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FORSYTH CO, NC FEE \$114.00
PRESENTED & RECORDED:

10-05-2015 10:18:06 AM

C. NORMAN HOLLEMAN
REGISTER OF DEEDS
BY: OLIVIA DOYLE

ASST

BK: RE 3253

PG: 2732-2768

Property Owner: Fourth Street Ventures, LLC

Recorded in Book ____, Page ____

Associated plat recorded in Plat Book 64, Page 12

Original To:

Joe Reece

NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 1 day of October, 2015 by Fourth Street Ventures, 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 Property is located in downtown Winston-Salem and is bordered to the northwest by commercial businesses, Burke Street NW, 4th Street NW, and commercial businesses and single family residential properties. To the north are commercial businesses, parking, a small undeveloped grassy area, and 4th Street NW, beyond which are commercial businesses. To the northeast are high density residential properties and North Broad Street, beyond which are parking lots and commercial properties. The adjacent property to the east is owned by Fourth Street Ventures, LLC and includes paved areas apparently used for parking and one warehouse building; beyond this is N. Green Street and portions of West End Ventures, LLC brownfields property redeveloped as high density residential. On the southeast corner of the intersection of Green Street and Holly Avenue Fourth Street Ventures, LLC owns a grassed, currently undeveloped parcel. Other properties to the east across Green Street and south of Holly Avenue are commercial properties. West, northwest, and southwest of the Property are commercial properties located across Brookstown Avenue and Burk Street from the Property.

The property was developed with single family residential properties from about 1917 through 1945. Around 1945 commercial development of the former 967 Burke Street address (northern portion of property) consisted of an auto service and repair business, and this type of business continued until the

2000s. A 1945 Sanborn Fire Insurance map indicated a gasoline station with USTs was located on the former 967 Burke Street address, currently the northwestern portion of the 955 Brookstown address. In approximately 2003 the Fritts Motor Company (at 967 Burke Street) operated an automobile repair facility and used two on-site 500 gallon capacity gasoline USTs. The auto maintenance and repair services also included auto body repair and painting. The painting activities occurred in the southern, middle portion of the building on the former 967 Burke Street property. After the Fritts Motor Company left the property it was used as general warehouse space. Previous environmental assessments at the former 967 Burke Street address included a comprehensive geophysical survey performed inside and outside the building in 2007. The geophysical survey did not find evidence of on-site USTs.

The Property's soil in the southeast quadrant of the intersection of Burke Street and Brookstown Avenue is contaminated with petroleum hydrocarbon compounds above applicable standards, groundwater is contaminated with the chlorinated hydrocarbon tetrachloroethene (PCE) at a concentrations above the applicable limits, and soil vapor in the northwest portion of the Property is contaminated with PCE above applicable limits.

The Property's intended re-development use is as High Density Residential, Office, Retail, and associated automobile Parking. The presence of soil vapor concentrations above applicable limits will require construction in this area to include and implement active vapor intrusion mitigation within the design.

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 High-Density Residential, Office, Retail, and associated automobile Parking. For purposes of this restriction, the following definitions apply:
 - A. "High Density Residential" shall mean permanent dwellings where residential units are attached to each other with common walls, such as condominiums, apartments, group homes, dormitories or boarding houses, and any property outside the dwelling structures is usable by all residents and not privately owned as part of a particular unit, and shall include related amenities, such as pools, clubhouses, courtyards, common areas, recreation areas and parking garages;
 - B. "Office" refers to the provision of business or professional services.
 - C. "Retail" refers to an activity the principal use or purpose of which is the sale of goods, products, or merchandise directly to the consumer.
 - D. "Parking" refers to the temporary accommodation of motor vehicles in an area designed for same.
2. Unless compliance with this Land Use Restriction is waived in writing in advance by DENR in relation to particular buildings, demolition of buildings on the Property depicted on the plat component of this Notice of Brownfields Property must occur in accordance with applicable legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.
3. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with an Environmental Management Plan 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;

at the Property without the prior written approval of DENR, except in de minimis amounts for cleaning and other routine housekeeping activities.

8. The Property may not be used for agriculture or grazing, without the prior written approval of DENR.
9. The Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.
10. The Property may not be used as a playground, or for child care centers or schools, without the prior written approval of DENR.
11. 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.
12. 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.
13. 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 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of Forsyth County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Forsyth County Register of Deeds office and certifying that the land use restrictions are being complied with. A joint LURU may be submitted for multiple owners by a duly constituted board or association, or another entity approved in advance by DENR. In addition to said certification of land use restriction compliance, the LURU shall provide the following information:
 - 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 14.f.ii. of the attached Exhibit A are performing as designed (demonstrated through sampling), 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.

D. A joint LURU submitted for multiple owners by a duly constituted board or association 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;

E. LURU's submitted for rental units shall include the rent roll and enough of each lease entered into during the previous calendar year to demonstrate compliance with lessee notification requirements in paragraphs 20 and 21 of the attached Exhibit A.

14. 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 Forsyth County land records, Book ____, Page ____." 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 35.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 1 day of October, 2015.

