



October 15, 2015

Chris Wilson, Assistant City Manager
City of Greensboro
PO Box 3136
Greensboro, NC 27401

Re: Environmental Impact Statement (EIS) Waiver for South Elm Street Redevelopment Project

In April 2015, the Department of Housing and Urban Development (HUD) environmental review required for projects utilizing federal funds was updated because revisions to the master plan for the South Elm Street development site showed relocation of the proposed residential units. The initial master plan located residential uses only in the south half of the property, along the Downtown Greenway, which follows Bragg Street. The updated noise assessment indicated that this project has unacceptable noise levels in areas proposed for noise-sensitive uses. The City of Greensboro must address the effect that unacceptable noise levels could have on the South Elm Street Redevelopment project by one of these alternatives:

1. Preclude the development of noise sensitive uses (such as residential development);
2. Complete an environmental impact statement (EIS);
3. Provide satisfactory support of an EIS waiver; or
4. Return the funds to HUD.

Planning Department staff requests approval of a waiver to the environmental impact statement based on the supporting documentation included with this request.

The South Elm Street Brownfields Redevelopment Plan was adopted by the Greensboro City Council in February 2007. The project, as described in the Redevelopment Plan, is intended to provide the following public benefits for the City of Greensboro:

- A return to productive use of the property;
- A spur to additional community development, through improved neighborhood appearance and otherwise;
- The creation of approximately 1150 permanent jobs and 1120 temporary jobs during the construction phase and post redevelopment phase combined;
- An increase in tax revenue for affected jurisdictions;
- Additional commercial, office, educational, hotel and residential space for the area; and
- “Smart growth” through use of land in an already developed area, which avoids development of land beyond the urban fringe.

The Plan was crafted to encourage infill development of an underutilized 6.7 acre area adjacent to the existing central business district and embedded between two historic neighborhoods that have themselves been the focus of multi-year redevelopment projects. Without public investment in remediation and infrastructure improvements, the area would have continued to be a source of blight with negative spillover effects in the adjoining neighborhoods. The proposed development is compatible with the surrounding land uses, which include the downtown greenway, a park, a 100-year-old mill building repurposed for office space, and a music school.

The project is located between two sources of ambient noise: a Norfolk Southern Railroad line and Gate City Boulevard. Two locations on the site were assessed. The combined Day/Night Level (DNL) was above the threshold of acceptability as defined by HUD. Since the site's DNLs were found to be above the accepted Noise Level Standards outlined by HUD, the Certifying Officer of the City must approve an EIS waiver and require that developers implement noise attenuation in their construction. The assessment locations and results are shown on Exhibit A – Noise Calculation Map and Backup.

Development underway or in final planning stages includes an 80,000 square foot institutional facility, 15,500 square feet of commercial/retail space, 250± apartments, and a parking structure with 600± spaces. Future project components could include a second institutional building, additional parking, and a hotel with ground floor retail.

The criteria necessary to request a waiver have been met and are documented as Exhibits to this letter.

Environmental Issues

The City must document that noise is the only environmental issue at the site. Exhibit B – Modified Environmental Assessment for HUD-Funded Proposals documents compliance with Part 58.5. All backup documentation has been made a part of the Environmental Review Record for this project.

Noise-Sensitive Outdoor Uses

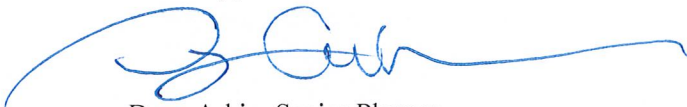
The City must document that there are no noise-sensitive outdoor uses and that attenuation measures will ensure that areas on the site are within acceptable noise levels once built out. Exhibit C is an annotated version of the most recent Master Plan submitted by the master developer. Exhibit D provides component development project descriptions and noise attenuation measures that will be required.

Mitigation of Other Environmental Issues

The City must document that environmental issues other than those covered by the HUD Environmental Assessment have been assessed and mitigated. Exhibit E – South Elm Street Redevelopment Area Brownfields Agreement summarizes remediation activities and North Carolina Department of the Environment and Natural Resources' requirements for site development.

Any Environmental Assessment that follows an EIS waiver must incorporate the mitigation actions as an explicit condition of project approval. Please sign the attached Environmental Impact Statement Waiver Certification to acknowledge and grant the waiver.

