

**Property Owner: LMC Block 42 Holdings, LLC; LMV Block 42 Holdings, LP;  
and Concord Levine Hotels LLC**

**Recorded in Book \_\_\_\_\_, Page \_\_\_\_\_**

**Associated plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_**

**NOTICE OF BROWNFIELDS PROPERTY**

**Site Name: Block 42**

**Brownfields Project Number: 21024-17-060**

**This documentary component of a Notice of Brownfields Property (“Notice”), as well as the plat component, have been filed this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP (“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 consists of 3.55 acres and encompasses the city block which includes 500 N. College in Charlotte, North Carolina. The site was first developed for industrial purposes as a lumber planing mill and wood products company in the late 1880s. Residential properties were developed on the site in the 1890s and commercial and, beginning in 1910, other industrial uses were added through the 1960, including a bearing

manufacturer, food and beverage distributors, a printing company, an auto parts company, and other commercial uses. Industrial use of the site ended in 1970s and the remaining building space was used for commercial office, retail, meeting and commercial parking purposes. In 2005, all but 2 buildings were razed and replaced by commercial parking space. In May of 2018, the final two building were razed. The site has contamination in the groundwater, soil, and soil gas as a result of the previous industrial and commercial uses. The Prospective Developer propose to redevelop the Brownfields Property for no uses other than retail, office, open space, recreation, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses.

**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 retail, office, open space, recreation, multi-family residential, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses. For purposes of this restriction, the following definitions apply:

a. "Retail" is defined as the sale of goods or services, products, or merchandise directly to the consumer or businesses and includes showrooms, personal service, and the sales of food and beverage products. For the purposes of this Agreement, retail excludes use as a dry cleaner using chlorinated solvents.

b. "Office" is defined as the provision of business or professional services.

c. "Open space" is defined as land maintained in a natural or landscaped state and used for natural resource protection, buffers, greenways, or detention facilities for storm water.

d. "Recreation" is defined as indoor and outdoor exercise-related, physically focused, or leisure-related activities, whether active or passive, and the facilities for same, including, but not limited to, studios, swimming pools, sports-related courts and fields, open space, greenways, parks, playgrounds, walking paths, and picnic and public gathering areas.

e. "High density residential" is defined as 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. Ground floor units are prohibited unless approved in writing by DEQ in advance.

f. "Hotel" is defined as the provision of overnight lodging to paying customers, and to associated food services, gym, reservation, cleaning, utilities, parking, and on-site hospitality, management and reception services.

g. "Restaurant" is defined as a commercial business establishment that prepares and serves food and beverages to patrons.

h. "Brewery or Food Production Facility" is defined as an establishment for the manufacture, sale and distribution of beverages or food products, including without limitation beer and ale, together with associated public roadways and related infrastructure.

i. "Storage unit" is defined as space that is commercially rented on a short- or long-term basis by consumers and businesses for the storage of personal effects, household goods, equipment and other non-hazardous materials that are in compliance with all other aspects of this Agreement.

j. "Parking" is defined as the temporary accommodation of motor vehicles in an area designed for same.

k. "Commercial" is defined as an enterprise carried on for profit or nonprofit by the owner, lessee or licensee. For the purposes of this Agreement, this excludes use as a dry cleaner using chlorinated solvents.

2. The Brownfields Property may not be used for child care centers, adult care centers or schools without the prior written approval of DEQ.

3. 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 Exhibit 2 of the

attached Exhibit A;

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.

4. No use of the Brownfields Property as specified above in Land Use Restriction 1 may occur until the then-owner of the Brownfields Property conducts representative final grade soil sampling pursuant to a plan approved in writing by DEQ of any area of the Brownfields Property that will not be covered by building foundations, sidewalks, or asphaltic or concrete parking areas and driveways unless otherwise approved in writing by DEQ in advance.

5. Groundwater at the Brownfields Property may not be used for any purpose without the prior written approval of DEQ.

6. No activity that disturbs soil on the Brownfields Property 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 above in Land Use Restriction 1 while fully protecting public health and the environment, except:

a. in connection with landscape planting to depths not exceeding 24 inches;

b. mowing and pruning of above-ground vegetation;

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 and;

d. in connection to work conducted in accordance with the EMP as outlined above in Land Use Restriction 3.

7. Soil may not be removed from, or brought onto, the Brownfields Property without prior sampling and analysis to DEQ's satisfaction and the written approval of DEQ, unless conducted in accordance with an approved EMP as outlined above in Land Use Restriction 3.

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

9. By January 31 of each one-year anniversary of the effective date of the attached Exhibit A, and 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 the EMP required by Land Use Restriction 3, 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).

10. 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.

11. None of the contaminants known to be present in the environmental media at the Brownfields Property, as described in Exhibit 2 of the attached Exhibit A 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. as fuel or other fluids customarily used in vehicles, landscaping equipment, and emergency generators; and
- c. as constituents of products and materials customarily used and stored in retail, office, open space, recreation, high-density residential, hotel, brewery or food production, storage units, parking, or commercial environments, provided such products and materials are stored in original retail packaging and used and disposed of in accordance with applicable laws.

12. 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.

13. Any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: “This property is subject to the Brownfields Agreement attached as Exhibit A to this 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 to this Notice, though financial figures and other confidential information related to the conveyance may be redacted to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. The owner conveying an interest may use the following mechanisms to comply with the obligations of this Land Use Restriction:

(i) If every lease and rider is identical in form, the owner conveying an interest 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 the attached Exhibit A; or

(ii) The owner conveying an interest may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV of the attached Exhibit A.

14. During January of each year after the year in which this Notice is recorded, the owner of any part of the Brownfields Property as of January 1st 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 1st, this Notice 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. The submitted LURU shall state the following:

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 any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 8 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.

d. A joint LURU may be submitted for multiple owners by a duly constituted board or association and 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.

**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.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

LMC Block 42 Holdings, LLC  
a Delaware limited liability company

By: Lennar MF Holdings, LLC  
a Delaware limited liability company, its sole member

By: Lennar Multifamily Communities, LLC  
a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Jeffrey Harris, Vice President Date

LMV Block 42 Holdings, LP  
a Delaware limited partnership

By: Lennar Multifamily BTC Venture GP Subsidiary, LLC  
a Delaware limited liability company, its general partner

By: Lennar Multifamily BTC Venture Manager, LLC  
a Delaware limited liability company, its manager

By: \_\_\_\_\_  
Jeffrey Harris, Vice President Date

NORTH CAROLINA  
\_\_\_\_\_ 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: \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Official Signature of Notary*

(Official Seal)

\_\_\_\_\_  
Notary's printed or typed name, Notary Public  
My commission expires: \_\_\_\_\_



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**ACKNOWLEDGMENT OF PROPERTY OWNER**

As the current owner, or representative of said owner, of at least part of the Brownfields Property, I hereby acknowledge recordation of this Notice of Brownfields Property and the Land Use Restrictions contained herein.

