

**Via Federal Express**

November 4, 2016

NC DEQ  
Brownfields Program  
1646 Mail Service Center  
Raleigh, North Carolina 27699-1646

Attn: Ms. Shirley Liggins

Re: Notice of Brownfields Property and Survey Plat  
Brownfields Project No. 18044-14-060  
NC DOT State Project: P-2918F  
WBS Element: 49999.1.STR8  
Mecklenburg County, Charlotte, North Carolina  
H&H Job No. ROW-509



Dear Shirley:

On behalf of the North Carolina Department of Transportation (NC DOT), Hart & Hickman, PC (H&H) is submitting the certified copies of the Notice of Brownfields Property (NBP) and the survey plat for the referenced project. The NBP and survey plat were recorded at the Mecklenburg County Register of Deeds on November 4, 2016.

If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

***Hart & Hickman, PC***

A handwritten signature in black ink, appearing to read "David Graham".

David Graham  
Senior Project Geologist

A handwritten signature in black ink, appearing to read "Matt Bramblett".

Matt Bramblett, PE  
Principal

cc: Ms. Carolyn Minnich, NC DEQ (via email)  
Mr. Gordon Box, NC DOT (via email and copy via US Mail)

**Attachments**

J. David Granberry, Register of Deeds  
720 East Fourth Street  
Charlotte, NC 28202  
980-314-4905

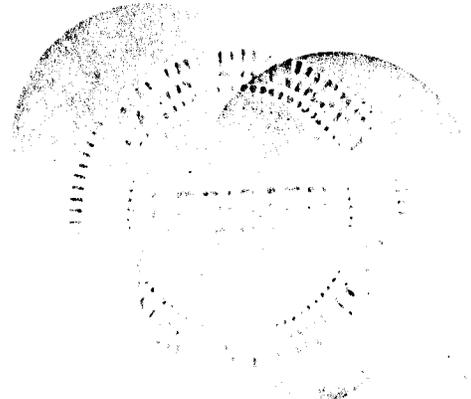
State of North Carolina  
County of Mecklenburg

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 Number 2016050008 in Book Number 31315 Page Number 017 and ending with Page Number 058.

Witness my hand and seal this 4<sup>th</sup> day of Nov. 2016.

J. David Granberry, Register of Deeds

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



FOR REGISTRATION  
J. David Granberry  
REGISTER OF DEEDS  
Mecklenburg County, NC  
2016 NOV 04 10:50:12 AM  
BK:31315 PG:617-658  
FEE:\$134.00  
INSTRUMENT # 2016150668

PHETSL



2016150668

Property Owner: North Carolina Department of Transportation (NCDOT)

Recorded in Book 31315, Page 617

Associated plat recorded in Plat Book 60, Page 157

### NOTICE OF BROWNFIELDS PROPERTY

Site Name: Charlotte Locomotive & Railcar Maintenance Facility

Brownfields Project Number: 18044-14-060

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 4<sup>th</sup> day of NOVEMBER, 2016 by the North Carolina Department of Transportation ("NCDOT") ("Prospective Developer").

This Notice concerns contaminated property.

A copy of this Notice certified by the North Carolina Department of Environmental Quality ("DEQ") 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 ("NCGS"), § 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 ("Brownfields Property") being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 ("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 DEQ's approval of the Notice or Prospective Developer's entry into the Brownfields Agreement required by the Act, whichever is later. The copy of the Notice certified by DEQ 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 at 1336 & 1320 South Graham Street and is approximately 2.637 acres. Parcel 31 is located at 1336 South Graham Street (Mecklenburg Parcel ID Number 07326215). Note that only the southern portion (Parcel 31.1) approximately 1.012 acres is included in the Brownfields Property. Parcel 32 is located at 1320 South Graham Street (Mecklenburg Parcel ID Number 07326216) and is approximately 1.625 acres. The Brownfields Property is surrounded by land in commercial and industrial uses, with residential use beyond. Soil and groundwater on the Brownfields Property are contaminated due to historical site operations.

RETURN TO:  
DAVID GRANBERRY  
HART & HICKMAN PC  
2923 S. TRYON CT, SUITE 100  
CHARLOTTE, NC 28203

The current land use is commercial and industrial; past uses include: a junkyard, warehousing/storage, trucking company & repairs, and millwork. NCDOT plans to redevelop the land for industrial use, specifically a Locomotive and Railcar Maintenance Facility (LRMF). This property is part of a large redevelopment project by NCDOT.

**The Brownfields Agreement between Prospective Developer and DEQ is attached hereto as Exhibit A. It sets forth the use that may be made of the Brownfields Property and the measures to be taken to protect public health and the environment, and is required by NCGS § 130A-310.32. The Brownfields Agreement's Exhibit 2 consists of one or more data tables reflecting the concentrations of and other information regarding the Property's regulated substances and contaminants.**

Attached as Exhibit B to this Notice is a reduction, to 8 1/2" x 11", of the survey plat component of this Notice. This plat shows areas designated by DEQ, 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.

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.

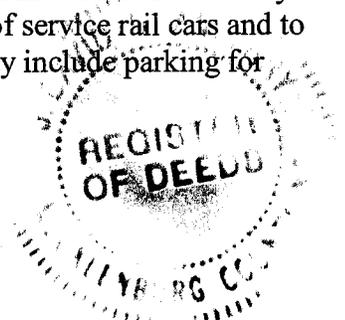
**LAND USE RESTRICTIONS**

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 DEQ (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 DEQ shall be understood to include any successor in function. The restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No use may be made of the Brownfields Property other than for redevelopment for industrial uses, specifically for the Charlotte Locomotive and Railcar Maintenance Facility. For purposes of this restriction, the following definitions apply:

a. Industrial defined as the assembly, fabrication, processing, warehousing or distribution of goods or materials; and

b. Operations and maintenance facility refers to the vehicles, parking, and equipment used to support the routine storage and servicing of rail cars as part of the operating routine. Allowed activities may include, the inspection, cleaning, maintenance, and repair of rail cars, storage of out of service rail cars and to other activities directly related to the rail operation and maintenance. The facility may include parking for



railroad employees and related service providers, as well as storage buildings and service areas pertinent to the operating routine.

2. Physical redevelopment of the Brownfields Property may not occur other than in accord, as determined by DEQ, with an Environmental Management Plan ("EMP") approved in writing by DEQ in advance (and revised to DEQ'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 Brownfields Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Brownfields Property during construction or redevelopment in any other form, including without limitation:

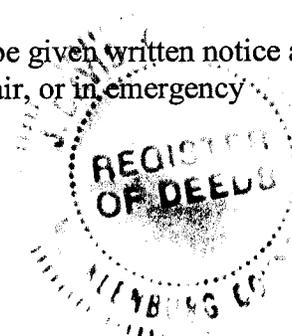
- a. soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;
- b. issues related to potential sources of contamination referenced in paragraph 7 and 8 and Exhibit 2 of Exhibit A hereto;
- c. contingency plans for addressing, including without limitation the testing of soil and groundwater, newly discovered potential sources of environmental contamination (e.g., USTs, tanks, drums, septic drain fields, oil-water separators, soil contamination); and
- d. plans for the proper characterization of, and, as necessary, disposal of contaminated soils excavated during redevelopment;

3. Within 90 days after each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Brownfields Property continues (except that the final deadline shall fall 90 days after the conclusion of physical redevelopment), the then owner of the Brownfields Property shall provide DEQ a report subject to written DEQ approval on environment-related activities since the last report, with a summary and drawings, that describes:

- a. actions taken on the Brownfields Property in accordance with Section V: Work to be Performed above;
- b. soil grading and cut and fill actions;
- c. methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;
- d. stockpiling, containerizing, decontaminating, treating, handling, laboratory analysis and ultimate disposition of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and
- e. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Brownfields Property (copies of all legally required manifests shall be included).