By: [Signature]
Fourth Street Ventures, LLC
John E. Reece, II
Principal Officer

NORTH CAROLINA
Forsyth 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: John E. Reece, II

Date: October 1, 2015

[Signature]
Official Signature of Notary



Julie K Goco
Notary's printed or typed name, Notary Public
My commission expires: August 13, 2017

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]
Michael E. Scott, Deputy Director
Division of Waste Management

9/25/15
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 Forsyth County

By: *Olivia Doyle*
Name typed or printed: Olivia Doyle
Deputy/Assistant Register of Deeds

Oct. 5, 2015
Date

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Fourth Street Ventures, LLC

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	955 Brookstown Avenue Project
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	955 Brookstown Avenue
Brownfields Project # 18028-14-34)	Winston-Salem, Forsyth County

I. INTRODUCTION

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

Fourth Street Ventures, LLC is a North Carolina-chartered, member-managed limited liability company created on May 30, 2012 for the purpose of redeveloping for high-density residential, office, retail, and associated automobile parking use, land in Winston-Salem, North Carolina that is the subject of this Agreement. Fourth Street Ventures, LLC is planning for redevelopment of this property and is therefore the Prospective Developer for the land subject to this Agreement. The land formerly included two parcels having addresses of 955 Brookstown Avenue and 967 Burke Street, and has since been combined into one parcel having Forsyth County Parcel Identification Number of 6825-96-0280. The land encompasses approximately 1.83 acres and has the address of 955 Brookstown Avenue. Fourth Street Ventures, LLC purchased the land from Branch Banking and Trust Company in March 2012 and taxable deed transfer was recorded as occurring on March 29, 2012. 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 Fourth Street

Ventures, LLC for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit Fourth Street Ventures, 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 Fourth Street Ventures, LLC.

III. STATEMENT OF FACTS

3. The Property comprises 1.83 acres. Prospective Developer has committed itself to redevelopment for no uses other than for high density residential, office, retail and associated automobile parking.

4. The Property is located in downtown Winston-Salem and is bordered to the northwest by commercial businesses, Burke Street NW, 4th Street NW, and commercial businesses and single family residential properties. To the north are commercial businesses, parking, a small undeveloped grassy area, and 4th Street NW, beyond which are commercial businesses. To the northeast are high density residential properties and North Broad Street, beyond which are parking lots and commercial properties. The adjacent property to the east is owned by Fourth Street Ventures, LLC and includes paved areas apparently used for parking and one warehouse building; beyond this is N. Green Street and portions of

West End Ventures, LLC brownfields property redeveloped as high density residential. On the southeast corner of the intersection of Green Street and Holly Avenue Fourth Street Ventures, LLC owns a grassed, currently undeveloped parcel. Other properties to the east across Green Street and south of Holly Avenue are commercial properties. West, northwest, and southwest of the Property are commercial properties located across Brookstown Avenue and Burk Street from the Property.

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 Phase II Environmental Site Assessment, Former Gas Station Property, 501 W. Morgan Street, Winston-Salem, North Carolina	Highlands Environmental Solutions Inc.	August 17, 2012
Brownfields Area Reconnaissance and Receptor Survey, Dillon Supply Buildings, 110 S. West Street, Winston-Salem, North Carolina	Highlands Environmental Solutions Inc.	July 27, 2012
Phase I Environmental Site Assessment, Dillon Supply Building, 110 S. West Street, Winston-Salem, N C	Highlands Environmental Solutions Inc,	July 18, 2012
Phase I Environmental Site Assessment Report, Approximate 1.85 Acre Tract, 955 & 967 Brookstown Avenue, Winston-Salem, NC	ECS Carolinas, LLP	August 4, 2009
Phase I Limited Site Assessment Report, 955 Brookstown Avenue and 967 Burke Street, Winston-Salem, NC	ECS Carolinas, LLP	September 28, 2008
Report of Environmental Services, 955 Brookstown Avenue and 967 Burke Street, Winston-Salem, NC	ECS Carolinas, LLP	March 23, 2007
Comprehensive Asbestos Survey, Parcel #-W-025, 120 South West Street, Winston-Salem, NC	EI, Inc.	January 24, 2006
Visual Survey of Hazardous Materials Report, Parcel #-W-025, 120 South West Street, Winston-Salem, NC	EI, Inc.	January 24, 2006
Lead-based Paint Survey Report, Triangle Transit Authority, Parcel #-W-025, 120 South West Street, Winston-Salem, NC	EI, Inc.	January 20, 2005
Phase II Environmental Site Assessment, Triangle Regional Rail Project, Downtown Winston-Salem	URS, Inc	May 13, 2004

Station		
Phase I Environmental Site Assessment, Triangle Regional Rail Project, Downtown Winston-Salem Station	URS, Inc	November 10, 2003

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 comprising about 1.83 acres in downtown Winston-Salem, NC. The property formerly included the addresses of 955 Brookstown Avenue and 967 Burke Street, but has since been combined into one parcel having the address of 955 Brookstown Avenue. The property is bounded by 4th Street NW and Burke Street NW to the North, N. Green Street to the East, 2nd Street West and Brookstown Avenue to the South, and Burke Street NW and Brookstown Avenue to the west. A dry cleaners and gasoline station were formerly located off-site and adjacent to the property on the west side of Brookstown Avenue. Based on the environmental site assessment data included in the Brownfields Property Application and in the reports referenced above, the on-site chlorinated solvent concentrations in groundwater appear to have an off-site source.

The property was developed with single family residential properties from about 1917 through 1945. Around 1945 commercial development of the former 967 Burke Street address (northern portion of property) consisted of an auto service and repair business, and this type of business continued until the 2000s. A 1945 Sanborn Fire Insurance map indicated a gasoline station with USTs was located on the former 967 Burke Street address, currently the northwestern portion of the 955 Brookstown address. In approximately 2003 the Fritts Motor Company (at 967 Burke Street) operated an automobile repair facility and used two on-site 500 gallon capacity gasoline USTs. The auto maintenance and repair services also included auto body repair and painting. The painting activities occurred in the southern, middle portion of the building on the former 967 Burke Street property. After the Fritts Motor Company left the property it was used as general warehouse space. Previous environmental assessments at the

former 967 Burke Street address included a comprehensive geophysical survey performed inside and outside the building in 2007. The geophysical survey did not find evidence of on-site USTs.