CONCORD LEVINE HOTELS LLC

By: Concord Manager, LLC, a North Carolina limited liability company, its Manager

By: \_\_\_\_\_

Julie L. Richter  
Vice President

NORTH CAROLINA  
\_\_\_\_\_ 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: \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Official Signature of Notary*

*(Official Seal)*

\_\_\_\_\_  
Notary's printed or typed name, Notary Public  
My commission expires: \_\_\_\_\_

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**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: \_\_\_\_\_ Date \_\_\_\_\_  
Michael E. Scott  
Director, Division of Waste Management

**EXHIBIT A**

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF: LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT	)	Block 42 Site
OF 1997, NCGS § 130A-310.30, <u>et seq.</u>	)	500 East Morehead Street, Suite 300
Brownfields Project # <b>21024-17-060</b>	)	Charlotte, Mecklenburg County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environmental Quality (“DEQ”) and co-Prospective Developers LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP (collectively the “Parties”) pursuant to the Brownfields Property Reuse Act of 1997, NCGS § 130A-310.30, et seq. (the “Act”) for the property located at 500 North College Street, Charlotte, North Carolina (the “Brownfields Property”). A map showing the location of the Brownfields Property that is the subject of this Agreement is attached hereto as Exhibit 1.

The co-Prospective Developers are LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP. LMC Block 42 Holdings, LLC is a member-managed Delaware Limited Liability Company registered to do business in North Carolina and is located at 700 N.W. 107<sup>th</sup> Avenue, Suite 400, Miami, Florida 33172. LMV Block 42 Holdings, LP is a member-managed Limited Partnership registered to do business in North Carolina and is located at 700 N.W. 107<sup>th</sup> Avenue, Suite 400, Miami, Florida 33172. LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP hereby acknowledge that they will be jointly and severally responsible for any liability incurred by Prospective Developer, and jointly and severally entitled to all benefits and protections afforded to Prospective Developer as defined in paragraph 2 below, pursuant to this Agreement.

LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP propose to redevelop the Brownfields Property for no uses other than retail, office, open space, recreation, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses.

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 LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP for contaminants at the Brownfields Property.

The Parties agree that LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP's entry into this Agreement, and the actions undertaken by LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP in accordance with the Agreement, do not constitute an admission of any liability by LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP for contaminants at the Brownfields Property. The resolution of this potential liability, in exchange for the benefit LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP 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. "Brownfields Property" shall mean the property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.

2. "Prospective Developer" shall mean LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP.

### III. STATEMENT OF FACTS

3. The Brownfields Property comprises six parcels totaling 3.55 acres made up of parcels 08004213 (Parcel A), 08004214 (Parcel B), 08004215 (Parcel C), 08004212 (Parcel D), 08004210 (Parcel E), and 08004211 (Parcel F). Historical addresses for the Brownfields Property include 215, 217, 219, 221, 223, 225 and 229 East Eighth Street; 208, 210, 212, 214, 216, 218 and 228 East Ninth Street; 500, 502, 508, 510, 512, 514 and 516 North College Street. Prospective Developer has committed itself to redevelopment for no uses other than retail, office, open space, recreation, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses.

4. The Brownfields Property is bordered to the northeast by East 9<sup>th</sup> Street, beyond which is land used for office and parking uses; to the northwest by North College Street, beyond which is property used for high-density residential, restaurant, office, and parking uses; to the southwest by East 8<sup>th</sup> Street, beyond which is property used for institutional, parking, and other commercial uses; and to the southeast by Charlotte Area Transit System Light Rail Line, beyond which is property used for recreation, office, restaurant, educational, and parking uses.

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

<i>Title</i>	<i>Prepared by</i>	<i>Date of Report</i>
Phase I Environmental Site Assessment, Mecklenburg County Tax Blocks 42, 43, 44, 45, 63, and 64	Aware Environmental Inc.	September, 2002
Phase I Environmental Site Assessment Report First Ward Site, 514 N. College St.	Hart and Hickman	September 2, 2016

<i>Title</i>	<i>Prepared by</i>	<i>Date of Report</i>
and 228 E. 9 <sup>th</sup> St. Charlotte, NC		
Brownfields Assessment Report – Block 42	Hart and Hickman	January 22, 2018
Phase II ESA Block 42 – Parcel A	Hart and Hickman	February 20, 2018

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

a. The site was first developed as early as the 1880s as a lumber planing mill and wood product manufacturing company located on the eastern portion of the Brownfields Property. The business was expanded into the 1910s and the names associated with this business are Charlotte Planing Mill and Bellows Factory; Charlotte Sash, Door and Blind Manufacturing Company; and Carolina Manufacturing Company and Planing Mill.

b. Residential properties were constructed on the site in the 1890s and into the 1910s or 1920s. Approximately 14 homes were present at different locations across the Brownfields Property over time, but only three homes remained by the early 1960s.

c. In the 1910s or 1920s, Carolina Manufacturing Company and Planing Mill and some homes were demolished which allowed for the construction of a rail spur and a warehouse on the southern portion of the Brownfields Property. Over time, the occupants in the warehouse building included a paint and glass company, food broker, automotive supply company, electric appliance company, printing company, and a beer distributor. Company names associated with the warehouse occupants include Kilgo Transfer Co. Inc., Mathleson Alkall Works, Carolinas Auto Supply, Queen City Beverage Inc., Enable Inc Building Specialties, Maverick Printing Co., and Angel Spirits Inc. The warehouse was demolished between 1996 and 2005.

d. In 1949, a residence on the northern portion of the Brownfields Property was demolished and a larger steel framed building was constructed in its place. The use or occupants

of that building are not known. The building was later razed between 1968 and 1973. A separate building on an adjacent area of the northern portion of the site was constructed in the 1960s and its occupants included Hub Uniform Inc., Hub Stinnette Uniform Co. Inc., R & R Uniforms Inc., Time Lounge, Comedy Zone, C&B Food Mart, and an artist cooperative. The building was razed in May, 2018.

e. In the early 1950s, a building was constructed on the western portion of the Brownfields Property and was occupied by Southern Bearing and Parts Co., Inc. and by an electric appliance company. Southern Bearing and Parts Co. Inc. operated until the 1970s. Known names of other entities that later occupied the building are Quality Auto Parts Inc., a Moose Lodge, the Uptown Flea Market, and Center City Packaging and Storage. The building was demolished by 2005 and the space was paved as part of a commercial parking lot.

f. In the early 1950s, a building was constructed on the eastern portion of the Brownfields Property where the Carolina Manufacturing Company once stood. Over time, the building was occupied by Garden and Benoit Inc. restaurant equipment; Scotsman Ice Machine; Ice Machine Distributors, Inc.; Charlotte Fire Chief; City of Charlotte Emergency Management; and City of Charlotte Mecklenburg County Government. The building was razed in May, 2018.

g. LMC Block 42 Holdings, LLC acquired the Brownfields Property, then composed of seven separate parcels, from Ninth Street Investors LLC on January 18, 2017. The seven parcels were then recombined into six parcels, as reflected on Exhibit B, on March 23, 2017. LMC Block 42 Holdings, LLC then transferred Parcels B, C, D, E, and F to LMV Block 42 Holdings, LP on April 18, 2017. LMC Block 42 Holdings, LLC transferred Parcel A to Concord Levine Hotels LLC on March 15, 2018.

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

a. A storage tank for boiler fuel was believed to have been present at the planing mill, and a fuel storage tank for vehicles was believed to be present at the warehouse on the southern portion of the Brownfields Property.

b. Homes on and around the Brownfields Property are known to have had home heating oil tanks.

c. The suspected source of the chlorinated solvents detected in groundwater at the Brownfields Property is the former Southern Bearing and Parts Company, which operated on the western portion of the Brownfields Property.

d. A small volume of potassium cyanide was packaged into a 5-gallon container and removed from a business located on the Brownfields Property in 2003. The material was packaged, transported and incinerated by an EPA contractor in this non-CERCLA event. No material was noted as having been released at the Brownfields Property.