4. No activity that disturbs soil on the Brownfields Property unless in accordance with Environmental Management Plan in previous paragraph 2 above, may occur unless and until DEQ states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DEQ deems necessary to ensure the Brownfields Property will be suitable for the uses specified in paragraph 1 above while fully protecting public health and the environment, except:

- a. in connection with landscape planting to depths not exceeding 6 inches;
- b. mowing and pruning of above-ground vegetation and;
- c. for repair of underground infrastructure, provided that DEQ shall be given written notice at least seven days in advance of a scheduled repair (if only by email) of any such repair, or in emergency



circumstances no later than the next business day, and that any related assessment and remedial measures required by DEQ shall be taken.

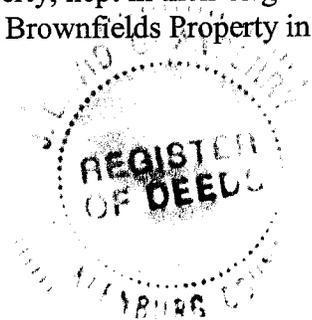
5. Groundwater and Surface water at the Brownfields Property may not be used for any purpose, other than in connection with legally compliant storm water collection and reuse techniques, without the prior written approval of DEQ.

6. No enclosed building may be constructed on the Brownfields Property and no existing building, defined as those depicted on the plat component of the Notice, may be occupied until DEQ determines in writing that:

- a. the building is or would be protective of the building's users, public health and the environment from risk of vapor intrusion based on site assessment data or a site-specific risk assessment approved in writing by DEQ; or
- b. the building is or would be sufficiently distant from the Brownfields Property's groundwater and/or soil contamination based on assessment data approved in writing by DEQ that the building's users, public health and the environment will be protected from risk from vapor intrusion related to said contamination; or
- c. vapor intrusion mitigation measures are installed and/or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. Any design specification for vapor intrusion mitigation measures shall be approved in writing by DEQ in advance of installation and/or implementation of said measures. The design specifications shall include methodology(ies) for demonstrating performance of said measures.

7. None of the contaminants known to be present in the environmental media at the Brownfields Property, as described in Exhibit 2 of this Agreement and as modified by DEQ in writing if additional contaminants in excess of applicable standards are discovered at the Brownfields Property, may be used or stored at the Brownfields Property without the prior written approval of DEQ, except:

- a. in *de minimis* quantities for cleaning and other routine housekeeping and maintenance activities;
- b. in fluids in vehicles;
- c. as constituents of products and materials customarily used and stored in railway environments, provided such products and materials are used, stored, in original retail packaging and disposed of in accordance with applicable laws;
- d. in *de minimis* quantities for railcar maintenance, service, railcar wash and body work in compliance with applicable law;
- e. as constituents of fuels, lubricants and oils in emergency generators, machinery, equipment and vehicles in on-board tanks integral to said equipment or in flammable liquid storage containers totaling no more than 25 gallons;
- f. as fuel or other fluids customarily used in vehicles, landscaping equipment and emergency generators; and
- g. in products or materials that are brought onto the Brownfields Property, kept in their original packaging or containers (that is, not used or repackaged) and later removed from the Brownfields Property in the original packaging or containers.



8. The owner of any portion of the Brownfields Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged by the owner, its contractors, or its tenants shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ, unless compliance with this Land Use Restriction is waived in writing by DEQ in advance.

9. Neither DEQ, nor any party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit, order or agreement issued or entered into by DEQ, may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Brownfields Property.

10. During January of each year after the year in which the Notice is recorded, the owner of any part of the Brownfields Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DEQ, 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:

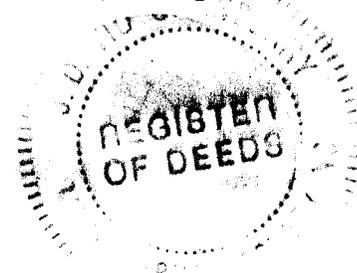
a. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Brownfields Property during the previous calendar year;

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 Brownfields Property during the previous calendar year;

c. whether soil caps (hardscape materials, clean soil, stone) and landscaping required by paragraph 4 above are being inspected and maintained to prevent erosion and/or human exposure to contaminated soil or other media; and

d. whether any vapor barrier and/or mitigation systems installed pursuant to paragraph 6 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;

11. Any deed or other instrument conveying an interest in the Brownfields 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 \_\_\_\_, Page \_\_\_\_." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions) of Exhibit A hereto, though financial figures related to the conveyance may be redacted. Prospective Developer may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, Prospective Developer may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notice and Submissions) of Exhibit A hereto; or (ii) Prospective Developer may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV of Exhibit A hereto.



For purposes of the land use restrictions set forth above, the DEQ point of contact shall be the DEQ official referenced in paragraph 35.a. of Exhibit A hereto, at the address stated therein.

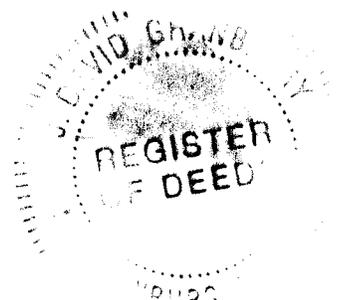
**ENFORCEMENT**

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 DEQ 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 DEQ (or its successor in function), or his/her delegate, shall be subject to enforcement by DEQ 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 \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.



North Carolina Department of Transportation

By: Walt Gray  
Walt Gray  
Chief Deputy Secretary

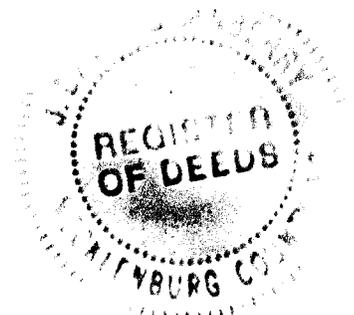
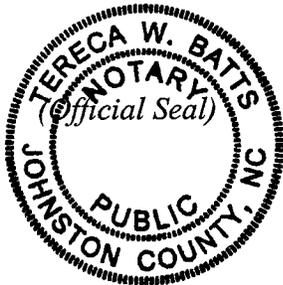
NORTH CAROLINA  
Wake COUNTY

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: Walt Gray.

Date: 10-24-16

Tereca W. Batts  
Official Signature of Notary

Tereca W. Batts  
Notary's printed or typed name, Notary Public  
My commission expires: 11-08-2017



\*\*\*\*\*

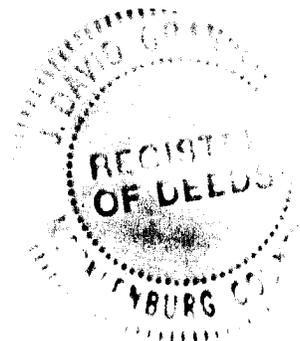
**APPROVAL AND CERTIFICATION OF NORTH CAROLINA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

The foregoing Notice of Brownfields Property is hereby approved and certified.