Around 1951 commercial development of the former 955 Brookstown Avenue property occurred, and an addition to the initial building was later constructed in about 1984. Previous uses of the property included a Graybar wholesale electrical supply operation for about 40 years (at 955 Brookstown Avenue), and by 2009 a company performing cabinet production and carpentry occupied the property. The former Graybar building was being used in 2007 by Master's Fitness, Halonite Fire Systems, and for warehouse space.

b. The Property's groundwater was historically contaminated with petroleum hydrocarbons, chlorinated hydrocarbons, and lead at concentrations above the applicable limits. More recent sampling indicates petroleum hydrocarbon concentrations occur in on-site soils above applicable standards but not site groundwater. The chlorinated solvent tetrachloroethene (PCE) appears to have as its source an off-site and adjacent former dry cleaners. Petroleum hydrocarbon concentrations have been documented in soil above both the residential and commercial/industrial use screening levels of DENR's Inactive Hazardous Sites Branch. Chlorinated solvents and petroleum hydrocarbons are noted to have potential for vapor intrusion at concentrations in groundwater above the Division of Waste Management Residential and Non-Residential Vapor Intrusion Screening Concentrations (January 2014 version).

7. The most recent environmental sampling at the Property reported in the Environmental Reports occurred in February, March, and May 2015. 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 1, 2013 version); or the 2L Groundwater Interim Maximum Allowable Concentration (IMACs, April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	Standard (µg/L)
Tetrachloroethene	TW-1A	8/29/2008	2.7	0.7
	TW-1	3/9/2007	2.35	0.7
	TW-2	3/9/2007	39.5	0.7
	TW-3	3/9/2007	128	0.7
	TW-4	3/9/2007	49.9	0.7
	SW-4	2/27/2015	25.8	0.7
	SB-6	2/25/2015	3.55	0.7

b. Soil contaminants in milligrams per kilogram (the equivalent of parts per million), the screening levels for which are derived from the Preliminary Residential and Preliminary Industrial Health-Based Remediation Goals of the Inactive Hazardous Sites Branch of DENR's Superfund Section (March 2015 version):

Soil Contaminant	Sample Location	Depth (Feet)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Residential Screening Level ¹ (mg/kg)	Industrial Screening Level ¹ (mg/kg)
Ethylbenzene	SB-1	8 to 10	02/25/2015	20.8	5.8	25
	SB-2	3 to 5	02/25/2015	7.87	5.8	25
	SB-3	23 to 25	02/25/2015	21.1	5.8	25
Naphthalene	SB-1	15 to 17	02/25/2015	23.7	3.8	17
	SB-2	15 to 17	02/25/2015	20.0	3.8	17
	SB-3	23 to 25	02/25/2015	27.7	3.8	17
	SB-4	23 to 25	02/25/2015	10.7	3.8	17
	SB-5	15 to 17	02/25/2015	7.95	3.8	17
1,2,4-TMB ²	SB-1	15 to 17	02/25/2015	56.1	12	48
	SB-2	15 to 17	02/25/2015	33.5	12	48
	SB-3	23 to 25	02/25/2015	71.5	12	48
	SB-4	23 to 25	02/25/2015	22.3	12	48
	SB-5	15 to 17	02/25/2015	16.6	12	48

¹Screening levels displayed for non-carcinogens are for hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for 1.0E-6 lifetime incremental cancer risk target.

²1,2,4-TMB = 1,2,4-Trimethylbenzene

c. 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 and Non-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 ¹ (µg/L)	Non-Residential VI Screening Level ¹ (µg/L)
Tetrachloroethene	TW-2	3/9/2007	39.5	11.5	278
	TW-3	3/9/2007	128	11.5	278
	TW-4	3/9/2007	49.9	11.5	278
	SW-4	2/27/2015	25.8	11.5	278

¹Screening 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.

²EDB = Ethylene Dibromide

³1,2,4-TMB = 1,2,4-Trimethylbenzene

d. Soil vapor (SG-2) and sub-slab soil vapor (SSV-1) sampling reported concentrations above the Division of Waste Management Residential and Non-Residential Vapor Intrusion Screening Levels (June 2014):

Soil Vapor and Sub-Slab Soil Vapor Compound and Depth of Collection	Date of Sampling	Concentration Exceeding Screening Level (µg/m ³)	Residential VI Sub-Slab/Soil Vapor Screening Level ¹ (µg/m ³)	Non-Residential Sub-Slab/Soil Vapor Screening Level ² (µg/m ³)
PCE – VP-2 – 8 ft	03/09/2015	27,000	278	3,500
PCE – VP-5 – 8 ft	05/04/2015	28,000	278	3,500
PCE – VP-6 – 8 ft	03/19/2015	18,000	278	3,500
PCE – VP-7 – 8 ft	03/20/2015	18,000	278	3,500

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, on October 31, 2012, Prospective Developer purchased the Property and then prepared and submitted to DENR a Brownfields Property Application dated June 27, 2014.

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 Brownfield 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. creation of retail, office and facility maintenance positions;

- b. help to revitalize this portion of downtown Winston-Salem through new construction and the influx of new business while providing multi-family residential opportunities;
- c. increase revenue for surrounding businesses;
- d. an increase in tax revenue for affected jurisdictions;
- e. “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. 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 requiring Prospective Developer to construct and operate active vapor intrusion mitigation for new construction located in the southeast quadrant of the intersection of Burke Street and Brookstown Avenue through the current location of the former Graybar building. This requirement is subject to paragraph 14.f. below. No other remediation is being required at the Property other than remediation that may be required pursuant to a DENR-approved Environmental Management Plan (EMP) required by this Section to 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.