8. The most recent environmental sampling at the Brownfields Property reported in the Environmental Reports occurred on January 12, 2018. The tables set forth in Exhibit 2 to this Agreement present contaminants present at the Brownfields Property above applicable standards or screening levels for each media sampled.

9. For purposes of this Agreement DEQ relies on Prospective Developer's representations that Prospective Developer's involvement with the Brownfields Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DEQ a Brownfields Property Application (BPA) dated May 3, 2017, and an amended BPA on May 31, 2017, and the following:

a. On January 18, 2017, LMC Block 42 Holdings, LLC purchased the eight parcels that made up the Brownfields Property as it was then configured.

b. On March 23, 2017, LMC Block 42 Holdings, LLC recombined the eight parcels



into six parcels.

c. On April 18, 2017, LMC Block 42 Holdings, LLC transferred five of the six recombined parcels to the sole ownership of LMV Block 42 Holdings, LP.

d. On March 15, 2018, LMC Block 42 Holdings, LLC transferred the sixth parcel to Concord Levine Hotels LLC.

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 Brownfields 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 Brownfields 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 Brownfields Property; and

e. Prospective Developer has complied with all applicable procedural requirements.

11. 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 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 Brownfields Property proposed herein would provide the following public benefits:

- a. an increase in the Brownfields Property's productivity;
- b. a spur to additional community investment and redevelopment, through improved neighborhood appearance and otherwise;
- c. an increase in tax revenue for affected jurisdictions;
- d. additional high density residential, and additional retail, commercial, office, restaurant, and hotel space for the area;
- e. expanded use of LYNX light rail public transportation system which reduces traffic, improves air quality, and reduces our carbon footprint; and
- f. "smart growth" through use of land in an already developed area, which avoids development of land beyond the urban fringe ("greenfields").

#### V. WORK TO BE PERFORMED

13. In redeveloping the Brownfields Property, Prospective Developer shall make reasonable efforts to evaluate applying sustainability principles at the Brownfields 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 Brownfields 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 Brownfields Property suitable for the uses specified in this Agreement while fully protecting public health and the environment instead of remediation to unrestricted use standards. All references to DEQ shall be understood to include any successor in function.

a. No use may be made of the Brownfields Property other than for retail, office, open space, recreation, multi-family residential, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses. For purposes of this restriction, the following definitions apply:

i. "Retail" is defined as the sale of goods or services, products, or merchandise directly to the consumer or businesses and includes showrooms, personal service, and the sales of food and beverage products. For the purposes of this Agreement, retail excludes use as a dry cleaner using chlorinated solvents.

ii. "Office" is defined as the provision of business or professional services.

iii. “Open space” is defined as land maintained in a natural or landscaped state and used for natural resource protection, buffers, greenways, or detention facilities for stormwater.

iv. “Recreation” is defined as indoor and outdoor exercise-related, physically focused, or leisure-related activities, whether active or passive, and the facilities for same, including, but not limited to, studios, swimming pools, sports-related courts and fields, open space, greenways, parks, playgrounds, walking paths, and picnic and public gathering areas.

v. “High density residential” is defined as 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. Ground floor units are prohibited unless approved in writing by DEQ in advance.

vii. “Hotel” is defined as the provision of overnight lodging to paying customers, and to associated food services, gym, reservation, cleaning, utilities, parking, and on-site hospitality, management and reception services.

viii. “Restaurant” is defined as a commercial business establishment that prepares and serves food and beverages to patrons.

ix. “Brewery or Food Production Facility” is defined as an establishment for the manufacture, sale and distribution of beverages or food products, including without limitation beer and ale, together with associated public roadways and related infrastructure.

x. “Storage unit” is defined as space that is commercially rented on a

short- or long-term basis by consumers and businesses for the storage of personal effects, household goods, equipment and other non-hazardous materials that are in compliance with all other aspects of this Agreement.

xi. “Parking” is defined as the temporary accommodation of motor vehicles in an area designed for same.

xii. “Commercial” is defined as an enterprise carried on for profit or nonprofit by the owner, lessee or licensee. For the purposes of this Agreement, this excludes use as a dry cleaner using chlorinated solvents.

b. The Brownfields Property may not be used for child care centers, adult care centers or schools without the prior written approval of DEQ.

c. 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:

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 Exhibit 2 to this Agreement;

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.

d. No use of the Brownfields Property as specified in subparagraph 15.a. may occur until the then-owner of the Brownfields Property conducts representative final grade soil sampling pursuant to a plan approved in writing by DEQ of any area of the Brownfields Property that will not be covered by building foundations, sidewalks, or asphaltic or concrete parking areas and driveways unless otherwise approved in writing by DEQ in advance.

e. Groundwater at the Brownfields Property may not be used for any purpose without the prior written approval of DEQ.

f. No activity that disturbs soil on the Brownfields Property 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 subparagraph 15.a. above while fully protecting public health and the environment, except:

i. in connection with landscape planting to depths not exceeding 24 inches;

ii. mowing and pruning of above-ground vegetation;

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 and;

iv. in connection to work conducted in accordance with the EMP as outlined in subparagraph 15.c.

g. Soil may not be removed from, or brought onto, the Brownfields Property without prior sampling and analysis to DEQ's satisfaction and the written approval of DEQ, unless conducted in accordance with an approved EMP as outlined in subparagraph 15.c.

h. 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 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 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

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.

i. By January 31 of each one-year anniversary of the effective date of this Agreement, and 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:

- i. actions taken on the Brownfields Property in accordance with the EMP required by subparagraph 15.c 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 Brownfields Property (copies of all legally required manifests shall be included).
- j. 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.
- k. 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:



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

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

iii. as constituents of products and materials customarily used and stored in retail, office, open space, recreation, high-density residential, hotel, brewery or food production, storage units, parking, or commercial environments, provided such products and materials are stored in original retail packaging and used and disposed of in accordance with applicable laws.

1. 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.

m. Any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: "This property 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 and other confidential information related to the conveyance may be redacted to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. The owner conveying an interest may use the following mechanisms to comply with the obligations of this subparagraph:

i. If every lease and rider is identical in form, the owner conveying an interest may provide DEQ with copies of a form lease or rider evidencing compliance with this subparagraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notice and Submissions); or

ii. The owner conveying an interest may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

n. 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 Brownfields Property as of January 1st 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 1st, 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. The submitted LURU shall state the following:

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 Brownfields 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 Brownfields Property during the previous calendar year;

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

iv. A joint LURU may be submitted for multiple owners by a duly

constituted board or association and 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.