North Carolina Department of Environmental Quality

By: Michael E. Scott  
Michael E. Scott  
Director, Division of Waste Management

9/30/16  
Date



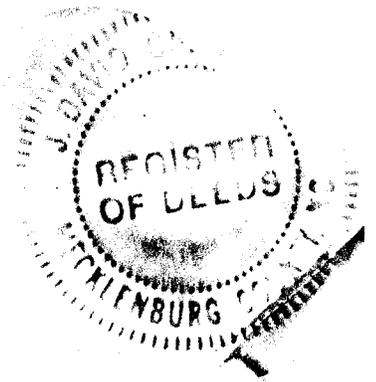
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**CERTIFICATION OF REGISTER OF DEEDS**

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 \_\_\_\_\_ County

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name typed or printed: \_\_\_\_\_  
Deputy/Assistant Register of Deeds



**EXHIBIT A**

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

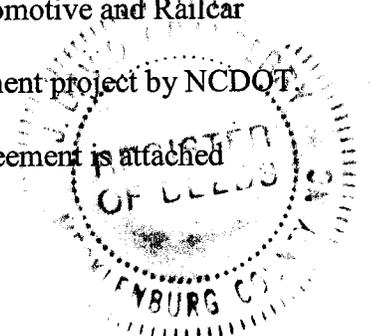
IN THE MATTER OF: North Carolina Department of Transportation

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT	)	Charlotte Locomotive & Railcar Maintenance Facility
OF 1997, NCGS § 130A-310.30, <u>et seq.</u>	)	1336 & 1320 South Graham Street
Brownfields Project #18044-14-060	)	Charlotte, Mecklenburg County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environmental Quality (“DEQ”) and North Carolina Department of Transportation (“NCDOT”) (collectively the “Parties”) pursuant to the Brownfields Property Reuse Act of 1997, NCGS § 130A-310.30, et seq. (the “Act”).

The NCDOT was formed in 1979 and is responsible for the building, repairing, and operating highways, bridges, and other modes of transportation in the State of North Carolina. The main office is located at the Transportation Building at 1 South Wilmington Street in Raleigh, North Carolina 27601. This Agreement concerns approximately 2.637 acres and is located at 1336 & 1320 South Graham Street in Charlotte. The property is surrounded by land in commercial and industrial uses, with residential use beyond. Soil and groundwater on the property are contaminated due to historical site operations. The current land use is commercial and industrial; past uses include: a junkyard, warehousing/storage, trucking company & repairs, and millwork. NCDOT plans to redevelop the land for industrial use, specifically the Charlotte Locomotive and Railcar Maintenance Facility (“LRMF”). This property is part of a large redevelopment project by NCDOT. 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 (DEQ's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the potential liability of NCDOT for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit NCDOT shall provide to DEQ, is in the public interest.

## II. DEFINITIONS

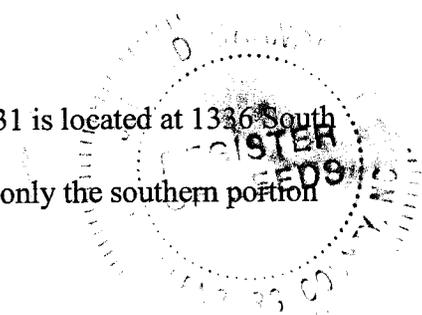
Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Act or elsewhere in NCGS § 130A, Article 9 shall have the meaning assigned to them in those statutory provisions, including any amendments thereto.

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 North Carolina Department of Transportation (NCDOT).

## III. STATEMENT OF FACTS

3. The Property comprises approximately 2.637 acres. Parcel 31 is located at 1336 South Graham Street (Mecklenburg Parcel ID Number 07326215). Note that only the southern portion



(Parcel 31.1 ) approximately 1.012 acres is included in the Brownfields Property. Parcel 32 is located at 1320 South Graham Street (Mecklenburg Parcel ID Number 07326216) and is approximately 1.625 acres. Prospective Developer has committed itself to redevelopment for no uses other than industrial, specifically for the Charlotte Locomotive and Railcar Maintenance Facility.

4. The Property is bordered to the north by railroad tracks and land owned by Charlotte Pipe and Foundry; to the south by South Graham Street and land used for commercial use beyond; to the east by land owned by NCDOT that is not part of the Brownfields Property defined herein and Penman Street; and to the west by land owned by NCDOT that is not part of the Brownfields Property defined herein and Winona Street.

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

<i>Title</i>	<i>Prepared by</i>	<i>Date of Report</i>
Asbestos Survey NCDOT Parcel 32	Hart & Hickman	June 23, 2016
Brownfields Soil Sampling NCDOT Parcel 32	Hart & Hickman	June 23, 2016
Hazardous Soil Removal Work Plan & Groundwater Sample Results NCDOT Parcel 32	Hart & Hickman	April 26, 2016
Parcel 31 Preliminary Site Assessment	Hart & Hickman	July 16, 2015
Parcel 32 Preliminary Site Assessment	Hart & Hickman	December 1, 2014
Geophysical Survey Report (Parcel 31)	URS Corporation	April 9, 2011
Addendum to UST Closure Report (Off - Property but on Parcel 31)	ARM Environmental Services, PLLC	September 8, 2005
Limited Site Assessment Report (Off -Property but on Parcel 31)	ARM Environmental Services, PLLC	December 9, 2005
Summary Report Tank Excavation Operations (Off -Property but on Parcel 31)	ERM Southeast, Inc.	October 8, 1990

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

a. Parcel 31 is located at 1336 South Graham Street. The southern portion of the property (Parcel 31.1 - approximately 1.012 acres) along South Graham Street is included in the Brownfields Property. Past tenants of 1336 S. Graham Street included Charlotte Pipe and Foundry for warehouse and storage; a trucking company and repair; millwork; a film distributor; a baseball stadium; and an HVAC company. On August 27, 2015, NCDOT took ownership of Parcel 31 from Charlotte Pipe and Foundry Company.

b. Parcel 32 is located at 1320 South Graham Street. Past tenants include: Smith Metal & Iron as a junkyard and Ferguson Plumbing Supply for plumbing supply/distributor. The junkyard operated from the 1920s to the mid-1970s. Environmental reports indicate a former battery storage building in the northeast portion. A rear warehouse in the northern portion dating to the 1920s and a warehouse in the southern portion dating to 1990 were demolished in early 2016. On September 4, 2015, NCDOT took ownership of Parcel 32 from RJS/STS LLC.

c. The Property is currently owned by the Prospective Developer.