14. By way of the Notice of Brownfields Property referenced below in paragraph 19, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. All references to DENR shall be understood to include any successor in function.

a. No use may be made of the Property other than for High Density Residential, Office, Retail and associated automobile Parking. For purposes of this restriction, the following definitions apply:

i. "High Density Residential" shall mean permanent dwellings where residential units are attached to each other with common walls, such as condominiums, apartments, group homes, dormitories or boarding houses, and any property outside the dwelling structures is usable by all residents and not privately owned as part of a particular unit, and shall include related amenities, such as pools, clubhouses, courtyards, common areas, recreation areas and parking garages;

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

iii. "Retail" refers to an activity the principal use or purpose of which is the sale of goods, products, or merchandise directly to the consumer.

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

b. Unless compliance with this Land Use Restriction is waived in writing in advance by DENR in relation to particular buildings, demolition of buildings on the Property depicted on the plat component of the Notice referenced in paragraph 19 below must occur in accordance with applicable

legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.

c. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with a Environmental Management Plan 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.

d. Groundwater at the Property may not be used for any purpose without the prior written approval of DENR.

e. After conclusion of the redevelopment period referenced in subparagraph 14.c above, as determined by DENR, no activity that disturbs soil or groundwater 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 14.a above while fully protecting public health and the environment. Notwithstanding the above, the Prospective developer may conduct landscaping activities including mowing and pruning of above-ground vegetation, landscape plantings that do not exceed 24 inches in depth, and for 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.

f. No building may be constructed on the Property until either the activities outlined in paragraph 14.f.i. or 14.f.ii occur. Existing buildings, defined as those depicted on the plat component of the Notice of Brownfields Property referenced in paragraph 19 below, must also comply with either paragraphs 14.f.i. or 14.f.ii. For existing buildings compliance with paragraph 14.f.i will occur through DENR's written approval of written reports and/or plans received by DENR within 120 days after signing this Agreement. Compliance with 14.f.ii for existing buildings will occur within 90 days of DENR's written approval of the reports and/or plans referenced above, if necessary as determined by DENR, as follows:

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.

g. 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.

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

i. The Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

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

k. 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.

l. 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.

m. During January of each year after the year in which the Notice referenced below in paragraph 19 is recorded, the owner of any part of the Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of Forsyth County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Forsyth County Register of Deeds office and certifying that the land use restrictions are being complied with. A joint

LURU may be submitted for multiple owners by a duly constituted board or association, or another entity approved in advance by DENR and stating in addition to said certification of land use restriction compliance, the LURU shall provide the following information:

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 14.f.ii. above are performing as designed (demonstrated through sampling), 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.

iv. A joint LURU submitted for multiple owners by a duly constituted board or association 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;

v. LURU's submitted for rental units shall include the rent roll and enough of each lease entered into during the previous calendar year to demonstrate compliance with lessee notification requirements in paragraphs 20 and 21 of this agreement.

n. 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 Forsyth County land records, Book ____, Page ____." 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.

1. 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.

15. 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.

16. 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.

17. 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

18. In addition to providing access to the Property pursuant to subparagraph 14.1. 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.

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

20. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Forsyth County land records, Book ____, Page ____." As part of the annual LURU (see paragraph 14.n above), the rent roll and enough of each lease of any part of the Property from the preceding calendar year to demonstrate inclusion of the preceding sentence's required language, and a copy of any other instrument conveying an interest during the preceding calendar year. A copy of 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. Instruments which convey leasehold interests shall

remain subject to the record keeping requirements of paragraph 33.

21. 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 and Section XI (Parties Bound) of this Agreement, including providing a notice to subsequent lessees and sublessees that the finalized Agreement is available for review at the leasing office. Within seven days of receiving the local jurisdiction's Certificate of Occupancy for the Property, Prospective developer shall make a copy of this Agreement available for lessees' and sublessees' review at the leasing office.

VII. DUE CARE/COOPERATION

22. The 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, 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

23. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Property

Application dated June 27, 2014 by which it applied for this Agreement. That use is for high density residential, office, retail 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

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

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.
- c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.
- d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.

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

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

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

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

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

26. This Agreement does not waive any applicable requirement to obtain a permit, license or certification, or to comply with any and all other applicable law, including the North Carolina

Environmental Policy Act, N.C.G.S. § 113A-1, et seq.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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

XI. FUTURE OWNERS

28. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 24 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.

29. 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

30. 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

31. 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.

32. Except for the Land Use Restrictions set forth in paragraph 19 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

33. 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 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

34. 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

35. 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 D. Rudder, P.G.

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

b. for Prospective Developer:

John E. Reece, II
Fourth Street Ventures, LLC
c/o Commercial Realty Advisors, LLC
101 N. Cherry Street, Suite 502
Winston-Salem, North Carolina, 27101

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

36. 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

37. 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

38. 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.

39. 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.