Sincerely,



Dyan Arkin, Senior Planner

Attachments

CC: Sue Schwartz, Planning Director
Barbara Harris, Neighborhood Development Director

ENVIRONMENTAL IMPACT STATEMENT WAIVER CERTIFICATION

As Certifying Officer of the City of Greensboro, I acknowledge that the South Elm Street Redevelopment Project will comply with the Department of Housing and Urban Development's Noise Standards and hereby grant this Environmental Impact Statement Waiver, with the understanding that all site development will be subject to the following conditions:

- The City of Greensboro will require proposed developer(s) to:
 - Acknowledge that sound attenuation will be required in all noise-sensitive areas as a condition of acceptance of proposal;
 - Ensure that the interior auditory environment does not exceed a day-night average sound level of 45 decibels;
 - Submit a detailed description of what attenuation measures will be used to achieve the 45-decibel average sound level and what additional measures will be taken to reduce sound levels in significantly noise-sensitive interior spaces, such as bedrooms;
 - Verify appropriate construction methods for attenuation and acoustical privacy with inclusion of certified wall system schedules in constructions drawing details;
 - Test and certify post-construction prior to occupancy that residential units meet required sound levels; and
 - Utilize quieter equipment and appliances where appropriate.

Signature

Christian Wilson
Assistant City Manager/Certifying Officer

Date

LIST OF EXHIBITS

EXHIBIT A – Noise Calculation Map and Backup

EXHIBIT B - Modified Environmental Assessment for HUD-Funded Proposals

EXHIBIT C - Annotated Master Development Plan

EXHIBIT D – Component Development Project Descriptions and Noise Attenuation Measures

Exhibit D1 – Component 1 - Institutional Facility

Exhibit D2 – Component 2 - Commercial/Retail Space, Apartments, Parking Structure

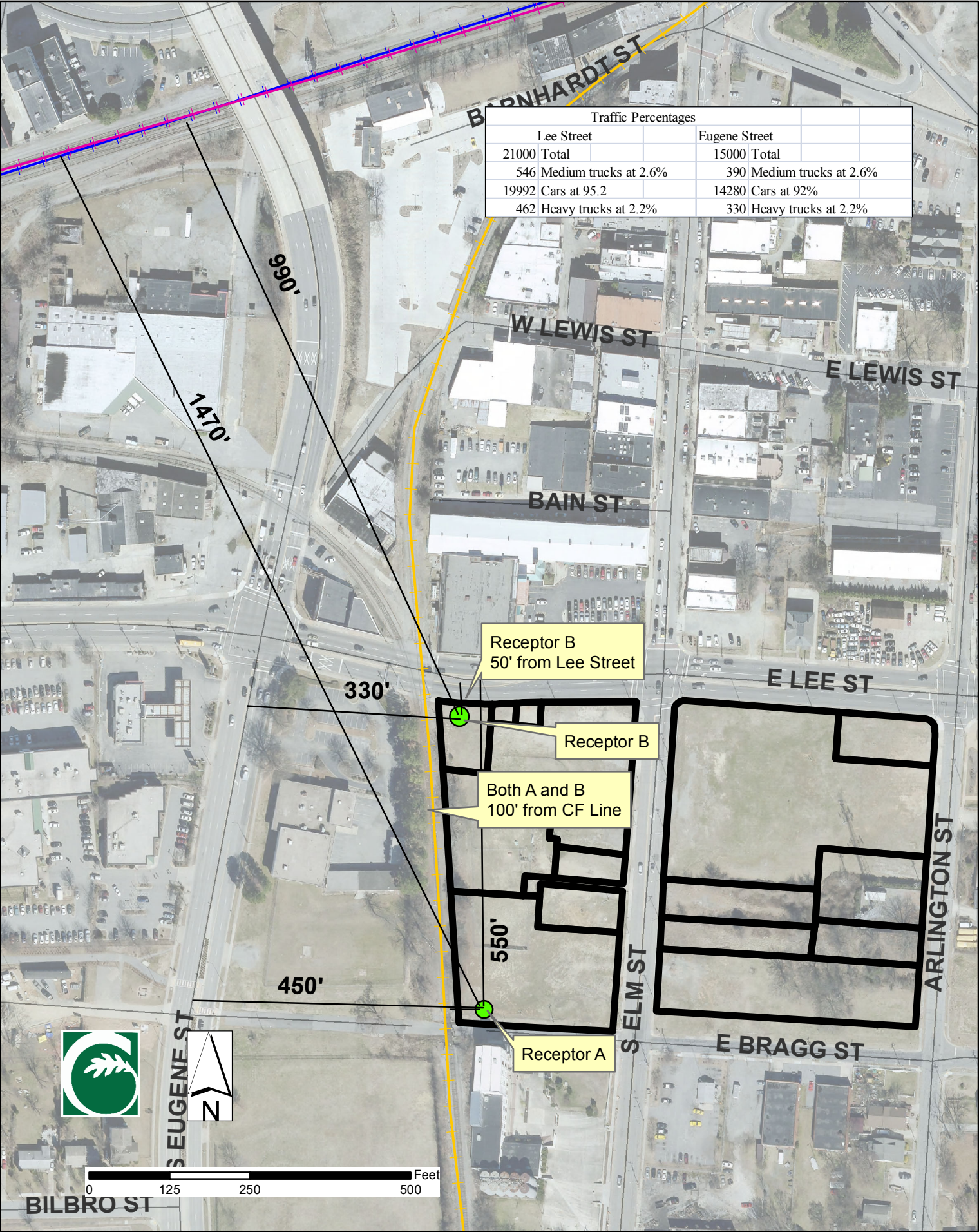
Exhibit D3 - Future Project Components

EXHIBIT E – South Elm Street Brownfields Agreement

EXHIBIT A

NOISE CALCULATION MAP AND BACKUP

South Elm Noise Considerations



[Environmental Review Main \(/programs/environmental-review/\)](/programs/environmental-review/)