16. The desired result of the above-referenced land use restrictions is to make the Brownfields 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 the 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 Brownfields 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 Brownfields Property pursuant to subparagraph 15.j. 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 Brownfields Property under applicable law. Such access is to occur 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 Brownfields 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 Brownfields 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 Brownfields 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 Brownfields 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 Brownfields Property shall contain the following notice: "This property 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 and other confidential information related to the conveyance may be redacted to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. 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 (Notices 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 Brownfields 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 Brownfields Property with respect to the manner in which regulated substances are handled at the Brownfields 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 Brownfields 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 Brownfields Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, 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, and shall 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 Brownfields Property other than that committed to in the Brownfields Property Application dated May 3, 2017, and by the Amended Brownfields Property Application dated May 31, 2017, by which it applied for this Agreement. That use is retail, office, open space, recreation, multi-family residential, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses. 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 Brownfields Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Brownfields 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 Brownfields Property except as specified in this Agreement:

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Brownfields 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 Brownfields 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 Brownfields

Property, in which case the Prospective Developer shall be responsible for remediation of the Brownfields 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 Brownfields Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Brownfields 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 Brownfields 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 Brownfields Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Brownfields 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 Brownfields Property or exposures at or around the Brownfields Property that raises the risk to public health or the environment associated with the Brownfields 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, but not limited to, future owners of the Brownfields 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. Prospective Developer and DEQ agree that this Agreement meets the requirements of the Act, including but not limited to the requirements set forth in NCGS § 130A-310.32(a)(2). However, 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 Brownfields Property, a representation by DEQ that the Brownfields 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 Brownfields 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. By entering into this Agreement, Prospective Developer waives no rights of confidentiality or privilege provided by the North Carolina Public Records Act or otherwise and, at the time DEQ requests to copy or inspect said documents, Prospective Developer shall provide DEQ with a log of documents withheld from DEQ, including a specific description of the document(s) and the alleged legal basis upon which they are being withheld. 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:

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

b. for Prospective Developer:

Jeffrey W. Harris (or successor in function)  
LMC Block 42 Holdings, LLC and LMV Block 42 Holdings, LP  
500 East Morehead Street, Suite 300

Charlotte, NC 28202

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

#### XVI. EFFECTIVE DATE

36. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving 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 set forth in N.C.G.S. § 130A-310.35(b). 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 Brownfields 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 receiving said suit or claim.

#### 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 of the following public notice tasks occurs: 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 Brownfields Property is located; conspicuous posting of a copy of said summary at the Brownfields Property; and mailing or delivery of a copy of the summary to each owner of property contiguous to the Brownfields 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  
Director, Division of Waste Management

\_\_\_\_\_  
Date

IT IS SO AGREED:  
By:

LMC Block 42 Holdings, LLC  
a Delaware limited liability company

By: Lennar MF Holdings, LLC  
a Delaware limited liability company, its sole member

By: Lennar Multifamily Communities, LLC  
a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Jeffrey Harris, Vice President

\_\_\_\_\_  
Date

LMV Block 42 Holdings, LP  
a Delaware limited partnership

By: Lennar Multifamily BTC Venture GP Subsidiary, LLC  
a Delaware limited liability company, its general partner

By: Lennar Multifamily BTC Venture Manager, LLC  
a Delaware limited liability company, its manager

By: \_\_\_\_\_  
Jeffrey Harris, Vice President

\_\_\_\_\_  
Date

Exhibit 1  
Location Map





## Exhibit 2

The most recent environmental sampling at the Property reported in the Environmental Reports occurred on January 12, 2018. The following tables set forth, for contaminants present at the Brownfields 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):

Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	2L Standard (µg/L)
Trichloroethylene	TMW-3	09/21/2017	510	3
	TMW-4	09/21/2017	59	

### GROUNDWATER VAPOR INTRUSION RISK

Groundwater contaminants with potential for vapor intrusion (VI) in micrograms per liter (the equivalent of parts per billion), the vapor intrusion screening levels for which are derived from the Residential Vapor Intrusion Screening Levels of the Division of Waste Management February 2018 version):

Groundwater Contaminant with Potential for Vapor Intrusion	Sample Location	Date of Sampling	Concentration Exceeding Screening Level (µg/L)	Residential VI Screening Level <sup>1</sup> (µg/L)
Trichloroethylene	TMW-3	09/21/2017	510	1.0
	TMW-4	09/21/2017	59	

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

## 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 (February 2018 version):

Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Unrestricted Use Screening Level <sup>1</sup> (mg/kg)
Arsenic	SB-1	0-2	09/20/2017	0.98	0.68
	SB-2	0-2		1.1	
	SB-3	2-4		2.0	
	SB-4	0-2		0.87	
	SB-6	7-9		1.6	
	SB-7	0-2		1.6	
	SB-8	0-2		1.5	
	SB-9	0-2		9/21/2017	
	SB-10	5-7	01/11/2018	0.964	
	SB-11	1-3		0.830	
	SB-12	1-3		0.700	
	SB-13	7-9		0.875	
	SB-14	1-3		1.43	
	Hexavalent Chromium	SB-1	0-2	09/20/2017	
SB-2		0-2	0.50		
SB-7		0-2	0.67		
Benzo(a)pyrene	SB-9	0-2	09/21/2017	0.33	0.11
	SB-15	1-3	01/11/2018	0.284	

<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.

J = compound detected above laboratory method detection limit, but below the laboratory reporting limit resulting in a laboratory estimated concentration



## SOIL GAS

Soil gas contaminants in micrograms per cubic meter, the screening levels for which are derived from Residential Vapor Intrusion Screening Levels of the Division of Waste Management (February 2018 version):

Soil Gas Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Screening Level ( $\mu\text{g}/\text{m}^3$ )	Residential VI Screening Level <sup>1</sup> ( $\mu\text{g}/\text{m}^3$ )
Trichloroethylene	SG-3	11/16/2017	1,100	14
	SG-4	11/16/2017	220	

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



MICHAEL E. SCOTT, DIRECTOR  
DIVISION OF WASTE MANAGEMENT  
STATE OF NORTH CAROLINA  
COUNTY OF WAKE

DATE

# N. COLLEGE STREET

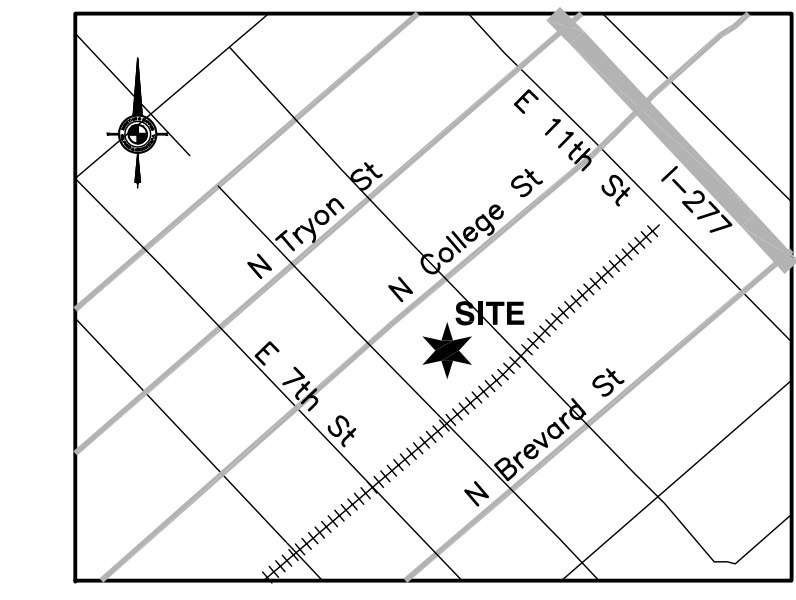
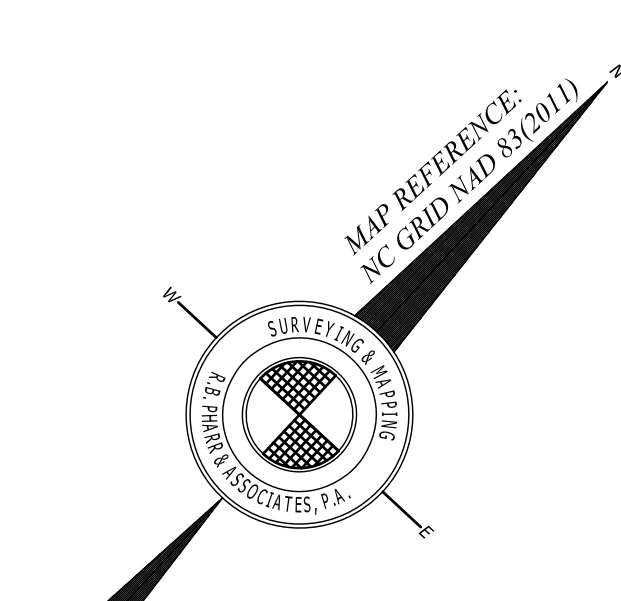
(50' Public R/W)