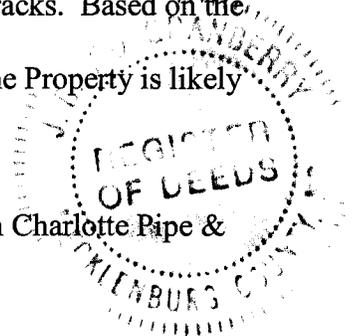
7. Pertinent environmental information regarding the Property and surrounding area includes the following:

a. Located on Parcel 31, but offsite of the Brownfields Property, several environmental impacts have been identified. UST Incident Number 13137 is associated with this Parcel and relates to one 4,000 gallon, one 2,000 gallon, and two 5,000 gallon diesel underground storage tanks (USTs) which were removed in 1990. Impacted soil remains on the parcel. In March 2006, a No Further Action Letter was issued from the DEQ UST Section and a Notice of Residual

Petroleum (NORP) was recorded on Parcel 31, located at 1336 South Graham Street. The Perpetual Land Use Restriction states: *Soil containing residual petroleum above applicable regulatory standard(s) remains on the site in the area identified in Figure 1, Attachment A (Refer to extent of contamination as diagrammed in an existing report and attached copy of that figure(s)). No soil shall be excavated or disturbed within 3 feet of the area identified in Figure 1, Attachment except to remediate the soil in accordance with all applicable state and federal statutes, regulations, and guideline. Groundwater from the site is prohibited from use as a water supply. Water supply wells of any kind shall not be installed or operated on the site.* Note, the impacted soil area referenced in NORP Figure 1 is not included in the Brownfields Property. Soil impacts including total petroleum hydrocarbons (TPH), polynuclear aromatic hydrocarbons (PAHs), and metals were also previously detected on Parcel 31. TPH and PAHs were identified in soil on the Brownfields Property Parcel 31.1.

b. Parcel 32 has three potential USTs located on-site. These will be investigated further during redevelopment in these areas of the Property. Soil impacted with metals specifically lead, PAHs, TPH and polychlorinated biphenyls (PCBs) has been identified on-site. One of the lead impacted areas is being treated on site to be rendered non-hazardous. The soil will either be used in an onsite berm or disposed of properly off site. This work is being reviewed and approved in accordance with the land use restriction in paragraph 15.b below. Additional soil samples were collected on the North-Northwest portion of the Property near the railroad tracks. Based on the Environmental Reports, the area of lead impact on the northern portion of the Property is likely limited to shallow soils within the top four feet.

c. The surrounding area has been industrial. Operations from Charlotte Pipe &



Foundry, Smith Metal & Iron, and others have impacted the Property and surrounding area.

8. Environmental information regarding the groundwater, soil, and vapor on the Property includes the following:

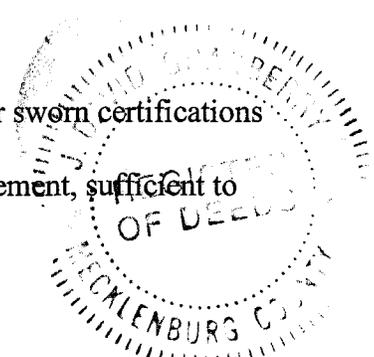
a. There are wide spread soil impacts on the Property including metals, specifically lead, TPH, PCBs and PAHs. An Environmental Management Plan (EMP) is required in paragraph 15.b. Soil will be treated, removed, or capped in place depending on redevelopment needs.

b. Groundwater impacts in the area appear to be limited. No target constituents were detected in the groundwater samples on Parcel 32 and minor impacts on Parcel 31 outside of the Brownfields property. Manganese detected in groundwater on Parcel 32 may be naturally occurring.

c. One or more data tables reflecting the concentrations of and other information regarding the Property's contaminants appear in Exhibit 2 to this Agreement. Screening levels and groundwater standards are shown for reference only and are not set forth as cleanup levels for the purposes of this Agreement.

9. For purposes of this Agreement DEQ relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DEQ a Brownfields Property Application (BPA) initially dated September 9, 2014 and revised on March 2, 2016. Prospective Developer is the current owner of the Property.

10. Prospective Developer has provided DEQ with information, or sworn certifications regarding that information on which DEQ relies for purposes of this Agreement, sufficient to demonstrate that:

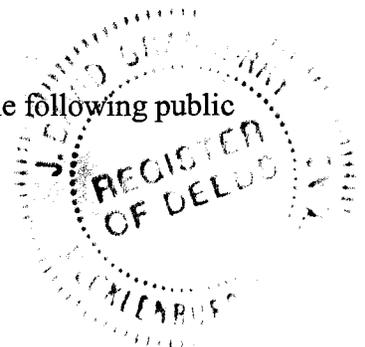


- a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at NCGS § 130A-310.32(a)(1);
- b. As a result of the implementation 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.

11. Prospective Developer has paid to DEQ the \$2,000 fee to seek a Brownfields Agreement required by NCGS § 130A-310.39(a)(1), and shall make a payment to DEQ of \$6,000 at the time Prospective Developer and DEQ enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that such fees will suffice as the \$2,000 fee to seek a brownfields agreement required by NCGS § 130A-310.39(a)(1), and, within the meaning of NCGS § 130A-310.39(a)(2), the full cost to DEQ 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.

#### IV. BENEFIT TO COMMUNITY

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

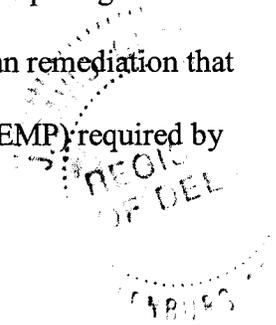


- a. Positive economic impacts on the surrounding community and businesses. These impacts include the significantly improved use of the Property and creation of jobs within walking and/or biking distance from several residential areas;
- b. Spur additional development and investment in the community, resulting in further tax base and employment opportunities;
- c. Expanded use of public transportation which reduces traffic, improves air quality, and reduces our carbon footprint; and
- d. Invest in “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**

13. In redeveloping the Property, Prospective Developer shall make reasonable efforts to evaluate applying sustainability principles at the Property, 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 (DEQ’s Covenant Not to Sue and Reservation of Rights), DEQ is not requiring Prospective Developer to perform any active remediation at the Property other than remediation that may be required pursuant to a DEQ-approved Environmental Management Plan (EMP) required by



this Section.

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 DEQ shall be understood to include any successor in function.

a. No use may be made of the Property other than for redevelopment for industrial uses, specifically for the Charlotte Locomotive and Railcar Maintenance Facility. For purposes of this restriction, the following definitions apply:

i. Industrial defined as the assembly, fabrication, processing, warehousing or distribution of goods or materials; and

ii. Operations and maintenance facility refers to the vehicles, parking, and equipment used to support the routine storage and servicing of rail cars as part of the operating routine. Allowed activities may include, the inspection, cleaning, maintenance, and repair of rail cars, storage of out of service rail cars, and to other activities directly related to the rail operation and maintenance. The facility may include parking for facility employees and related service providers, as well as storage buildings and service areas pertinent to the operating routine.

b. Physical redevelopment of the Property may not occur other than in accord, as determined by DEQ, with an Environmental Management Plan (“EMP”) approved in writing by DEQ in advance (and revised to DEQ’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

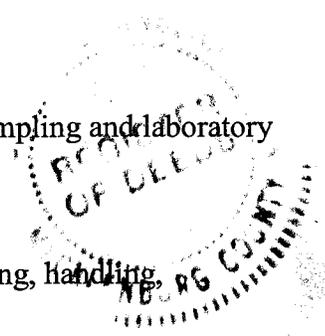


environmental issues that may arise from use of the Property during construction or redevelopment in any other form, including without limitation:

- i. soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;
- ii. issues related to potential sources of contamination referenced in paragraph 7 and 8 above and Exhibit 2;
- iii. contingency plans for addressing, including without limitation the testing of soil and groundwater, newly discovered potential sources of environmental contamination (e.g., USTs, tanks, drums, septic drain fields, oil-water separators, soil contamination); and
- iv. plans for the proper characterization of, and, as necessary, disposal of contaminated soils excavated during redevelopment;

c. Within 90 days after each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Property continues (except that the final deadline shall fall 90 days after the conclusion of physical redevelopment), the then owner of the Property shall provide DEQ a report subject to written DEQ approval on environment-related activities since the last report, with a summary and drawings, that describes:

