greenways and/or detention facilities for stormwater; and

vi. "Parking" refers to the temporary accommodation of motor vehicles in an area designed for same.

b. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with PD's EMP, or, as to future redevelopment, an EMP, approved in



writing by DENR in advance (and revised to DENR's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment in any other form, including without limitation:

- i. soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;
- ii. potential sources of the contamination referenced in paragraph 7 above;
- iii. surface soil sampling for any soil areas that are planned to be exposed after the planned development, and subsurface soil sampling as required by DENR;
- iv. contingency plans for addressing newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields); and
- v. plans for the proper characterization of, and, as necessary, disposal of soils excavated during redevelopment.

For purposes of this paragraph, "physical redevelopment" shall be defined to include new building construction and the demolition and reconstruction of the improvements on the Property described in PD's EMP. "Physical redevelopment" shall not include activities that do not affect soil, groundwater, or possible vapor intrusion on the Property, such as interior remodeling, exterior aesthetic improvements not affecting soil or groundwater, and parking lot improvements not affecting soil or groundwater.

- c. Groundwater at the Property may not be used for any purpose without the

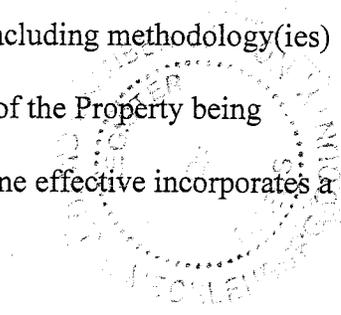
prior written approval of DENR.

d. After conclusion of the redevelopment period referenced in subparagraph 15.b above, as determined by DENR, no activity that disturbs soil on the Property may occur unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in subparagraph 15.a above while fully protecting public health and the environment, except in connection with mowing and pruning of above-ground vegetation, landscape plantings that do not exceed 18 inches in depth, and emergency repair of underground infrastructure, provided that DENR shall be given written notice (if only by email) of any such emergency repair no later than the next business day, and that any related assessment and remedial measures required by DENR shall be taken.

e. No building may be constructed on the Property until:

i. DENR determines in writing, based on submittals from the building's proponent, that the building's users, and public health and the environment, would not be at risk from the Property's volatile contaminant plume; or

ii. vapor mitigation measures are installed or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's seal on a report that includes photographs and a description of the installation and performance of said measures. All vapor mitigation measures shall be installed or implemented in accordance with a plan approved in writing by DENR in advance, including methodology(ies) for demonstrating performance of said measures. The redevelopment of the Property being undertaken by Prospective Developer at the time this Agreement became effective incorporates a



plan for vapor mitigation measures and for demonstrating performance of such measures—the Vapor Barrier Plan dated April 16, 2014 and approved by DENR on the same date.

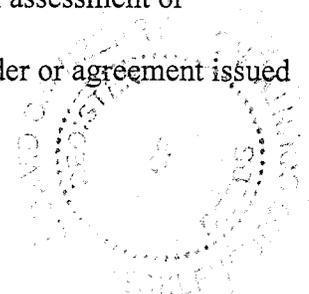
f. None of the contaminants known to be present in the environmental media at the Property, including those appearing in paragraph 7 of this Agreement, may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities; in petroleum products used in the operation of motor vehicles and landscaping equipment; in functional components of buildings; in emergency generator fuel if stored and used in compliance with a plan approved in writing in advance by DENR; and in constituents of products customarily used or offered for sale in retail grocery stores, drug stores, photo processing operations, retail paint and wallpaper stores and other retail businesses, so long as such products are stored, used and disposed of in compliance with all applicable laws and regulations.

g. The Property may not be used for agriculture or grazing, without the prior written approval of DENR.

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

i. 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, unless compliance with this Land Use Restriction is waived in writing by DENR in advance.

j. 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.

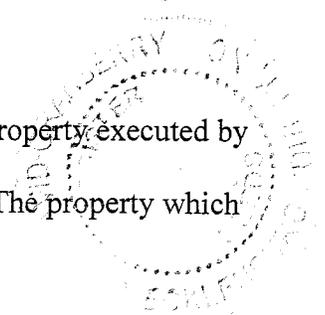
k. During January of each year after the year in which the Notice referenced below in paragraph 20 is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR, and to the chief public health and environmental officials of Mecklenburg 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 Mecklenburg 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; and

iii. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 15.e.ii. 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.