DNL Calculator

The Day/Night Noise Level Calculator is an electronic assessment tool that calculates the Day/Night Noise Level (DNL) from roadway and railway traffic. For more information on using the DNL calculator, view the Day/Night Noise Level Calculator Electronic Assessment Tool Overview (<https://onecpd.info/programs/environmental-review/daynight-noise-level-electronic-assessment-tool/>).

Guidelines

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

DNL Calculator

Site ID

Record Date

User's Name

Road # 1 Name:

Road #1

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	550	550	550
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	19992	546	462

Night Fraction of ADT	15	15	15
Road Gradient (%)			2
Vehicle DNL	51.7	36.1	55.8
Calculate Road #1 DNL	57.3	Reset	

Road # 2 Name:	Eugene St
----------------	--

Road #2

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	450	450	450
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	14280	390	330
Night Fraction of ADT	15	15	15
Road Gradient (%)			1
Vehicle DNL	51.5	35.9	55.2
Calculate Road #2 DNL	56.8	Reset	

Railroad #1 Track Identifier:	CF Line
-------------------------------	--------------------------------------

Rail # 1

Train Type	Electric ☐	Diesel ☒
Effective Distance		100
Average Train Speed		25
Engines per Train		2
Railway cars per Train		30

Average Train Operations (ATO)		2
Night Fraction of ATO		50
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		71.7
Calculate Rail #1 DNL	71.7	Reset

Railroad #2 Track Identifier:

Rail # 2

Train Type	Electric ☐	Diesel ☒
Effective Distance		1470
Average Train Speed		55
Engines per Train		3
Railway cars per Train		75
Average Train Operations (ATO)		44
Night Fraction of ATO		25
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		63.9
Calculate Rail #2 DNL	63.9	Reset

Airport Noise Level

Loud Impulse Sounds? ☐ Yes ☐ No

Combined DNL for all Road and Rail sources	72.6
Combined DNL including Airport	N/A
Site DNL with Loud Impulse Sound	

Calculate

Mitigation Options

If your site DNL is in Excess of 65 decibels, your options are:

- **No Action Alternative:** Cancel the project at this location
- **Other Reasonable Alternatives:** Choose an alternate site
- **Mitigation**
 - Contact your Field or Regional Environmental Officer (<https://www.onecpd.info/programs/environmental-review/hud-environmental-staff-contacts/>)
 - Increase mitigation in the building walls (only effective if no outdoor, noise sensitive areas)
 - Reconfigure the site plan to increase the distance between the noise source and noise-sensitive uses
 - Incorporate natural or man-made barriers. See *The Noise Guidebook* (<https://www.onecpd.info/resource/313/hud-noise-guidebook/>)
 - Construct noise barrier. See the Barrier Performance Module (<https://onecpd.info/programs/environmental-review/bpm-calculator/>)

Tools and Guidance

Day/Night Noise Level Assessment Tool User Guide (<https://www.onecpd.info/resource/3822/day-night-noise-level-assessment-tool-user-guide/>)

Day/Night Noise Level Assessment Tool Flowcharts (<https://www.onecpd.info/resource/3823/day-night-noise-level-assessment-tool-flowcharts/>)

[Environmental Review Main \(/programs/environmental-review/\)](/programs/environmental-review/)

DNL Calculator

The Day/Night Noise Level Calculator is an electronic assessment tool that calculates the Day/Night Noise Level (DNL) from roadway and railway traffic. For more information on using the DNL calculator, view the Day/Night Noise Level Calculator Electronic Assessment Tool Overview (<https://onecpd.info/programs/environmental-review/daynight-noise-level-electronic-assessment-tool/>).

Guidelines

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

DNL Calculator

Site ID

Record Date

User's Name

Road # 1 Name:

Road #1

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	550	550	550
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	19992	546	462

Night Fraction of ADT	15	15	15
Road Gradient (%)			2
Vehicle DNL	51.7	36.1	55.8
Calculate Road #1 DNL	57.3	Reset	

Road # 2 Name:	Eugene St
----------------	--

Road #2

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	450	450	450
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	14280	390	330
Night Fraction of ADT	15	15	15
Road Gradient (%)			1
Vehicle DNL	51.5	35.9	55.2
Calculate Road #2 DNL	56.8	Reset	

Railroad #1 Track Identifier:	CF Line
-------------------------------	--------------------------------------

Rail # 1

Train Type	Electric ☐	Diesel ☒
Effective Distance		55
Average Train Speed		25
Engines per Train		2
Railway cars per Train		30