# E. 8TH STREET

(30' Public R/W)

# E. 9TH STREET

(Variable Width Public R/W)



- NOTES:**
- ALL CORNERS MONUMENTED AS SHOWN.
  - NO RECOVERABLE NGS MONUMENT LOCATED WITHIN 2,000 FEET OF SUBJECT PROPERTY.
  - THE LOCATION OF UNDERGROUND UTILITIES SHOWN ON THIS MAP IS APPROXIMATE, BASED ON INFORMATION PROVIDED BY OTHERS OR BY FIELD LOCATION. UTILITY LOCATIONS AS SHOWN HEREON ARE INTENDED FOR PLANNING ONLY. ACTUAL LOCATION, SIZE, OR DEPTH OF LINE SHOULD BE VERIFIED WITH THE INDIVIDUAL UTILITY COMPANY BEFORE CONSTRUCTION.
  - BROKEN LINES UNLESS THEY HAVE A METES AND BOUNDS DESCRIPTION, INDICATE PROPERTY LINES NOT SURVEYED.
  - NORTH COLLEGE STREET IS SHOWN AS A "MAJOR THOROUGHFARE" ON THE MECKLENBURG-UNION METROPOLITAN PLANNING ORGANIZATION THOROUGHFARE PLAN OF 2004 AND MAY BE SUBJECT TO A FUTURE RIGHT-OF-WAY OF 40' FROM CENTERLINE.
  - THE OFF-SITE RIGHT-OF-WAY SHOWN HEREON IS FOR ILLUSTRATIVE PURPOSES ONLY. THE UNDERSIGNED CERTIFIES ONLY TO THE RIGHT-OF-WAYS SURVEYED, AND DOES NOT CERTIFY TO THE RIGHT OF WAY WIDTH OF ANY ADJACENT PROPERTIES.
  - THE AREAS AND TYPES OF CONTAMINATION DEPICTED HEREON ARE APPROXIMATIONS DERIVED FROM THE BEST AVAILABLE INFORMATION AT THE TIME OF FILING. A LIST OF THE TECHNICAL REPORTS USED TO PREPARE THIS PLAN ARE AVAILABLE IN THE BROWNFIELDS AGREEMENT FOR THIS PROPERTY.
  - ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES, UNLESS OTHERWISE NOTED.

**ZONING:**  
ZONING RESTRICTIONS AS PER ZONING ORDINANCE:  
SUBJECT PROPERTY ZONED: UMUD-G

FOR FURTHER INFORMATION CONTACT THE  
CHARLOTTE-MECKLENBURG ZONING DEPARTMENT AT  
704-336-3369.

**GPS CERTIFICATION:**  
I, CHARLES E. BELL, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

- CLASS OF SURVEY: A(1:10,000)
- POSITIONAL ACCURACY: HORZ. NORTH = 0.00045, EAST = 0.0016, VERT. = 0.0085
- TYPE OF GPS FIELD PROCEDURE: REAL-TIME KINEMATIC
- DATES OF SURVEY: 07/26/2016
- DATE OF PLOTTING: 08/01/2016
- PUBLISHED/FIXED-CONTROL USE: NGS MONUMENT "MCDOWELL"
- GEOID MODEL: GEOID12B(CONUS)
- COMBINED GRID FACTORS: 0.99944487
- UNITS: US SURVEY FEET

**NOT SUBJECT TO**  
THIS PLAN IS NOT SUBJECT TO THE PROVISIONS OF THE CITY OF CHARLOTTE OR MECKLENBURG COUNTY SUBDIVISION ORDINANCES AND DOES NOT REQUIRE THE APPROVAL OF THE CHARLOTTE-MECKLENBURG PLANNING COMMISSION. HOWEVER, ANY FURTHER SUBDIVISION OF THIS PROPERTY MAY BE SUBJECT TO THESE PROVISIONS.  
CHARLOTTE-MECKLENBURG PLANNING COMMISSION

PLANNING COMMISSION STAFF \_\_\_\_\_ DATE \_\_\_\_\_

**REVIEW OFFICER:**  
I, \_\_\_\_\_ REVIEW OFFICER OF MECKLENBURG COUNTY, CERTIFY THAT THE MAP OR PLAN TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER \_\_\_\_\_ DATE \_\_\_\_\_

**SURVEYOR'S CERTIFICATE:**  
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG  
I, THE UNDERSIGNED SURVEYOR, CERTIFY THAT THIS PLAN WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED REFERENCE 31596-343); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION AS REFERENCED ON THE FACE OF THIS PLAN; THAT THE RATIO OF PRECISION AS CALCULATED EXCEEDS 1:10,000 LINEAR FEET; THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS 1ST DAY OF AUGUST, A.D., 2016.

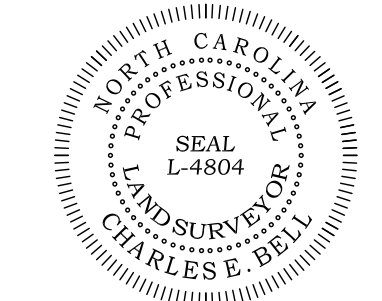
THIS PLAN IS OF A SURVEY OF AN EXISTING PARCEL OR PARCELS OF LAND.