- i. actions taken on the Property in accordance with Section V: Work to be Performed above;
- ii. soil grading and cut and fill actions;
- iii. methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;
- iv. stockpiling, containerizing, decontaminating, treating, handling,



laboratory analysis and ultimate disposition of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and

v. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Property (copies of all legally required manifests shall be included).

d. No activity that disturbs soil on the Property unless in accordance with Environmental Management Plan in previous paragraph 15.b, may occur unless and until DEQ states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DEQ 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:

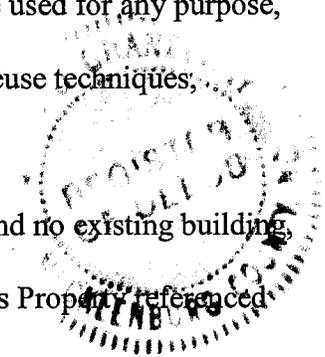
i. in connection with landscape planting to depths not exceeding 6 inches;

ii. mowing and pruning of above-ground vegetation and;

iii. for repair of underground infrastructure, provided that DEQ shall be given written notice at least seven days in advance of a scheduled repair (if only by email) of any such repair, or in emergency circumstances no later than the next business day, and that any related assessment and remedial measures required by DEQ shall be taken.

e. Groundwater and Surface water at the Property may not be used for any purpose, other than in connection with legally compliant storm water collection and reuse techniques, without the prior written approval of DEQ.

f. No enclosed building may be constructed on the Property and no existing building, defined as those depicted on the plat component of the Notice of Brownfields Property referenced



in paragraph 20 below, may be occupied until DEQ determines in writing that:

i. the building is or would be protective of the building's users, public health and the environment from risk of vapor intrusion based on site assessment data or a site-specific risk assessment approved in writing by DEQ; or

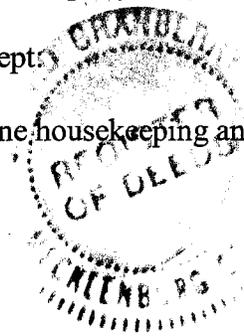
ii. the building is or would be sufficiently distant from the Property's groundwater and/or soil contamination based on assessment data approved in writing by DEQ that the building's users, public health and the environment will be protected from risk from vapor intrusion related to said contamination; or

iii. vapor intrusion mitigation measures are installed and/or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. Any design specification for vapor intrusion mitigation measures shall be approved in writing by DEQ in advance of installation and/or implementation of said measures. The design specifications shall include methodology(ies) for demonstrating performance of said measures.

g. None of the contaminants known to be present in the environmental media at the Property, as described in Exhibit 2 of this Agreement and as modified by DEQ in writing if additional contaminants in excess of applicable standards are discovered at the Property, may be used or stored at the Property without the prior written approval of DEQ, except:

i. in *de minimis* quantities for cleaning and other routine housekeeping and maintenance activities;

ii. in fluids in vehicles;



iii. as constituents of products and materials customarily used and stored in railway environments, provided such products and materials are used, stored, in original retail packaging and disposed of in accordance with applicable laws;

iv. in *de minimis* quantities for railcar maintenance, service, railcar wash and body work in compliance with applicable law;

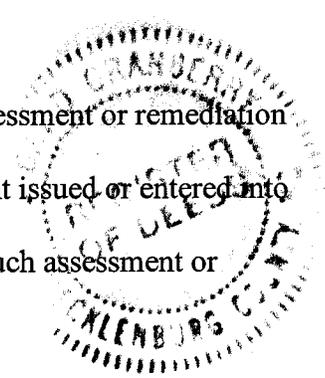
v. as constituents of fuels, lubricants and oils in emergency generators, machinery, equipment and vehicles in on-board tanks integral to said equipment or in flammable liquid storage containers totaling no more than 25 gallons;

vi. as fuel or other fluids customarily used in vehicles, landscaping equipment and emergency generators; and

vii. in products or materials that are brought onto the Property, kept in their original packaging or containers (that is, not used or repackaged) and later removed from the Property in the original packaging or containers.

h. The owner of any portion of the Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged by the owner, its contractors, or its tenants shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ, unless compliance with this Land Use Restriction is waived in writing by DEQ in advance.

i. Neither DEQ, 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 DEQ, 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.

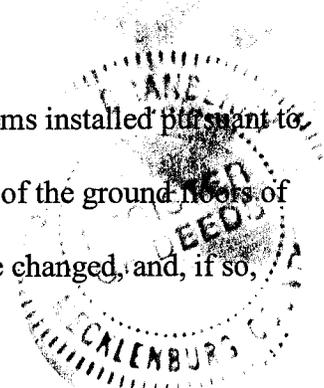
j. During January of each year after the year in which the Notice referenced below in paragraph 20 is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DEQ, and to the chief public health and environmental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

iii. whether soil caps (hardscape materials, clean soil, stone) and landscaping required by subparagraph 15.d above are being inspected and maintained to prevent erosion and/or human exposure to contaminated soil or other media; and

iv. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 15.f 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;



k. 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 \_\_\_\_, Page \_\_\_\_." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted. Prospective Developer may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, Prospective Developer may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notice and Submissions); or (ii) Prospective Developer may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

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 DEQ's Superfund Section and Division of Waste Management Vapor Intrusion Guidance, as embodied in their most current version.

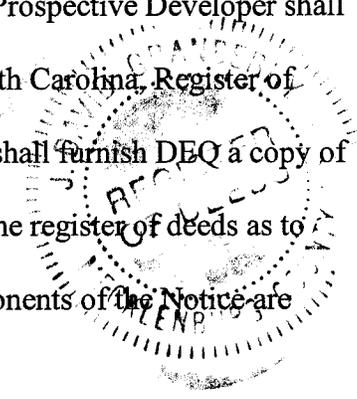
18. The consequence of achieving the desired results will be that the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment. The consequence of not achieving the desired results will be that modifications to land use restrictions and/or 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.i. above, Prospective Developer shall provide DEQ, its authorized officers, employees, representatives, and all other persons performing response actions under DEQ 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, which access is to be conducted after prior notice and using reasonable efforts to minimize interference with authorized uses of such other property except in response to emergencies and/or imminent threats to public health and the environment. While Prospective Developer owns the Property, DEQ shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DEQ at the Property. Except as may be set forth in the Agreement, DEQ 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. DEQ has approved, pursuant to NCGS § 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 NCGS § 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 DEQ 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



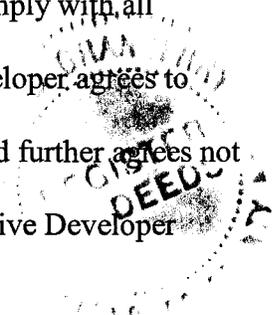
recorded, and a copy of the plat with notations indicating its recordation.

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 \_\_\_\_, Page \_\_\_\_." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted. Prospective Developer may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, Prospective Developer may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notice and Submissions); or (ii) Prospective Developer may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

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.

#### VII. DUE CARE/COOPERATION

23. 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 assessment or remediation of the Property by DEQ and further agrees not to interfere with any such assessment or 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, comply with any applicable notification requirements under NCGS § 130A-310.1 and 143-215.85, Section 103 of CERCLA, 42 USC § 9603, and/or any other law, immediately notify the DEQ Official referenced in paragraph 35.a below of any such required notification.