Average Train Operations (ATO)		2
Night Fraction of ATO		50
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		75.6
Calculate Rail #1 DNL	75.6	Reset

Railroad #2 Track Identifier:

Rail # 2

Train Type	Electric ☐	Diesel ☒
Effective Distance		1470
Average Train Speed		55
Engines per Train		3
Railway cars per Train		75
Average Train Operations (ATO)		44
Night Fraction of ATO		25
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		63.9
Calculate Rail #2 DNL	63.9	Reset

Airport Noise Level

Loud Impulse Sounds? ☐ Yes ☐ No

Combined DNL for all Road and Rail sources	76
Combined DNL including Airport	N/A
Site DNL with Loud Impulse Sound	

Calculate

Mitigation Options

If your site DNL is in Excess of 65 decibels, your options are:

- **No Action Alternative:** Cancel the project at this location
- **Other Reasonable Alternatives:** Choose an alternate site
- **Mitigation**
 - Contact your Field or Regional Environmental Officer (<https://www.onecpd.info/programs/environmental-review/hud-environmental-staff-contacts/>)
 - Increase mitigation in the building walls (only effective if no outdoor, noise sensitive areas)
 - Reconfigure the site plan to increase the distance between the noise source and noise-sensitive uses
 - Incorporate natural or man-made barriers. See *The Noise Guidebook* (<https://www.onecpd.info/resource/313/hud-noise-guidebook/>)
 - Construct noise barrier. See the Barrier Performance Module (<https://onecpd.info/programs/environmental-review/bpm-calculator/>)

Tools and Guidance

Day/Night Noise Level Assessment Tool User Guide (<https://www.onecpd.info/resource/3822/day-night-noise-level-assessment-tool-user-guide/>)

Day/Night Noise Level Assessment Tool Flowcharts (<https://www.onecpd.info/resource/3823/day-night-noise-level-assessment-tool-flowcharts/>)

[Environmental Review Main \(/programs/environmental-review/\)](/programs/environmental-review/)

DNL Calculator

The Day/Night Noise Level Calculator is an electronic assessment tool that calculates the Day/Night Noise Level (DNL) from roadway and railway traffic. For more information on using the DNL calculator, view the Day/Night Noise Level Calculator Electronic Assessment Tool Overview (<https://onecpd.info/programs/environmental-review/daynight-noise-level-electronic-assessment-tool/>).

Guidelines

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

DNL Calculator

Site ID

Record Date

User's Name

Road # 1 Name:

Road #1

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	50	50	50
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	19992	546	462

Night Fraction of ADT	15	15	15
Road Gradient (%)			2
Vehicle DNL	67.3	51.7	71.4
Calculate Road #1 DNL	72.9	Reset	

Road # 2 Name:	Eugene St
----------------	--

Road #2

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	330	330	330
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	14280	390	330
Night Fraction of ADT	15	15	15
Road Gradient (%)			1
Vehicle DNL	53.6	37.9	57.2
Calculate Road #2 DNL	58.9	Reset	

Railroad #1 Track Identifier:	CF Line
-------------------------------	--------------------------------------

Rail # 1

Train Type	Electric ☐	Diesel ☒
Effective Distance		100
Average Train Speed		25
Engines per Train		2
Railway cars per Train		30

Average Train Operations (ATO)		2
Night Fraction of ATO		50
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		71.7
Calculate Rail #1 DNL	71.7	Reset

Railroad #2 Track Identifier:

Rail # 2

Train Type	Electric ☐	Diesel ☒
Effective Distance		990
Average Train Speed		55
Engines per Train		3
Railway cars per Train		75
Average Train Operations (ATO)		44
Night Fraction of ATO		25
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		66.5
Calculate Rail #2 DNL	66.5	Reset

Airport Noise Level

Loud Impulse Sounds? ☐ Yes ☐ No

Combined DNL for all Road and Rail sources	76
Combined DNL including Airport	N/A
Site DNL with Loud Impulse Sound	

Calculate

Mitigation Options

If your site DNL is in Excess of 65 decibels, your options are:

- **No Action Alternative:** Cancel the project at this location
- **Other Reasonable Alternatives:** Choose an alternate site
- **Mitigation**
 - Contact your Field or Regional Environmental Officer (<https://www.onecpd.info/programs/environmental-review/hud-environmental-staff-contacts/>)
 - Increase mitigation in the building walls (only effective if no outdoor, noise sensitive areas)
 - Reconfigure the site plan to increase the distance between the noise source and noise-sensitive uses
 - Incorporate natural or man-made barriers. See *The Noise Guidebook* (<https://www.onecpd.info/resource/313/hud-noise-guidebook/>)
 - Construct noise barrier. See the Barrier Performance Module (<https://onecpd.info/programs/environmental-review/bpm-calculator/>)

Tools and Guidance

Day/Night Noise Level Assessment Tool User Guide (<https://www.onecpd.info/resource/3822/day-night-noise-level-assessment-tool-user-guide/>)

Day/Night Noise Level Assessment Tool Flowcharts (<https://www.onecpd.info/resource/3823/day-night-noise-level-assessment-tool-flowcharts/>)

[Environmental Review Main \(/programs/environmental-review/\)](/programs/environmental-review/)

DNL Calculator

The Day/Night Noise Level Calculator is an electronic assessment tool that calculates the Day/Night Noise Level (DNL) from roadway and railway traffic. For more information on using the DNL calculator, view the Day/Night Noise Level Calculator Electronic Assessment Tool Overview (<https://onecpd.info/programs/environmental-review/daynight-noise-level-electronic-assessment-tool/>).