CHARLES E. BELL (L-4804) \_\_\_\_\_ DATE \_\_\_\_\_  
cbell@rpharr.com

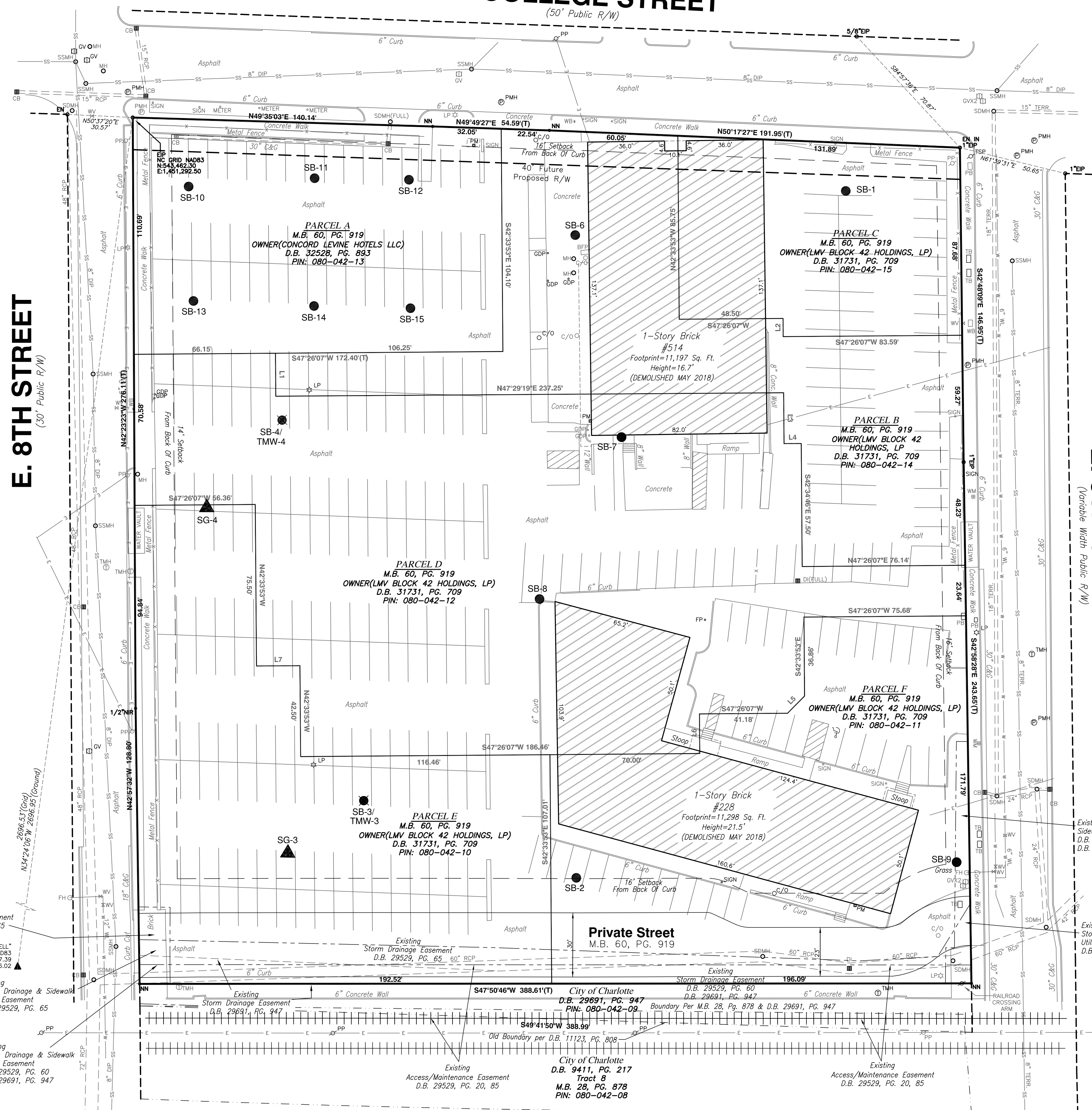
**PRELIMINARY**  
FOR REVIEW AND APPROVAL

**SHEET 1 OF 2:** 154,441 SQ. FT. OR 3.5455 ACRES

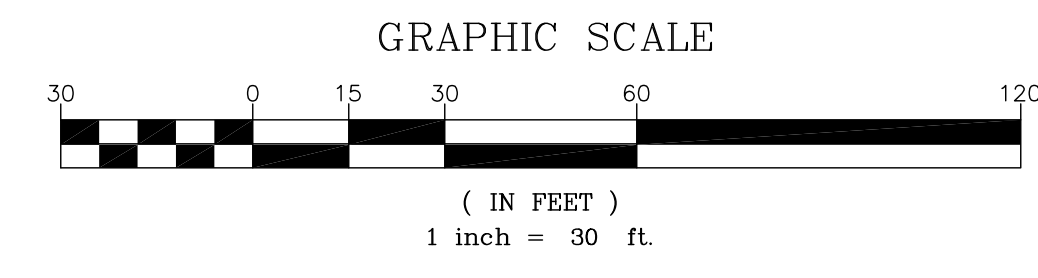
REVISIONS			EXHIBIT B to the Notice of Brownfields Property SURVEY PLAN		
5-30-18:	REFERENCE BUILDING DEMOLITION AND UPDATE PARCEL A OWNERSHIP.		OWNER: LMV BLOCK 42 HOLDINGS, LP & CONCORD LEVINE HOTELS LLC PROJECT NAME: BLOCK 42 REDEVELOPMENT PROSPECTIVE DEVELOPER: LMV BLOCK 42 HOLDINGS, LLC & LMV BLOCK 42 HOLDINGS LP (NCR # 21024-17-060) NORTH COLLEGE STREET EAST 8TH STREET, AND EAST 9TH STREET CITY OF CHARLOTTE, MECKLENBURG COUNTY, NC DEED REFERENCE: 32528-893 & 31731-709 TAX PARCEL NO: 080-042-10, -11, -12, -13, -14, -15		
Crew: PH DJ			R.B. PHARR & ASSOCIATES, P.A. SURVEYING & MAPPING LICENSE NO. C-1471 420 HAWTHORNE LANE, CHARLOTTE, N.C. 28204 TEL. (704) 376-2186		
DATE:	1"=30'	AUGUST 1, 2016	SCALE:	DATE:	AUGUST 1, 2016
FILE NO.:	W-5146BF		JOB NO.:	B8082	



**FLOOD CERTIFICATION:**  
THIS IS TO CERTIFY THAT THE SUBJECT PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, DATED FEBRUARY 19, 2014.  
MAP NUMBER: 3710455400K, ZONE X



LINE	BEARING	DISTANCE
L1	N42°33'53"W	20.08
L2	S42°33'52"E	8.50
L3	S42°33'52"E	23.78
L4	S47°26'12"W	8.03
L5	S02°28'07"W	11.31
L6	S42°33'53"E	16.50
L7	S47°26'07"W	20.29



**HATCH LEGEND:**

- EXISTING BUILDING
- DEMOLISHED MAY 2018

**LEGEND:**

- BFP - BACK FLOW PREVENTOR
- C&G - CURB & GUTTER
- CB - CATCH BASIN
- C&F - COMBINED GRID FACTOR
- CO - CLEAN OUT
- D.B. - DEED BOOK
- DI - DROP-INLET
- DIP - DUCTILE IRON PIPE
- EIP - EXISTING IRON PIPE
- EN - EXISTING NAIL
- FH - FIRE HYDRANT
- FP - FLAG POLE
- GDP - GUARD POST
- GP - GAS VALVE
- LP - LIGHT POLE
- M.B. - MAP BOOK
- NG.S. - NATIONAL GEODETIC SURVEY
- NR - NEW IRON ROD
- NN - NEW NAIL
- PB - POWER BOX
- PIN - PARCEL IDENTIFICATION NUMBER
- PM - POWER METER
- PMH - POWER MANHOLE
- PP - POWER POLE
- PG - PAGE
- R/W - RIGHT-OF-WAY
- RCP - REINFORCED CONCRETE PIPE
- SDMH - STORM DRAIN MANHOLE
- SSMH - SANITARY SEWER MANHOLE
- TERR. - TERRACOTTA PIPE
- TMH - TELEPHONE MANHOLE
- WB - WATER BOX
- WM - WATER METER
- WV - WATER VALVE