1. Any deed or other instrument conveying an interest in the Property executed by an owner of any 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 Mecklenburg County land records, Book 29451, Page 216 .” A copy of any such instrument shall be sent to the persons listed in Section XVI (Notices and Submissions), though financial figures related to the conveyance may be redacted. In connection with residential and commercial leases of the Property, if standard form leases are used in every instance, copies of them may be sent in lieu of copies of actual leases if they are sent at least 30 days before their first use and the first use of any materially revised versions of them.

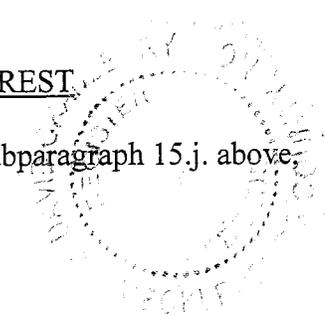
16. The desired result of the above-referenced land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

17. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are, 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.

18. 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

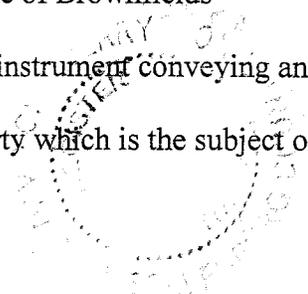
19. In addition to providing access to the Property pursuant to subparagraph 15.j. above,



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. Except as may be set forth in the Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

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

21. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of



this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Mecklenburg County land records, Book 21457, Page 216 .” A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

22. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property within seven days of the effective date of this Agreement and shall ensure that, to the extent it can legally do so, any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound & Transfer/Assignment Notice) of this Agreement.

#### VII. DUE CARE/COOPERATION

23. While it owns the Property, Prospective Developer shall exercise due care at the Property with respect to the manner in which regulated substances are handled at the Property 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 while it owns 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 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

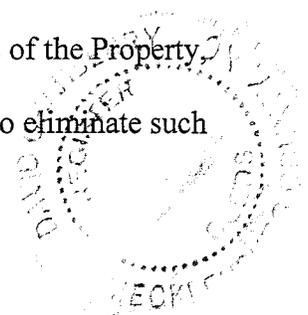
## VIII. CERTIFICATION

24. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Property Application dated October 21, 2013 by which it applied for this Agreement. That use is for mixed-use, multi-family residential, retail, office, and open space development and associated automobile parking. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any past use of regulated substances or known contaminants at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

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

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

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

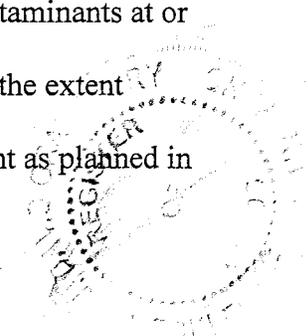


c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.

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

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

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



this Agreement.

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

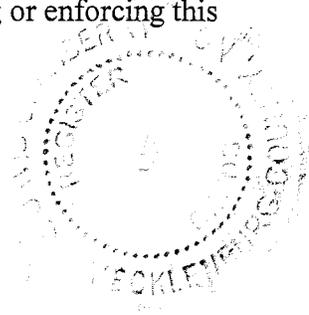
h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

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

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

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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



## XI. FUTURE OWNERS

29. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 25 through 27 above, apply to all of the persons listed in N.C.G.S. § 130A-310.33, including future owners of the property, to the same extent as Prospective Developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties.

30. Future owners that request changes to any brownfields document after it is executed, shall pay a fee consistent with the provisions of paragraph 10 above with respect to those requested changes and thereby maintain liability protection to the same extent as the Prospective Developer consistent with N.C.G.S. § 130A-310.33.

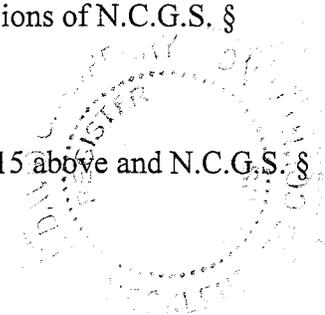
## XII. PARTIES BOUND

31. 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.

## XIII. DISCLAIMER

32. 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.

33. Except for the Land Use Restrictions set forth in paragraph 15 above and N.C.G.S. §



130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

#### XIV. DOCUMENT RETENTION

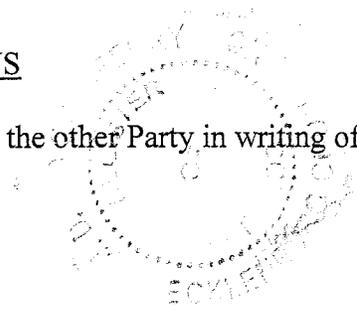
34. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, remediation reports and documents generated by and/or in the control of the Prospective Developer relating to storage, generation, use, disposal and management of regulated substances at the Property, including without limitation all Material Safety Data Sheets, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of six (6) 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. To the extent DENR retains any copies of such documents, Prospective Developer retains all rights it then may have to seek protection from disclosure of such documents as confidential business information.