Guidelines

- To display the Road and/or Rail DNL calculator(s), click on the "Add Road Source" and/or "Add Rail Source" button(s) below.
- All Road and Rail input values must be positive non-decimal numbers.
- All Road and/or Rail DNL value(s) must be calculated separately before calculating the Site DNL.
- All checkboxes that apply must be checked for vehicles and trains in the tables' headers.
- **Note #1:** Tooltips, containing field specific information, have been added in this tool and may be accessed by hovering over all the respective data fields (site identification, roadway and railway assessment, DNL calculation results, roadway and railway input variables) with the mouse.
- **Note #2:** DNL Calculator assumes roadway data is always entered.

DNL Calculator

Site ID

Record Date

User's Name

Road # 1 Name:

Road #1

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	50	50	50
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	19992	546	462

Night Fraction of ADT	15	15	15
Road Gradient (%)			2
Vehicle DNL	67.3	51.7	71.4
Calculate Road #1 DNL	72.9	Reset	

Road # 2 Name:

Road #2

Vehicle Type	Cars ☒	Medium Trucks ☒	Heavy Trucks ☒
Effective Distance	330	330	330
Distance to Stop Sign			
Average Speed	35	35	35
Average Daily Trips (ADT)	14280	390	330
Night Fraction of ADT	15	15	15
Road Gradient (%)			1
Vehicle DNL	53.6	37.9	57.2
Calculate Road #2 DNL	58.9	Reset	

Railroad #1 Track Identifier:

Rail # 1

Train Type	Electric ☐	Diesel ☒
Effective Distance		55
Average Train Speed		25
Engines per Train		2
Railway cars per Train		30

Average Train Operations (ATO)		2
Night Fraction of ATO		50
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		75.6
Calculate Rail #1 DNL	75.6	Reset

Railroad #2 Track Identifier:

Rail # 2

Train Type	Electric ☐	Diesel ☒
Effective Distance		990
Average Train Speed		55
Engines per Train		3
Railway cars per Train		75
Average Train Operations (ATO)		44
Night Fraction of ATO		25
Railway whistles or horns?	Yes: ☐ No: ☐	Yes: ☒ No: ☐
Bolted Tracks?	Yes: ☐ No: ☐	Yes: ☐ No: ☒
Train DNL		66.5
Calculate Rail #2 DNL	66.5	Reset

Airport Noise Level

Loud Impulse Sounds? ☐ Yes ☐ No

Combined DNL for all Road and Rail sources	77.9
Combined DNL including Airport	N/A
Site DNL with Loud Impulse Sound	

Calculate

Mitigation Options

If your site DNL is in Excess of 65 decibels, your options are:

- **No Action Alternative:** Cancel the project at this location
- **Other Reasonable Alternatives:** Choose an alternate site
- **Mitigation**
 - Contact your Field or Regional Environmental Officer (<https://www.onecpd.info/programs/environmental-review/hud-environmental-staff-contacts/>)
 - Increase mitigation in the building walls (only effective if no outdoor, noise sensitive areas)
 - Reconfigure the site plan to increase the distance between the noise source and noise-sensitive uses
 - Incorporate natural or man-made barriers. See *The Noise Guidebook* (<https://www.onecpd.info/resource/313/hud-noise-guidebook/>)
 - Construct noise barrier. See the Barrier Performance Module (<https://onecpd.info/programs/environmental-review/bpm-calculator/>)

Tools and Guidance

Day/Night Noise Level Assessment Tool User Guide (<https://www.onecpd.info/resource/3822/day-night-noise-level-assessment-tool-user-guide/>)

Day/Night Noise Level Assessment Tool Flowcharts (<https://www.onecpd.info/resource/3823/day-night-noise-level-assessment-tool-flowcharts/>)

EXHIBIT B

MODIFIED ENVIRONMENTAL ASSESSMENT

FOR HUD-FUNDED PROPOSALS

Modified Environmental Assessment for HUD-funded Proposals



Preparer: Russ Clegg

Fiscal Year: 2012/2013

Project Name: South Elm Redevelopment

Project Location: The majority of the two blocks on either side of Elm Street, south of Lee Street for one block_____

Estimated total project cost:_____Over \$5 million in federal loans and City dollars; total project over \$20 million_____

Conditions for Approval: (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

FINDING: [58.40(g)]

 X

Finding of No Significant Impact

(The project will not result in a significant impact on the quality of the human environment)

Finding of Significant Impact

(The project may significantly affect the quality of the human environment)

Preparer Signature: _____ **Date:** _____

Name/Title/Agency: _____ City of Greensboro

NEPA Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 & 1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a determination of impact. **Impact Codes:** (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation; (5) - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional material as appropriate. Note conditions or mitigation measures required.