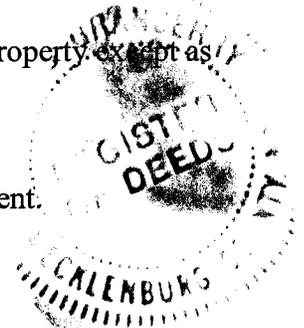
#### VIII. CERTIFICATION

24. By entering into this Agreement, the Prospective Developer certifies that, without DEQ approval, it will make no use of the Property other than that committed to in the Brownfields Property Application initially dated September 9, 2014 and revised on March 2, 2016 by which it applied for this Agreement. That use is redevelopment for no uses other than industrial, specifically for a locomotive and railcar maintenance facility. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DEQ 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. DEQ'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

25. Unless any of the following apply, Prospective Developer shall not be liable to DEQ, and DEQ 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.

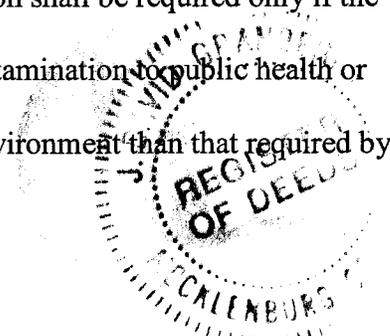


b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required 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 NCGS § 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.

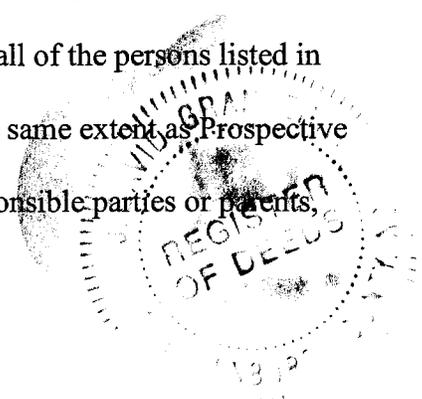
g. DEQ obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under NCGS § 130A-310.35.

26. Except as may be provided herein, DEQ reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act.

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, NCGS § 113A-1, et seq.

28. Consistent with NCGS § 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 NCGS § 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.



X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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

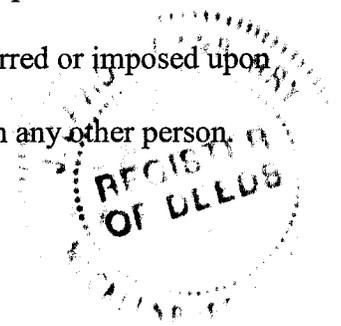
XI. PARTIES BOUND

30. This Agreement shall apply to and be binding upon DEQ, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

XII. DISCLAIMER

31. This Agreement in no way constitutes a finding by DEQ as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DEQ 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 NCGS § 130A-310.37.

32. Except for the Land Use Restrictions set forth in paragraph 15 above and NCGS § 130A-310.33(a)(1) -(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.



### XIII. DOCUMENT RETENTION

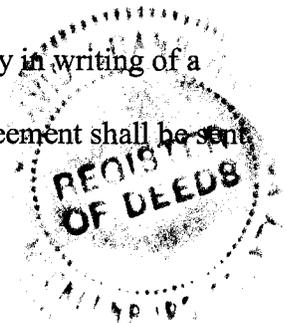
33. The Prospective Developer agrees to retain and make available to DEQ all business and operating records, contracts, site studies and investigations, remediation reports, and documents generated by and/or in the control of the Prospective Developer, its affiliates or subsidiaries relating to storage, generation, use, disposal and management of regulated substances at the Property, including without limitation all Material Safety Data Sheets or Safety Data Sheets, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. Said records may be retained electronically such that they can be retrieved and submitted to DEQ upon request. At the end of six (6) years, the Prospective Developer shall notify DEQ of the location of such documents and shall provide DEQ with an opportunity to copy any documents at the expense of DEQ. To the extent DEQ 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.

### XIV. 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 DEQ to enforce this Agreement or otherwise obtain compliance.

### XV. NOTICES AND SUBMISSIONS

35. Unless otherwise required by DEQ 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 DEQ:

Carolyn Minnich (or successor in function)  
N.C. Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

b. for Prospective Developer:

Walt Gray, Chief Deputy Secretary (or successor in function)  
North Carolina Department of Transportation  
c/o Paul C. Worley, Rail Division Director  
1553 Mail Service Center  
Raleigh, NC 27699-1533

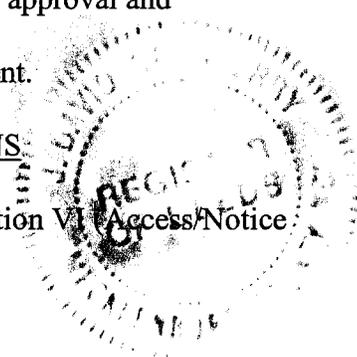
Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

#### XVI. EFFECTIVE DATE

36. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving it, the signed, conditionally approved Agreement from DEQ. DEQ's approval of this Agreement is conditioned upon the complete and timely execution and filing of this Agreement in the manner set forth herein. Prospective Developer shall expeditiously sign the Agreement in order to effect the recordation of the full Notice of Brownfields Property within the statutory deadline of 15 days following such receipt. If the Agreement is not signed by Prospective Developer within 45 days after such receipt, DEQ has the right to revoke its approval and certification of this Agreement, and invalidate its signature on this Agreement.

#### XVII. 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).

#### XVIII. CONTRIBUTION PROTECTION

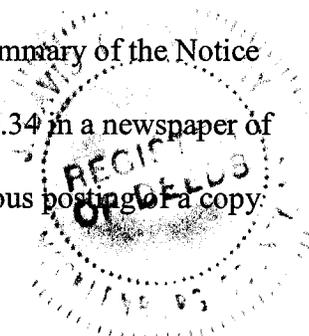
38. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by NCGS § 130A-310.37(a)(5) -(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DEQ 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 DEQ 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 DEQ in writing within 10 days of service of the complaint on it.

#### XIX. 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 NCGS § 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 DEQ holds one pursuant to NCGS § 130A-310.34(c), DEQ 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:

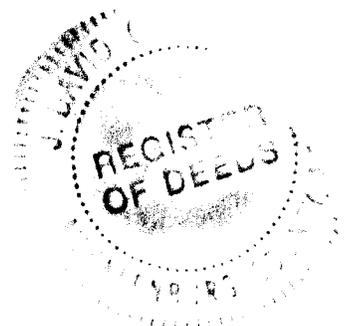
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Michael E. Scott Date 9/30/16  
Michael E. Scott  
Director, Division of Waste Management

IT IS SO AGREED:

North Carolina Department of Transportation

By: Walt Gray Date 10/24/16  
Walt Gray  
Chief Deputy Secretary







## EXHIBIT C (Parcel 32)

Commencing at North Carolina Geodetic Survey monument "M044", and running S 30°29'07" W a distance of 10,362.50' to a found #4 rebar located within the 200' private right of way of Norfolk Southern Railroad, a common corner of Norfolk Southern Railroad and Subject Tract, the point and place of beginning;