40. 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

41. 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 Date 9/25/15
Michael E. Scott, Deputy Director
Division of Waste Management

IT IS SO AGREED:

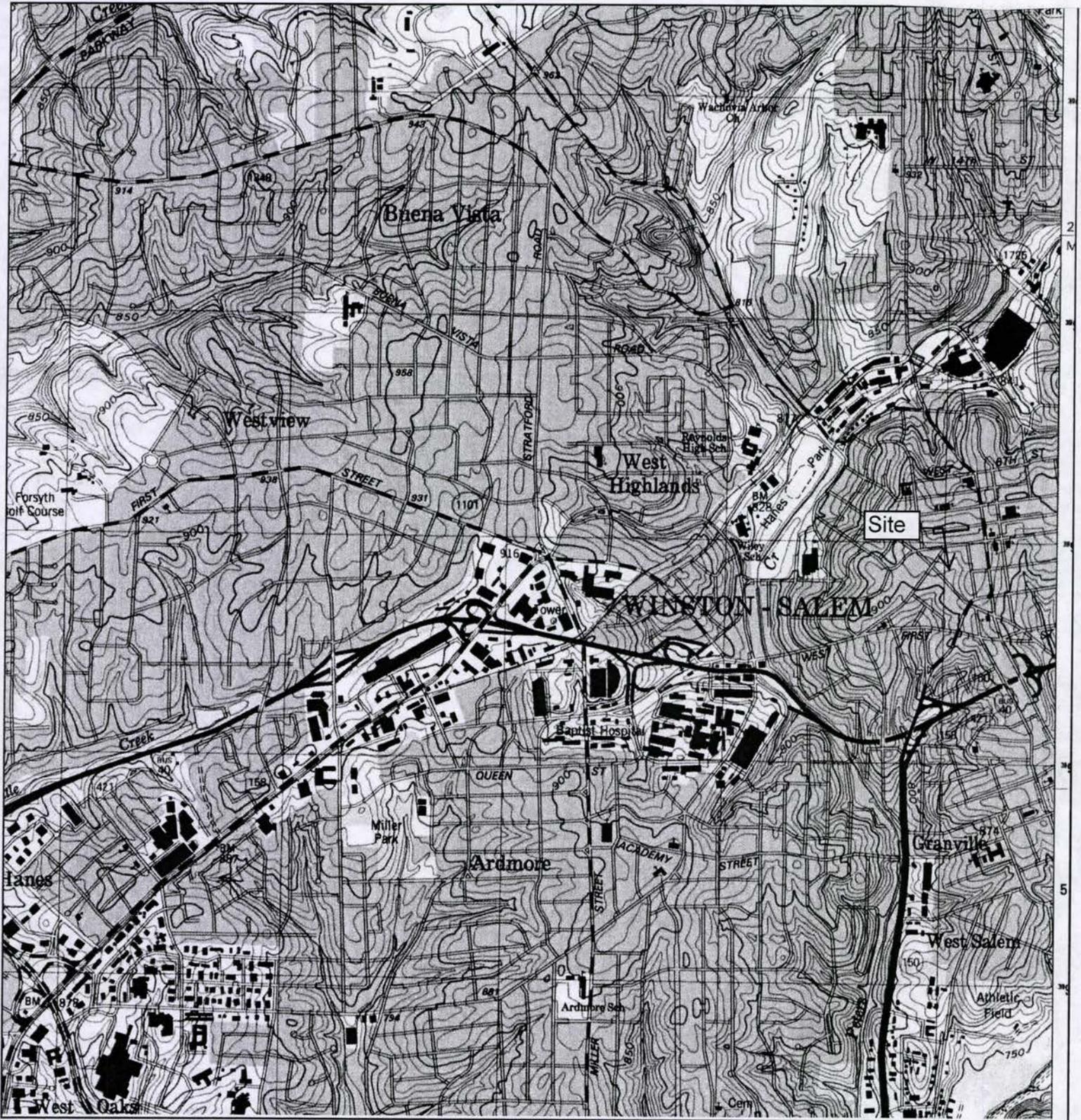
Fourth Street Ventures, LLC

By: John E. Reece, II Date 10/1/15
John E. Reece, II
Principal Officer

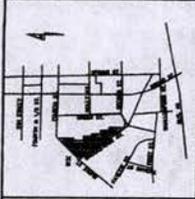
THIS MAP IS NOT A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A LOCAL

Historical Topographic Map

GOVERNMENT AGENCY FOR COMPLIANCE
WITH ANY APPLICABLE LAND DEVELOPMENT
REGULATIONS.