#### XV. PAYMENT OF ENFORCEMENT COSTS

35. 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.

#### XVI. NOTICES AND SUBMISSIONS

36. 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:

James Rudder, P.G.  
N.C. Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

b. for Prospective Developer:

Stephen M. McClure  
Trade & Graham Associates, LLC  
201 South Tryon Street, Suite 550  
Charlotte, NC 28202

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.

#### XVII. EFFECTIVE DATE

37. 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.

#### XVIII. TERMINATION OF CERTAIN PROVISIONS

38. 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).

#### XIX. CONTRIBUTION PROTECTION

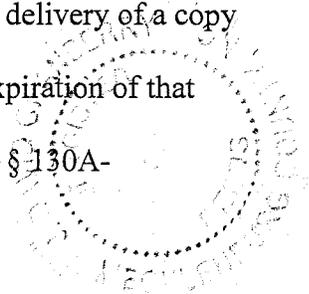
39. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation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

40. 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.

41. 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.

#### XX. PUBLIC COMMENT

42. 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:

*Michael E. Scott*

*9/10/14*

Michael E. Scott, Deputy Director  
Division of Waste Management

Date

IT IS SO AGREED:

Trade & Graham Associates, LLC

By: Trade & Graham Development, LLC, its Operating Manager

By:

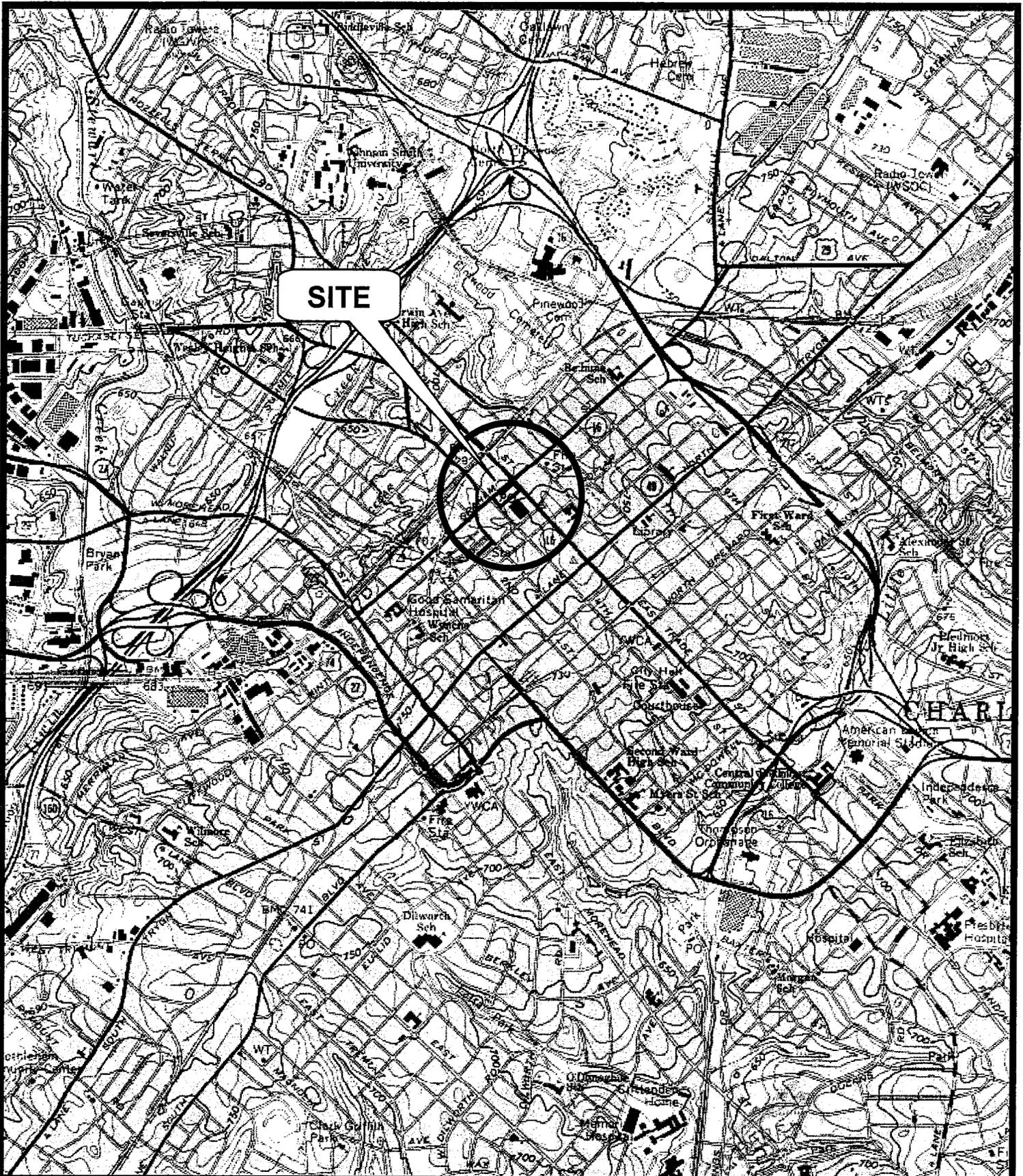
*Stephen M. McClure*

*9/17/14*

Stephen M. McClure  
Manager

Date





**SOURCE:**

USGS TOPOGRAPHIC MAP:  
 CHARLOTTE EAST, DATED 1967  
 PHOTOREVISED 1988  
 NORTH CAROLINA QUADRANGLE

SCALE: 1" = 2,000'



**EXHIBIT 1**  
**SITE LOCATION MAP**

PROPOSED TRADE AND GRAHAM APARTMENTS  
 427 WEST TRADE STREET AND  
 426 WEST 4TH STREET  
 CHARLOTTE, MECKLENBURG COUNTY, NORTH  
 CAROLINA  
 ECS PROJECT NO. 08-9212





EXHIBIT C  
Legal Description

That certain tract or parcel of land situated, lying and being in the City of Charlotte, County of Mecklenburg, State of North Carolina and being more particularly described as follows:

BEGINNING at an existing nail being the northwesterly corner of the City of Charlotte Engineering and Property Management Department property, as described in Deed Book 18133, Page 411, Mecklenburg County Registry, said point also being on the northeasterly margin of the right-of-way of West 4th Street; thence with said northeasterly margin of West 4th Street the following three (3) courses and distances: 