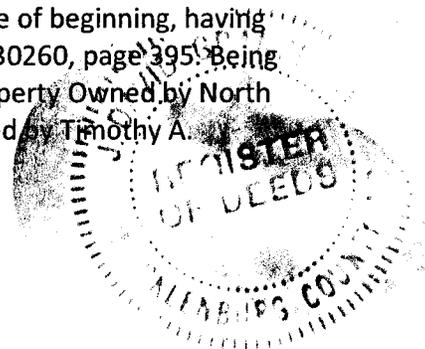
Thence, with that Department of Transportation property described in deed book 16687, page 370, five calls as follow: (1) with the arc of a circular curve to the right, having a radius of 471.92', arc length of 86.20', chord bearing of S 82°17'42" E and chord distance of 86.08' to a found #5 rebar on the Southern right of way line of Norfolk Southern Railroad; (2) with the arc of a circular curve to the right, having a radius of 471.92', arc length of 218.93', chord bearing of S 63°46'20" E and chord distance of 216.97' a found #5 rebar; (3) with the arc of a circular curve to the right, having a radius of 471.92', arc length of 76.21', chord bearing of S 45°51'22" E and chord distance of 76.12' to a found magnetic nail; (4) S 41°10'23" E a distance of 88.08' to a ½" found iron pipe; and (5) S 28°51'00" E a distance of 26.26' to a found #5 rebar, a common corner of Department of Transportation, Subject Tract and that Hal H. Conroy property described in deed book 6732, page 517;

Thence, with the Conroy property, S 39°28'38" E a distance of 89.20' to a found magnetic nail in the Northern right of way of South Graham Street;

Thence, with the Northern right of way of South Graham Street, two calls as follow: (1) S 52°37'48" W a distance of 238.93' to a point; and (2) N 30°41'05" E a distance of 12.75' to a ¾" found iron pipe, a common corner of South Graham Street, Subject Tract and that North Carolina Department of Transportation property described in deed book 30235, page 105 as Tract 5;

Thence, with the North Carolina Department of Transportation Tract 5 property, N 30°41'05" W, passing a set #4 rebar at 100.00', a found #5 rebar at an additional 230.07', a found #5 rebar on the Southern right of way line of Norfolk Southern Railroad at an additional 133.40' and continuing into the right of way of Norfolk Southern Railroad an additional 14.99', a total distance of 478.46' to a 1" found iron pipe, common corner of North Carolina Department of Transportation Tract 5 property, Subject Tract and that North Carolina Department of Transportation property described in deed book 30235, page 105 as Tract 6;

Thence, with the North Carolina Department of Transportation Tract 6 property, N 28°51'00" E a distance of 26.26' to found #4 rebar, the point and place of beginning, having an area of 1.953 acres and being that property described in deed book 30260, page 395. Being shown as Brownsfield Parcel 32 on a survey entitled "Survey Plat of Property Owned by North Carolina Department of Transportation", dated July 19, 2016 as surveyed by Timothy A. Rudolph, PLS of Dewberry Engineers, Inc.



**EXHIBIT C (Parcel 31.1)**

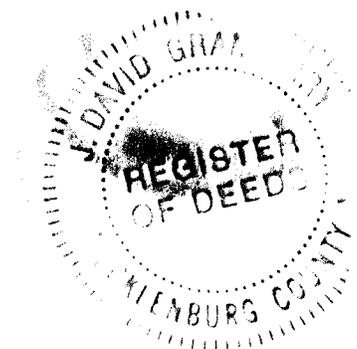
Commencing at a found #4 rebar located at the common point marking the Northeast terminus of Winona Street and the Northwest corner of that North Carolina Department of Transportation property described in deed book 30235, page 105 as Tract 5, and running thence with the common line of aforementioned properties, S 30°33'40" E a distance of 226.42' to a set #4 rebar, a common corner of Winona Street, Subject Tract and the remainder of that North Carolina Department of Transportation property described in deed book 30235, page 105 as Tract 5, the point and place of beginning;

Thence, a new line dividing the North Carolina Department of Transportation property, N 59°13'56" E a distance of 395.66' to a set #4 rebar, a common corner the remainder of the North Carolina Department of Transportation property, Subject Tract and that North Carolina Department of Transportation property described in deed book 30260, page 395;

Thence, with the latter North Carolina Department of Transportation property, S 30°41'05" E a distance of 100.00' to a ¾" found iron pipe in the Northern right of way of South Graham Street;

Thence, with the Northern right of way of South Graham Street, S 56°20'27" E a distance of 396.45' to a found magnetic nail, a common corner of South Graham Street, Subject Tract and Winona Street;

Thence, with the Eastern right of way line of Winona Street, N 30°33'40" W a distance of 120.00' to set #4 rebar, the point and place of beginning, having an area of 0.999 acres and being a portion of that property described in deed book 30235, page 105. Being shown as Brownsfield Parcel 31.1 on a survey entitled "Survey Plat of Property Owned by North Carolina Department of Transportation", dated July 19, 2016 as surveyed by Timothy A. Rudolph, PLS of Dewberry Engineers, Inc.