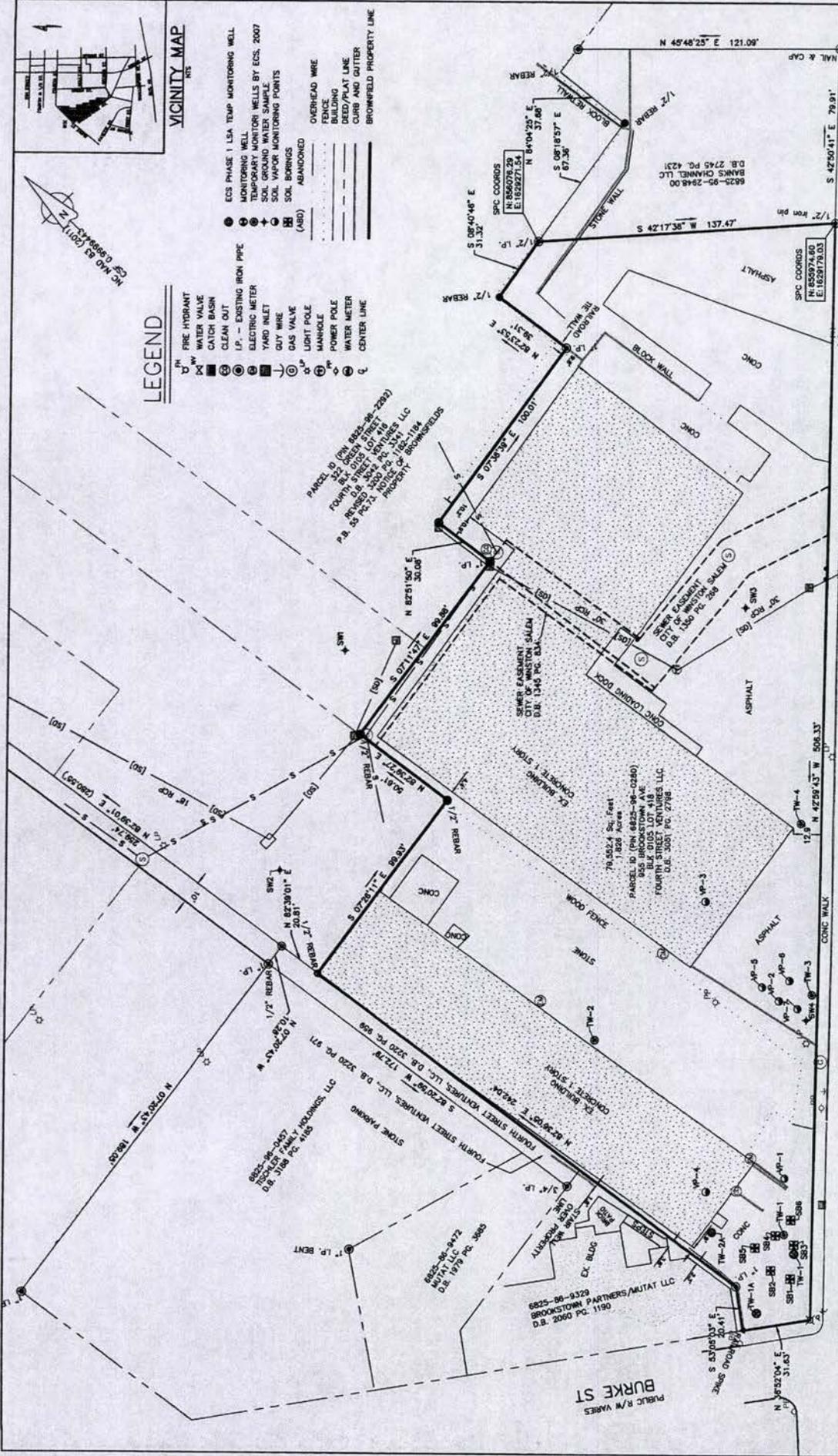
	TARGET QUAD NAME: WINSTON SALEM WEST MAP YEAR: 1997	SITE NAME: Fourth Street Ventures LLC ADDRESS: 955 Brookstown Avenue Winston Salem, NC 27101 LAT/LONG: 36.0961 / -80.2555	EXHIBIT 1
	SERIES: 7.5 SCALE: 1:24000		CLIENT: Piedmont Industrial Services CONTACT: Jason Jomp INQUIRY#: 3968739.4 RESEARCH DATE: 06/10/2014



VICINITY MAP

LEGEND

- ECS PHASE I LSA TEMP MONITORING WELL
- MONITORING WELL
- TEMPORARY MONITORING WELLS BY EGS, 2007
- SOL GROUND WATER SAMPLE
- SOL VAPOR MONITORING POINTS
- SOL BORINGS
- ABANDONED
- (ABD)
- OVERHEAD WIRE
- FENCE
- BUILDING
- DEED/PLAT LINE
- CURB AND GUTTER
- BROWNFIELD PROPERTY LINE
- FIRE HYDRANT
- WATER VALVE
- CATCH BASIN
- CLEAN OUT
- L.P. — EXISTING IRON PIPE
- ELECTRIC METER
- YARD INLET
- GUY WIRE
- GAS VALVE
- LIGHT POLE
- MANHOLE
- POWER POLE
- WATER METER
- CENTER LINE



DATE: 05.25.2015

PAGE 1 OF 3

SURVEY PLAT — EXHIBIT B TO THE NOTICE OF BROWNFIELDS PROPERTY

FOURTH STREET VENTURES LLC
 PIN 6825-96-0280
 955 BROOKSTOWN AVE
 CITY OF WINSTON — SALEM
 WINSTON TOWNSHIP
 FORSYTH COUNTY, NC

40' PUBLIC R/W BROOKSTOWN AVENUE

SEAL: 05/25/15
 NORTH CAROLINA PROFESSIONAL SURVEYOR
 DAVID J. SCOTT

for the purposes of N.C.G.S. — 150A-310.35

MICHAEL E. SCOTT, Deputy Director
 of Waste Management
 N.C. Division of Environment and Natural Resources
 State of North Carolina
 County of Wake

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.



LAND USE RESTRICTIONS

NCCS § 130A-310.2(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 intended by the use of the Brownfields Property and that are designated in the Agreement. The restrictions are hereby imposed on the Brownfields Property, and are as follows:

- No use may be made of the Property other than for High-Density Residential, Office, Retail, and associated automobile parking. For purposes of this restriction, the following definitions apply:
 - "High-Density Residential" shall mean permanent dwellings where residential units are attached to each other with common walls, such as condominiums, apartments, group homes, dormitories or boarding houses, co-ops, common areas, recreation areas and parking garages.
 - "Office" refers to the provision of business or professional services.
 - "Retail" refers to an activity the principal use or purpose of which is the sale of goods, products, or merchandise directly to the consumer.
- "Parking" refers to the temporary accommodation of motor vehicles in an area designed for same.
- Unless consistent with this Land Use Restriction, no building or structure shall be constructed on the Property in violation of the restrictions on the use of the Property set forth in this Agreement. The restrictions on the use of the Property shall be enforceable by the Health Hazard Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.
- Physical redevelopment of the Property may not occur other than in accordance with the Environmental Management Plan approved in writing by DENR in substance (and revised in accordance with the terms of the agreement) and in accordance with the Environmental Management Plan approved in writing by DENR in substance (and revised in accordance with the terms of the agreement) prior to each subsequent redevelopment phase that is consistent with all of the terms and conditions of the agreement and the Environmental Management Plan, 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.
- Groundwater at the Property may not be used for any purpose without the prior written approval of DENR.