1) North  $43^{\circ}07'59''$  West a distance of 165.87 feet to an existing nail; 2) North  $29^{\circ}05'26''$  East a distance of 18.53 feet to an existing nail; 3) North  $42^{\circ}52'05''$  West a distance of 17.23 feet to an existing nail on the southeasterly margin of the right-of-way of South Graham Street; thence with said southeasterly margin of South Graham Street for the following three (3) courses and distances: 1) North  $50^{\circ}35'55''$  East a distance of 64.94 feet to an existing nail; 2) with a curve turning to the right having a radius of 308.50 feet and an arc length of 24.36 feet (chord bearing of North  $57^{\circ}51'10''$  East and chord length of 24.35 feet) to an existing nail; 3) North  $60^{\circ}06'54''$  East a distance of 43.57 feet to an existing nail on the southwesterly margin of a 14 foot alleyway; thence with said southwesterly margin of alleyway South  $40^{\circ}20'59''$  East a distance of 45.65 feet to a new nail at the terminus of the aforesaid alley; thence turning and running with the southeasterly margin of the aforesaid alley and continuing with the southeasterly line of the 445 West Trade Street LLC property as described in Deed Book 19363, Page 279, Mecklenburg County Registry North  $48^{\circ}08'18''$  East, passing an existing nail at 13.96 feet, for a total distance of 245.39 feet to an existing punch hole on the southwesterly margin of the right-of-way of West Trade Street; thence with said southwesterly margin of West Trade Street South  $42^{\circ}52'03''$  East a distance of 151.23 feet to an existing iron rod, said point being the northerly most corner of the City of Charlotte Engineering and Property Management Department property, as described in Deed Book 18133, Page 411, Mecklenburg County Registry; thence with the northwesterly line of said City of Charlotte Engineering and Property Management Department property the following three (3) courses and distances: 1) South  $51^{\circ}24'07''$  West a distance of 238.10 feet to an existing iron rod; 2) South  $51^{\circ}38'08''$  West a distance of 13.96 feet to an existing nail; 3) South  $51^{\circ}55'23''$  West a distance of 140.53 feet to the point of BEGINNING; having an area of 62,831 square feet or 1.4424 acres, as shown on a survey prepared by R. B. Pharr & Associates, P.A., dated September 7, 2013 (Map File W-4218A).