**LINE LEGEND:**

- EASEMENT
- BROWNFIELDS PROPERTY LINE
- PROPERTY LINE (NOT SURVEYED)
- RIGHT-OF-WAY (NOT SURVEYED)
- SETRACK
- POWER LINE
- SANITARY SEWER PIPE
- STORM DRAIN PIPE >12" WATER LINE



The most recent environmental sampling at the Property reported at the Environmental Reports occurred on January 12, 2018. The following tables set forth, for contaminants present at the Brownfields 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 21.21, Rule 0202, (April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	ZL Standard (µg/L)
Trichloroethylene	TMW-3	09/21/2017	510	3
	TMW-4	09/21/2017	59	

**GROUNDWATER VAPOR INTRUSION RISK**

Groundwater contaminants with potential for vapor intrusion (VI) in micrograms per liter (the equivalent of parts per billion), the vapor intrusion screening levels for which are derived from the Residential Vapor Intrusion Screening Levels of the Division of Waste Management (February 2018 version):

Groundwater Contaminant with Potential for Vapor Intrusion	Sample Location	Date of Sampling	Concentration Exceeding Screening Level (µg/L)	Residential VI Screening Level (µg/L)
Trichloroethylene	TMW-3	09/21/2017	510	1.0
	TMW-4	09/21/2017	59	

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

**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 (February 2018 version):

Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Unrestricted Use Screening Level (mg/kg)
Arsenic	SB-1	0-2	09/20/2017	0.96	0.68
		2-4		1.1	
		4-6		2.0	
		6-8		0.87	
		8-10		1.6	
		10-12		1.6	
		12-14		1.5	
		14-16		0.3	
		16-18		0.964	
		18-20		0.800	
		20-22		0.700	
		22-24		0.875	
		24-26		1.43	
		26-28		0.361	
Hexavalent Chromium	SB-2	0-2	09/20/2017	0.50	0.30
		2-4		0.67	
Benzodibenzene	SB-9	0-2	09/21/2017	0.33	0.11
		2-4		0.284	

<sup>1</sup> Screening levels displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for a 1.0E-5 lifetime incremental cancer risk.  
<sup>2</sup> - compound detected above laboratory method detection limit, but below the laboratory reporting limit resulting in laboratory estimated concentration

**SOIL GAS**

Soil gas contaminants in micrograms per cubic meter, the screening levels for which are derived from Residential Vapor Intrusion Screening Levels of the Division of Waste Management (February 2018 version):

Soil Gas Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Screening Level (µg/m <sup>3</sup> )	Residential VI Screening Level (µg/m <sup>3</sup> )
Trichloroethylene	SG-3	11/16/2017	1,100	14
	SG-4	11/16/2017	220	

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

**LAND USE RESTRICTIONS**

N.C.G.S. 130A-310.35(e) requires recodification of a Notice of Brownfields Property ("Notice") that identifies any restrictions on the current and future use of a Brownfields Property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the property and that are designated in a Brownfields Agreement pertaining to the property. This survey plat constitutes one of two components of the Notice pertaining to the Brownfields Property depicted on this plat and recorded at the Mecklenburg County Register of Deeds' office. The other component of the Notice is a document, to which the Brownfields Agreement for the subject property is attached as Exhibit A; a reduced version of this survey plat constitutes Exhibit B to that document. The following Land Use Restrictions, excerpted verbatim from the Notice, are hereby imposed on the Brownfields Property and shall remain in force in perpetuity unless canceled by the Secretary of the North Carolina Department of Environment and Natural Resources (or its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to N.C.G.S. § 130A-310.35(e):

- No use may be made of the Brownfields Property other than for retail, office, open space, recreation, multi-family residential, high-density residential, hotel, restaurant, brewery or food production facility, storage units, parking, and, subject to DEQ's prior written approval, other commercial uses. For purposes of this restriction, the following definitions apply:
  - "Retail" is defined as the sale of goods or services, products, or merchandise directly to the consumer or businesses and includes slow-motion, personal service, and the sales of food and beverage products. For the purposes of this Agreement, retail excludes use as a dry cleaner using chlorinated solvents.
  - "Office" is defined as the provision of business or professional services.
  - "Open space" is defined as land maintained in a natural or landscaped state and used for natural resource protection, buffers, greenways, or detention facilities for storm water.
  - "Recreation" is defined as indoor and outdoor exercise-related, physically focused, or leisure-related activities, whether active or passive, and the facilities for same, including, but not limited to, studios, swimming pools, sports-related courts and fields, open space, greenways, parks, playgrounds, walking paths, and picnic and public gathering areas.
  - "High density residential" is defined as 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. Ground floor units are prohibited unless approved in writing by DEQ in advance.
  - "Hotel" is defined as the provision of overnight lodging to paying customers, and to associated food services, gym, recreation, cleaning, utilities, parking, and on-site hospitality, management and reception services.
  - "Restaurant" is defined as a commercial business establishment that prepares and serves food and beverages to patrons.
  - "Brewery or Food Production Facility" is defined as an establishment for the manufacture, sale and distribution of beverages or food products, including without limitation beer and ale, together with associated public walkways and related infrastructure.
  - "Storage unit" is defined as space that is commercially rented on a short- or long-term basis by consumers and businesses for the storage of personal effects, household goods, equipment and other non-hazardous materials that are in compliance with all other aspects of this Agreement.
  - "Parking" is defined as the temporary accommodation of motor vehicles in an area designed for same.
  - "Commercial" is defined as an enterprise carried on for profit or nonprofit by the owner, lessee or licensee. For the purposes of this Agreement, this excludes use as a dry cleaner using chlorinated solvents.
- The Brownfields Property may not be used for child care centers, adult care centers or schools without the prior written approval of DEQ.
  - Physical redevelopment of the Brownfields Property may not occur other than as 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:
    - soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;
    - issues related to potential sources of contamination referenced in Exhibit 2 of the attached Exhibit A;
    - 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
    - plans for the proper characterization of, and, as necessary, disposal of contaminated soils excavated during redevelopment.
- No use of the Brownfields Property as specified above in Land Use Restriction 1 may occur until the then-owner of the Brownfields Property conducts representative final grade soil sampling pursuant to a plan approved in writing by DEQ of any area of the Brownfields Property that will not be covered by building foundations, sidewalks, or asphaltic or concrete parking areas and driveways unless otherwise approved in writing by DEQ in advance.
  - Groundwater at the Brownfields Property may not be used for any purpose without the prior written approval of DEQ.
    - No activity that disturbs soil on the Brownfields Property 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 above in Land Use Restriction 1 while fully protecting public health and the environment, except:
      - in connection with landscape planting to depths not exceeding 24 inches;
      - mowing and pruning of above-ground vegetation;
      - 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 and;
      - in connection to work conducted in accordance with the EMP as outlined above in Land Use Restriction 3.
    - Soil may not be removed from, or brought onto, the Brownfields Property without prior sampling and analysis to DEQ's satisfaction and the written approval of DEQ, unless conducted in accordance with an approved EMP as outlined above in Land Use Restriction 3.
    - No enclosed building may be constructed on the Brownfields Property and no existing building, defined as those depicted on the plat component of this Notice of Brownfields Property, may be occupied, until DEQ determines in writing that:
      - 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
      - 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
      - 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.
    - By January 31 of each one-year anniversary of the effective date of the attached Exhibit A, and 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:
      - actions taken on the Brownfields Property in accordance with the EMP

required by Land Use Restriction 3, above;
 

- soil gas testing and soil and fill actions;
- methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;
- stacking, 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
- 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).