3. After completion of the redevelopment period referenced in paragraph 3 above, as determined by DENR, no activity that disturbs soil or groundwater on the Property may occur unless and until the uses specified in paragraph 1. above shall have been approved in writing by DENR. The approval shall be based on the following:

- A. the proposed activity shall not exceed 24 inches in height above the existing ground surface, and shall not exceed 24 inches in width;
- B. no building may be constructed on the Property until after the activities outlined in paragraph 6.A. or 6.B. of this Notice. For existing buildings existing on the site, the owner of the Property shall be responsible for obtaining the necessary permits and approvals from DENR and the Health Hazard Control Unit within 120 days after signing this Agreement. Compliance with the referenced 6.B. for existing buildings will occur within 90 days of DENR's written approval of the reports and/or plans referenced above, as determined by DENR, as follows:
 - A. DENR's determination, based on a submission 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 visible contamination 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 writing by DENR in substance, including methodology(ies) for demonstrating performance of said measures.

7. 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.

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

9. The Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

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

11. The owner of any portion of the Property where any existing or substantially existing, DENR-approved monitoring well is damaged and is responsible for repair of any such well 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 substance.

12. 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.

13. During January of each year after the year in which this Notice is recorded, the owner of any part of the Property shall submit a notated Land Use Restrictions Update ("LURU") to DENR, and to the other public entities having jurisdiction over the Property, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Forayth County Register of Deeds Office and that the LURU is recorded with the Forayth County Register of Deeds Office and that the LURU and all other documents submitted by the owner of the Property to DENR, DENR's written approval of the LURU, and all other documents submitted by the owner of the Property to DENR, are available to the public. The LURU and all other documents submitted by the owner of the Property to DENR, DENR's written approval of the LURU, and all other documents submitted by the owner of the Property to DENR, may be deleted 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.

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 home/office 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 14.1.1. of the attached Exhibit A are performing as designed (demonstrated through sampling), 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.

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

E. LURUs submitted for rental units shall include the rent roll and amount of each lease entered into during the previous calendar year to demonstrate compliance with lease notification requirements in paragraphs 20 and 21 of the attached Exhibit A.

14. 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 deed or other instrument shall be subject to the land use restrictions set forth in the Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Forayth County and recorded in the Forayth County Register of Deeds Office 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 version 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 35.0 of Exhibit A hereto, at the address stated therein.

GRID TIE-

I, DAVID J. SOROKI, PLS., certify that this map was drawn under my supervision from an actual GPS (or GNSS) survey made under my supervision and the following information was used to perform the survey:

- Positional accuracy: 1.0" (RTK DENR/CD)
- Type of GPS (or GNSS) field procedure: VRS (GDOP TIE ONLY)
- Date(s) of survey: AUG 28, 2014
- Surveyor's name: DAVID J. SOROKI, PLS., NAD 2011
- Published/Used control: GEOID 12A V/A - V/S
- Geoid model: GEOID 12A V/A - V/S
- Combined grid factor - CSF - 0.9999443
- Units - FEET

PLANNING DEPARTMENT/DEEDS OFFICER

This is to certify that this plan meets the recording requirements of the North Carolina Substitution Regulations for the Forayth County, North Carolina.

Approved: _____ Date: _____

By: _____

_____ Register of Deeds

_____ Forayth County, North Carolina

_____ Day of _____ 2013

_____ Forayth County, North Carolina

DATE: 08/28/2013
 PAGE 2 OF 3
SURVEY PLAT - EXHIBIT B TO THE NOTICE OF BROWNFIELDS PROPERTY
FOURTH STREET VENTURES LLC
 PIN 6825-96-0280
 955 BROOKSTOWN AVE
CITY OF WINSTON - SALEM
WINSTON TOWNSHIP
FORSYTH COUNTY, NC



DAVID J. SOROKI
 Surveyor
 Registration Number
 338-888-1368

- NOTES:**
- SITE IS SUBJECT TO ALL EASEMENTS, R/W AND AGREEMENTS OF RECORD PRIOR TO THE DATE OF THE SURVEY.
 - ALL DISTANCES ARE HORIZONTAL GROUND, UNLESS OTHERWISE NOTED.
 - ALL BEARINGS ARE GRID BEARINGS.
 - AREA COMPUTED BY COORDINATE GEOMETRY.
 - THE AREAS AND TYPES OF CONTAMINATION DEPICTED HEREON ARE BASED ON INFORMATION OBTAINED FROM THE BEST AVAILABLE INFORMATION AT THE TIME OF FILING.
 - PURPOSE OF THIS MAP IS TO SHOW ENVIRONMENTAL INFORMATION BASED ON AN OUTSIDE CONSULTANT'S SOIL LAND SURVEYING NOT RESPONSIBLE FOR THE ACCURACY OF THE PROVIDED ENVIRONMENTAL DATA ON THIS PLAT.
 - SURVEYOR CERTIFICATIONS ON TWO WILL SERVE FOR PAGES 1-3.