Land Development

Code

Source or Documentation

Conformance with Comprehensive Plans and Zoning	1	In conformance with Comp Plan and CB Zoning district
Compatibility and Urban Impact	1	Plans will expand the foot print of downtown and tie together several developments on south side of Lee Street
Slope	2	Site slopes to the south, but the plan takes advantage of the grade difference
Erosion	2	There is some erosion along Bragg street that reworked stormwater infrastructure will fix
Soil Suitability	1	Site has undergone extensive soil work as part of Brownfields agreement with DENR
Hazards and Nuisances including Site Safety	2	Improvements will be made to Lee Street to make it safer to cross; mixed-use development will bring positive activity to an area that currently has some crime problems
Energy Consumption	2	Project being built to LEED standards; is location efficient

Noise - Contribution to Community Noise Levels	1	Site is not expected to contribute significant additional noise
Air Quality Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels	1	Current site plan was reviewed by the DENR air quality staff and they found no reason to require an air quality study
Environmental Design Visual Quality - Coherence, Diversity, Compatible Use and Scale	2	The site design is a very high quality, new urbanist style that will greatly benefit the area.

Socioeconomic

Code

Source or Documentation

Demographic Character Changes	2	Area currently vacant; project will bring residents, businesses, offices and potentially college classes to the area
Displacement	1	Site is currently vacant
Employment and Income Patterns	1	Jobs are required per the funding types involved; Davis-Bacon will be monitored during construction phase.

Community Facilities and Services

Code

Source or Documentation

Educational Facilities	2	Colleges and Universities are nearby; potential site for multi-school campus
Commercial Facilities	2	Adjacent to downtown, will expand footprint while differentiating from other areas
Health Care	1	Major hospitals are on other side of downtown, on major roads
Social Services	1	Adjacent to some social services located downtown; Guilford County Social Services available by bus

Solid Waste	1	As a commercial development waste will be contracted
Waste Water	1	Part of Greensboro sewer service
Storm Water	2	Stormwater infrastructure will be improved; site will feature green roofs, tree wells and other innovative design features
Water Supply	1	In Greensboro water supply system
Public Safety	1	In Greensboro response area
- Police		
- Fire	1	Within Greensboro 3 minute response area
- Emergency Medical	1	Within Greensboro 3 minute response area
Open Space and Recreation	1	
- Open Space		Limited open space nearby, though several small parks are within walking distance
- Recreation	1	Several playgrounds, trails and parks are nearby. Downtown Greenway will go through site
- Cultural Facilities	1	Located adjacent to downtown, in close proximity to two major universities
Transportation	1	Located near several main roads connecting to highways, on several bus routes, within walking distance of Depot

Natural Features

Source or Documentation

Water Resources	1	No water resources adjacent to site
Surface Water	1	No surface waters adjacent to site; some improvement to nearby Mile Run Creek anticipated by improvements to stormwater system
Unique Natural Features and Agricultural Lands	1	Area is devoid of natural features
Vegetation and Wildlife	1	Area has long been urbanized

Other Factors

Source or Documentation

Flood Disaster Protection Act [Flood Insurance] [§58.6(a)]	1	Not in a flood hazard zone
Coastal Barrier Resources Act/ Coastal Barrier Improvement Act [§58.6(c)]	1	Not in a coastal zone; see City-wide file
Airport Runway Clear Zone or Clear Zone Disclosure [§58.6(d)]	1	Not in airport hazard zone
Other Factors		

Summary of Findings and Conclusions

ALTERNATIVES TO THE PROPOSED ACTION

Alternatives and Project Modifications Considered [24 CFR 58.40(e), Ref. 40 CFR 1508.9] (Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.)

No Action Alternative [24 CFR 58.40(e)]

(Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative).

Mitigation Measures Recommended [24 CFR 58.40(d), 40 CFR 1508.20]

(Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.)

Additional Studies Performed

(Attach studies or summaries)

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]

NC SHPO, NC-DENR Office of Air Quality

Environmental Assessment Work Sheet

This worksheet provides a suggested format that may be used to complete the Environmental Assessment process.