10. 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.

11. None of the contaminants known to be present in the environmental media at the Brownfields Property, as described in Exhibit 2 of the attached Exhibit A 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:
 

- in *de minimis* quantities for cleaning and other routine housekeeping and maintenance activities;
- as fuel or other fluids customarily used in vehicles, landscaping equipment, and emergency generators; and
- as constituents of products and materials customarily used and stored in retail, office, open space, recreation, high-density residential, hotel, brewery or food production, storage units, parking, or commercial environments, provided such products and materials are stored in original retail packaging and used and disposed of in accordance with applicable laws.

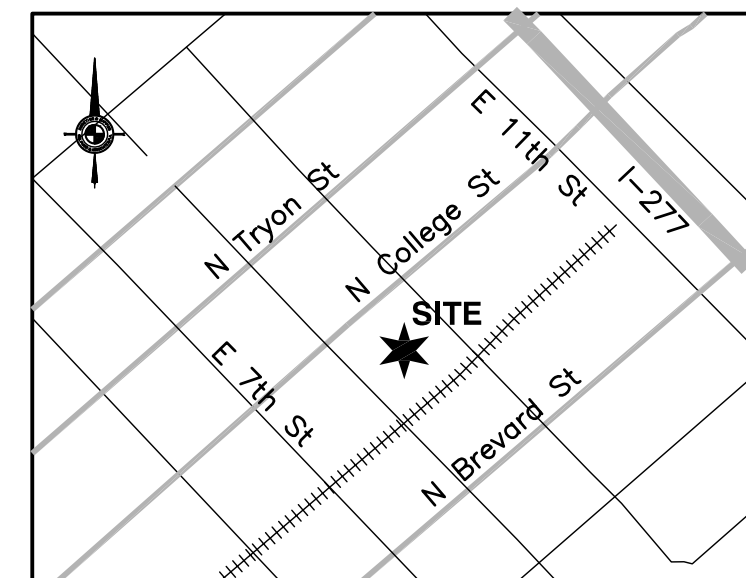
12. The owner of any portion of the Brownfields Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged by the owner, its contractors, or its tenants shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable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

13. Any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: "This property is subject to the Brownfields Agreement attached as Exhibit A to this 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 to this Notice, though financial figures and other confidential information related to the conveyance may be redacted to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. The owner conveying an interest may use the following mechanisms to comply with the obligations of this Land Use Restriction:

- If every lease and rider is identical in form, the owner conveying an interest 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 the attached Exhibit A; or
- The owner conveying an interest may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV of the attached Exhibit A.

14. During January of each year after the year in which this Notice is recorded, the owner of any part of the Brownfields Property as of January 1st 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 1st, this Notice 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. The submitted LURU shall state the following:

- 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;
- 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;
- whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 8 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;
- A joint LURU may be submitted for multiple owners by a duly constituted board or association and 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.



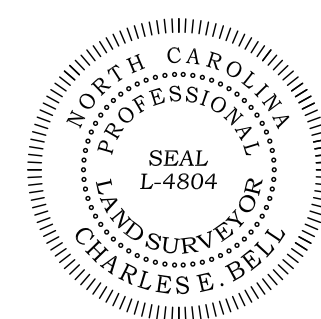
VICINITY MAP  
NOT TO SCALE

FOR THE PURPOSES OF N.C.G.S. 130A-310.35

MICHAEL E. SCOTT, DIRECTOR DATE  
 DIVISION OF WASTE MANAGEMENT  
 STATE OF NORTH CAROLINA  
 COUNTY OF WAKE

**SHEET 2 OF 2:**

REVISIONS			EXHIBIT B		
5-30-18:	REFERENCE:		<b>to the Notice of Brownfields Property SURVEY PLAT</b> OWNER: LMV BLOCK 42 HOLDINGS, LP & CONCORD LEVINE HOTELS LLC PROJECT NAME: BLOCK 42 REDEVELOPMENT PROSPECTIVE DEVELOPER: LMV BLOCK 42 HOLDINGS, LLC, & LMV BLOCK 42 HOLDINGS LP (NCB # 21024-17-090) NORTH COLLEGE STREET EAST 8TH STREET, AND EAST 9TH STREET CITY OF CHARLOTTE, MECKLENBURG COUNTY, NC DEED REFERENCE: 32528-893 & 31731-709 TAX PARCEL NO: 080-042-10, -11, -12, -13, -14, -15		
BUILDING DEMOLITION AND UPDATE PARCEL A OWNERSHIP.					
R.B. PHARR & ASSOCIATES, P.A. SURVEYING & MAPPING LICENSE NO. C-1471 420 HAWTHORNE LANE, CHARLOTTE, N.C. 28204 TEL. (704) 376-2186			SCALE: 1"=40' DATE: AUGUST 1, 2016 FILE NO. W-5146BF JOB NO. 88082		
CREW: PH	DRAWN: DJ	REVISED:	PLOTTED: 5/30/2018 G:\88\0\88082\DWG\88082.DWG		



## Exhibit C

### Legal Description

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

**BEGINNING** at a an existing iron pipe at the intersection of the northeasterly right-of-way margin of East 8<sup>th</sup> Street (30 foot public R/W) and the southeasterly right-of-way margin of North College Street (50 foot public R/W), said point being located N 34°24'06" W a distance of 2696.95 feet from NGS Monument "McDowell" (having NC Grid Coordinates N: 541,237.39, E: 1,452,816.02); Thence with and along said southeasterly right-of-way margin of North College Street for the following three (3) courses and distances: 1) N 49°35'03" E a distance of 140.14 feet to a new nail; 2) N 49°49'27" E a distance of 54.59 feet to a new nail; 3) N 50°17'27" E a distance of 191.95 feet to an existing 1 inch iron pipe at the intersection of the southeasterly right-of-way margin of North College Street and the southwesterly right-of-way margin of East 9<sup>th</sup> Street (50 foot public R/W); Thence with and along said southwesterly right-of-way margin of East 9<sup>th</sup> Street for the following two (2) courses and distances: 1) S 42°48'09" E a distance of 146.95 feet to an existing 1 inch iron pipe; 2) S 42°58'28" E a distance of 243.65 feet to a new nail, said point being the northern corner of the property of City of Charlotte (now or formerly) as described in Deed Book 29691, Page 947 in the Mecklenburg County Public Registry; Thence with and along the northwesterly boundary of said property of City of Charlotte S 47°50'46" W a distance of 388.61 feet to a new nail on the northeasterly right-of-way margin of East 8<sup>th</sup> Street; Thence with and along said northeasterly right-of-way margin of East 8<sup>th</sup> Street for the following two (2) courses and distances: 1) N 42°57'32" W a distance of 128.80 feet to a new 1/2 inch iron rod; 2) N 42°23'23" W a distance of 276.11 feet to the point of **BEGINNING**;

*Having an area of 154,441 square feet or 3.5455 acres, as shown on a survey prepared by R. B. Pharr & Associates, P.A. dated August 1, 2016 (Map File W-5146BF). Job No. 88082.*