Soil contaminants in milligrams per kilogram (the equivalent of parts per million), the screening levels for which are derived from the Preliminary Residential and Preliminary Industrial Health-Based Remediation Goals of the Inactive Hazardous Sites Branch of DENR's Superfund Section (March 2015 version):

Soil Contaminant	Sample Location	Depth (Feet)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Residential Screening Level ¹ (mg/kg)	Industrial Screening Level ² (mg/kg)
Ethylbenzene	SB-1	8 to 10	02/25/2015	20.8	5.8	25
	SB-2	3 to 5	02/25/2015	7.87	5.8	25
	SB-3	23 to 25	02/25/2015	21.1	5.8	25
	SB-4	15 to 17	02/25/2015	23.7	3.8	17
Naphthalene	SB-2	15 to 17	02/25/2015	20.0	3.8	17
	SB-3	23 to 25	02/25/2015	27.7	3.8	17
	SB-4	23 to 25	02/25/2015	10.7	3.8	17
	SB-5	15 to 17	02/25/2015	7.95	3.8	17
1,2,4-TMB ³	SB-1	15 to 17	02/25/2015	56.1	12	48
	SB-2	15 to 17	02/25/2015	33.5	12	48
	SB-3	23 to 25	02/25/2015	71.5	12	48
	SB-4	23 to 25	02/25/2015	22.3	12	48
	SB-5	15 to 17	02/25/2015	16.6	12	48

¹Screening levels displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for a 10⁻⁶ lifetime incremental cancer risk target.

²1,2,4-TMB = 1,2,4-Trinitrotoluene

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 1, 2013 version); or the 2L Groundwater Interim Maximum Allowable Concentration (IMACs, April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	Standard (µg/L)
Tetrachloroethene	TW-1A	8/29/2008	2.7	0.7
	TW-1	3/9/2007	2.35	0.7
	TW-2	3/9/2007	39.5	0.7
	TW-3	3/9/2007	128	0.7
	TW-4	3/9/2007	49.9	0.7
	SW-4	2/27/2015	25.8	0.7
	SB-6	2/25/2015	3.55	0.7

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 and Non-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 ¹ (µg/L)	Non-Residential VI Screening Level ² (µg/L)
Tetrachloroethene	TW-2	3/9/2007	39.5	11.5	278
	TW-3	3/9/2007	128	11.5	278
	TW-4	3/9/2007	49.9	11.5	278
	SW-4	2/27/2015	25.8	11.5	278

¹Screening levels displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for a 10⁻⁶ lifetime incremental cancer risk.

²1,2,4-TMB = 1,2,4-Trinitrotoluene

Soil vapor (SG-2) and sub-slab soil vapor (SSV-1) sampling reported concentrations above the Division of Waste Management Residential and Non-Residential Vapor Intrusion Screening Levels (June 2014):

Soil Vapor and Sub-Slab and Soil Vapor Compounds and Depth of Collection	Date of Sampling	Concentration Exceeding Screening Level (µg/m ³)	Residential VI Sub-Slab Soil Vapor Screening Level ¹ (µg/m ³)	Non-Residential VI Sub-Slab Screening Level ² (µg/m ³)
PCE - VP-2 - 8 ft	03/09/2015	27,000	278	3,500
PCE - VP-5 - 8 ft	05/04/2015	28,000	278	3,500
PCE - VP-6 - 8 ft	03/19/2015	18,000	278	3,500
PCE - VP-7 - 8 ft	03/20/2015	18,000	278	3,500



JUNE 25, 2015
 PAGE 3 OF 3
 SURVEY PLAT - EXHIBIT B TO THE
 NOTICE OF BROWNFIELDS PROPERTY
 FOURTH STREET VENTURES LLC
 PIN 6825-96-0280
 955 BROOKSTOWN AVE
 CITY OF WINSTON - SALEM
 WINSTON TOWNSHIP
 FORSYTH COUNTY, NC



EXHIBIT C

BEGINNING at an iron found at the intersection of the northeastern right-of-way line of Brookstown Avenue and the southeastern right-of-way line of Burke Street, and running with said right-of-way of Burke Street North $36^{\circ}52'15''$ East 31.63 feet to an iron; thence leaving said right-of-way of Burke Street and running the following two (2) courses with the southern boundary of the property conveyed to J.W. Tatum and Jack R. Trischier, Trustee in Deed Book 1831, Page 2759, Forsyth County Registry: (1) South $52^{\circ}47'47''$ East 20.39 feet and (2) North $82^{\circ}24'44''$ East 241.94 feet to an iron located in the northwesternmost corner of the property conveyed to Fowler-Morefield Co. in Deed Book 1123, Page 72, Forsyth County Registry; running thence with the western boundary of the Fowler-Morefield property, the following eight (8) courses and distances: (1) South $07^{\circ}40'38''$ East 48.23 feet to an iron; (2) South $07^{\circ}32'17''$ East 51.76 feet to an iron; (3) North $83^{\circ}31'51''$ East 50.45 feet to an iron; (4) South $07^{\circ}15'50''$ East 99.90 feet to an iron; (5) North $82^{\circ}42'51''$ East 30.07 feet to an iron; (6) South $06^{\circ}55'48''$ East 99.80 feet to an iron; (7) North $81^{\circ}26'18''$ East 39.92 feet to an iron; and (8) South $09^{\circ}55'00''$ East 32.22 feet to an iron located in the western boundary of the Fowler-Morefield property, in a northern corner of the property conveyed to Banks Channel, LLC in Deed Book 2745, Page 4235, Forsyth County Registry; thence with the northwestern boundary of the Banks Channel property, South $42^{\circ}21'17''$ West 137.62 feet to a nail in concrete located in the northeastern right-of-way line of Brookstown Avenue; thence with said right-of-way of Brookstown Avenue, North $42^{\circ}59'13''$ West 506.29 feet to the point and place of beginning, containing 1.828 acres, more or less, as shown on a survey prepared for Fourth Street Ventures, LLC, by Brady Surveying Company, P.A., date July 2, 2008, and updated on February 13, 2012.