Project Name and Description: (The description should include location of the project and types of activities to be included)

Project Name: South Elm Redevelopment Disposition

Location: Properties adjacent to east and west sides of Elm Street, between Lee and Bragg Streets

Activities included in the project: Disposition under a master development agreement for mixed-use development as per Redevelopment Plan, DENR Brownfields Agreement, and negotiations through the Redevelopment Commission of Greensboro and Greensboro City Council

Directions: The Responsible Entity (RE) must make a determination as to whether the activities affiliated with the project will affect the resource under consideration and trigger formal compliance consultation procedures with the appropriate oversight agency and/or subsequent mitigation. You may consult guidance by clicking on links in each box below which also will take you to information from agency web sites. If the activity affects the resource, indicate **(A)** in the Status Determination Column below. Or indicate **(B)** in that column if the activity does not affect the resources under consideration. The compliance documentation column should indicate what source documentation was used to make the compliance determination and copies of all necessary documentation should be attached to the completed form for inclusion in the Environmental Review Record (ERR).

Statutes, Executive Orders, and Regulations listed at 24 CFR Sec. 58.5 and 58.6	Status Determination (A or B)	Compliance Documentation
Wetland Protection [Executive Order 11990] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/review/floodplain.cfm	B	Site has a long history of development, currently is covered in grass
Coastal Zone Management	B	Not in a coastal county; see

[Coastal Zone Management Act, 1972, sec. 307 (c) and (d)] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/review/coastal.cfm		City-wide clearance file
Historic Preservation [36 CFR Part 800] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/historic.cfm	B	No historic resources impacted, see letter from NC SHPO
Floodplain Management [Executive Order 11988; 24 CFR Part 55] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/floodplain.cfm	B	Not is a flood area; see attached map
Sole Source Aquifers [40 CFR 149] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/aquifers.cfm	B	No single-source aquifers in NC; see City-wide clearance file
Endangered Species Act [50 CFR 402] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/endangeredspecies.cfm	B	Not Eagle or darter habitat
Wild and Scenic Rivers [16 U.S.C. 1271, Sec. 7(b), (c)] <i>Guidance:</i> http://www.rivers.gov/wildriverslist.html	B	No wild and scenic rivers in Guilford County; see City-wide clearance file
Clean Air Act [40 CFR Parts 6, 51, 93] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/cleanair.cfm	B	See email from NC DENR
Farmland Policy Act [7CFR Part 658] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/farmlands.cfm	B	Located in Greensboro MSA
Environmental Justice [Executive Order 12898] <i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/review/justice.cfm	B	Will bring redevelopment, jobs and economic activity to an underserved community
Noise Abatement and Control [24 CFR Part 51, Subpart B]	A	Noise levels at receptors are below 65 DNL

<i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/noise.cfm Explosive and Flammable Operations [24 CFR Part 51 C]	A	No hazards on site, within one mile, or reported from Fire Department. See attached file.
<i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/explosive.cfm Toxic Chemicals and Radioactive Materials [24 CFR Part 58, Sec 5(i)(2)]	B	This site is a brownfields and redevelopment will occur under an agreement with NC DENR
<i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/toxic.cfm Airport Clear Zones and Accident Potential Zones [24 CFR Part 51 Subpart D]	B	Not in a hazard; see attached map
<i>Guidance:</i> http://www.hud.gov/offices/cpd/environment/airport.cfm		

Determination: The preparers have complied with all provisions of 24 CFR Part 58, Subpart E—Environmental Review Process: Environmental Assessments, examining alternatives to the project itself, feasible ways to modify the project to eliminate or minimize adverse impacts, and based on steps (a) through (f) found in the regulations, determined one of the following:

- (1) Finding of No Significant Impact (FONSI), whereby the Responsible Entity may proceed to Dissemination and publication of the FONSI, per regulations found at 24 CFR Part 58, sec. **58.43(a)**.
- (2) Finding of Significant Impact whereby the Responsible Entity must proceed to develop an Environmental Impact Statement (EIS) in compliance with 24 CFR Part 58, Subparts F or G.

PREPARER SIGNATURE:

DATE:

EXHIBIT C - ANNOTATED MASTER DEVELOPMENT PLAN

U N I O N S Q U A R E A T S O U T H E L M

Revised Site Plan (subject to Redevelopment Commission approval):