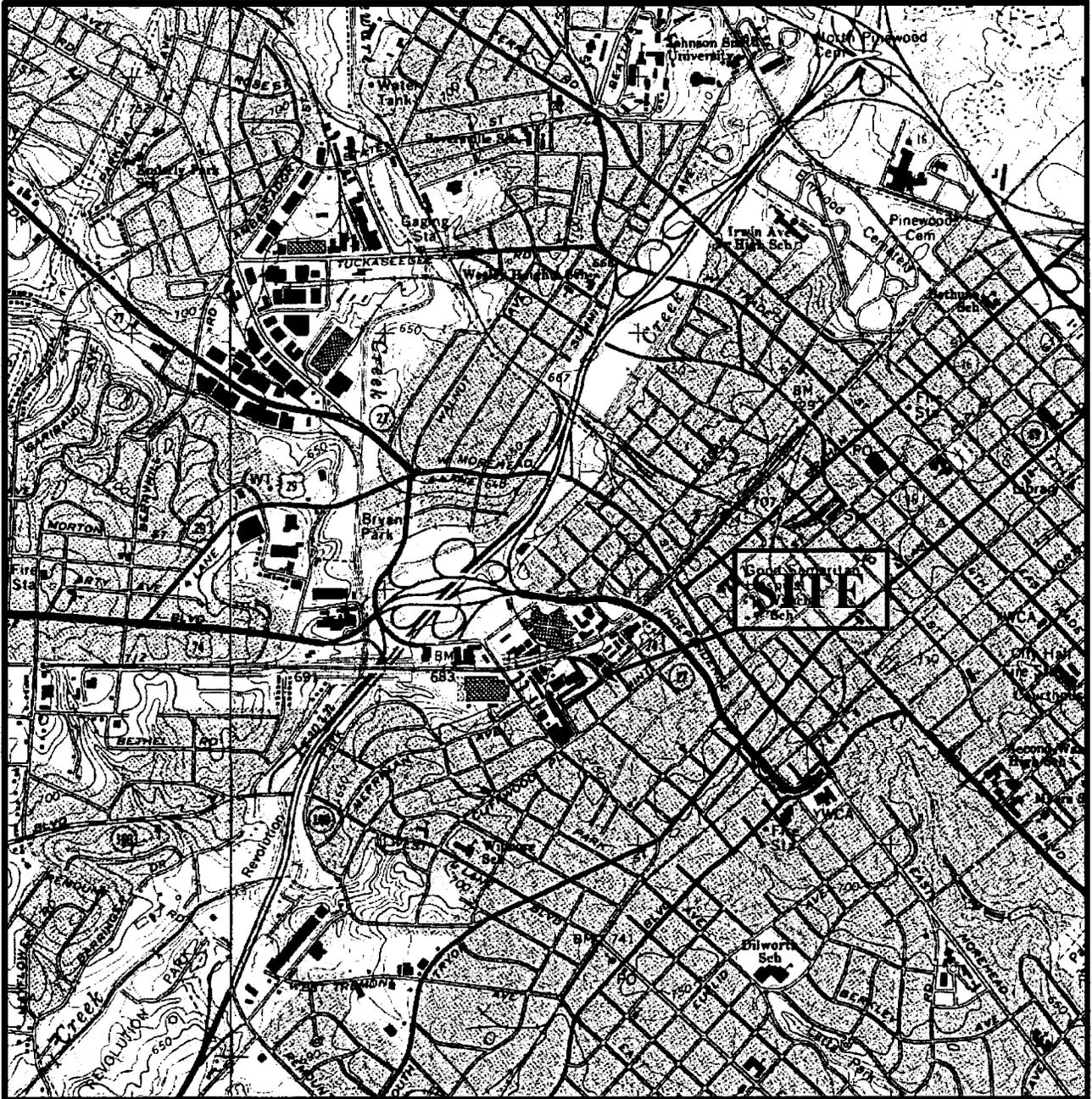


Exhibit 1



U.S.G.S. QUADRANGLE MAP  
 CHARLOTTE EAST, NC 1991

QUADRANGLE  
 7.5 MINUTE SERIES (TOPOGRAPHIC)

TITLE	<b>SITE LOCATION MAP</b>	
PROJECT	CHARLOTTE LOCOMOTIVE AND RAILCAR MAINTENANCE FACILITY CHARLOTTE, MECKLENBURG COUNTY, NORTH CAROLINA	
	 2920 S. Tryon Street, Suite 400 Charlotte, NC 28203 704.586.0007(p) 704.586.0373(f)	
DATE:	2-2-16	REVISION NO: 0
JOB NO:	ROW-508	FIGURE: 1

**Exhibit 2**

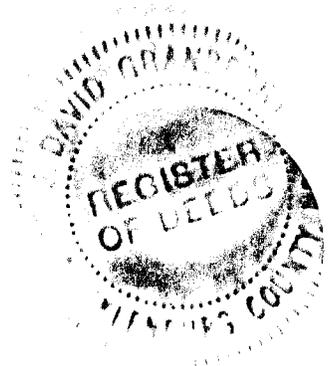
The most recent environmental sampling at the Property reported in the Environmental Reports occurred in April 2016. The following tables set forth, for contaminants present at the Property above unrestricted use standards or screening levels, the concentration found at each sample location, and the applicable standard or screening level. Screening levels and groundwater standards are shown for reference only and are not set forth as cleanup levels for purposes of this Agreement.

**GROUNDWATER**

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 (2L), Rule .0202, (April 1, 2013 version); or the 2L Groundwater Interim Maximum Allowable Concentration (IMACs), (April 2013 version):

Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	Standard (µg/L)
Manganese*	TW-2	03/31/2016	640	50

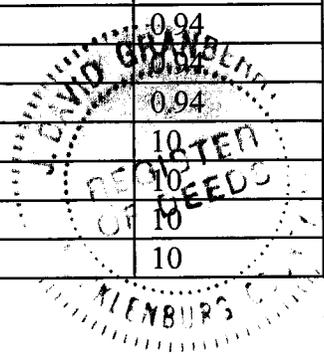
\* May be naturally occurring.



## SOIL

Soil contaminants in milligrams per kilogram (the equivalent of parts per million), the screening levels for which are derived from the Preliminary Industrial Health- Based Soil Remediation Goals of the Inactive Hazardous Sites Branch of DEQ's Superfund Section (April 2016 version):

Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Industrial Screening Level <sup>1</sup> (mg/kg)
Benzo(a)pyrene	31-15	0-2	06/10/2015	0.418	0.29
Benzo(a)pyrene	32-2	0-2	09/04/2014	5.46	0.29
Benzo(a)pyrene	PILE 1		03/28/2016	34.7	0.29
Benzo(a)anthracene	32-2	0-2	09/04/2014	6.42	2.9
Benzo(a)anthracene	PILE 1		03/28/2016	43.7	2.9
Benzo(b)fluoranthene	32-2	0-2	09/04/2014	4.34	2.9
Benzo(b)fluoranthene	PILE 1		03/28/2016	45.6	2.9
Indeno(1,2,3-cd)pyrene	PILE 1		03/28/2016	19.6	2.9
Arsenic	32-1	2-4	09/03/2014	13.4	3.0
Arsenic	32-2	0-2	09/04/2014	12.8	3.0
Arsenic	32-3	0-2	09/04/2014	8.9	3.0
Arsenic	32-6	0-2	09/04/2014	9.6	3.0
Arsenic	32-7	0-2	09/04/2014	15	3.0
Arsenic	32-16	0-2	09/05/2014	3.5	3.0
Arsenic	32-20	0-1	10/30/2014	18.4	3.0
Arsenic	PILE 1		03/28/2016	7.4	3.0
Cadmium	32-3	0-2	09/04/2014	421	196
Lead	32-1	2-4	09/03/2014	2,580	800
Lead	32-2	0-2	09/04/2014	2,200	800
Lead	32-3	0-2	09/04/2014	1,290	800
Lead	32-6	0-2	09/04/2014	3,780	800
Lead	32-7	0-2	09/04/2014	2,290	800
Lead	32-20	0-1	10/30/2014	3,100	800
PCB-total	32-1	2-4	09/03/2014	1.64	0.94
PCB-total	32-6	0-2	09/04/2014	6.78	0.94
PCB-total	32-16	0-2	09/05/2014	1.34	0.94
PCB-total	32-20	0-1	10/30/2014	6.33	0.94
TPH-DRO	31-21	5-7	06/10/2015	11.5	10
TPH-DRO	31-28	0-2	06/10/2015	49.3	10
TPH-DRO	32-1	2-4	09/03/2014	4,330	10
TPH-DRO	32-1	6-8	09/03/2014	71.7	10



Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Industrial Screening Level <sup>1</sup> (mg/kg)
TPH-DRO	32-2	0-2	09/04/2014	1,180	10
TPH-DRO	32-3	0-2	09/04/2014	1,180	10
TPH-DRO	32-4	0-2	09/04/2014	66.9	10
TPH-DRO	32-6	0-2	09/04/2014	466	10
TPH-DRO	32-7	0-2	09/04/2014	1,760	10
TPH-DRO	32-9	0-2	09/05/2014	421	10
TPH-DRO	32-13	0-2	09/05/2014	69.4	10
TPH-DRO	32-16	0-2	09/05/2014	63.8	10
TPH-DRO	32-17	2-4	09/05/2014	148	10
TPH-DRO	32-20	0-1	10/30/2014	1,040	10
TPH-GRO	32-2	0-2	09/04/2014	15.1	10
TPH-GRO	32-3	0-2	09/04/2014	58.7	10
TPH-GRO	32-7	0-2	09/04/2014	11.5	10

<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.

NE – No established screening level

PCB-polychlorinated biphenyl. The screening level is total PCB of 1 mg/kg

TPH DRO Total Petroleum Hydrocarbons Diesel Range Organics. The screening level is the Action Level of 10 mg/kg specified by the NC DEQ UST Section.

TPH GRO Total Petroleum Hydrocarbons Gasoline Range Organics. The screening level is the Action Level of 10 mg/kg specified by the NC DEQ UST Section.