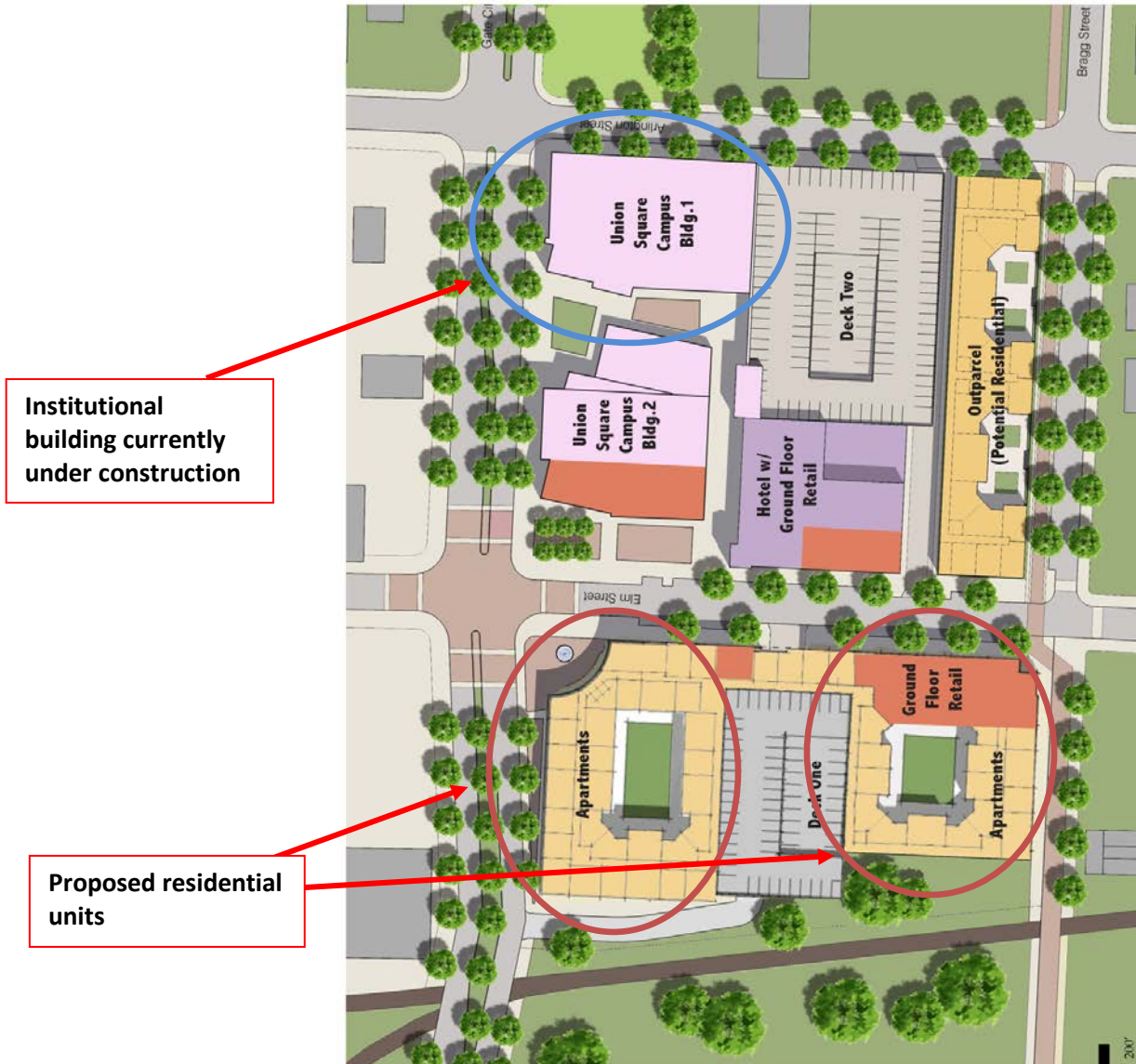


EXHIBIT D

COMPONENT DEVELOPMENT PROJECT DESCRIPTIONS AND

NOISE ATTENUATION MEASURES

EXHIBIT D1

COMPONENT 1 – INSTITUTIONAL FACILITY (UNION SQUARE CAMPUS)

Detailed project description

- One three-story building;
- 83,000 square feet;
- Building is set back approximately 20 feet from the streets at the corner of Gate City Boulevard and Arlington Street;
- 5000 square foot exterior seating area located at the northwest corner of the building;
- Includes office, classroom, auditorium, and simulation lab spaces;
- LEED gold certification sought;
- Uses include
 - o Classes and simulation lab sessions for nursing students;
 - o Advanced nursing education; and
 - o Public lectures and presentations.

Impact of findings

- No noise-sensitive uses will take place within this building. Seating area will be used by building tenants and general public on a limited basis.

Requirements

- The City of Greensboro will not require verification of noise levels.

Timeline

- Construction will be complete in June 2016.

.....

EXHIBIT D2

COMPONENT 2 - APARTMENTS/RETAIL/PARKING

Detailed project description (PROPOSED)

- Proposal for three- and four-story apartment buildings wrapping a four- to five-story parking deck with ground floor commercial/retail;
- Proposed location covers the west block of project site, with structured parking centered on the block and surrounded on the north, east, and west sides with apartments and commercial/retail;
- Green building techniques required by project standards;
- Uses include
 - o Proposed 200,000 square feet of residential use;
 - o Proposed 15,500 square feet of commercial/retail use;
 - o Proposed 20,000 square feet of common areas for tenant use; and
 - o Proposed 200,000 square feet of structured parking.

Impact of findings

- Residential units are noise-sensitive uses and will need to meet HUD standards for attenuation.

Requirements

- The City of Greensboro will require proposed developer to:
 - Acknowledge that sound attenuation will be required in all noise-sensitive areas as a condition of acceptance of proposal;
 - Ensure that the interior auditory environment does not exceed a day-night average sound level of 45 decibels;
 - Submit a detailed description of what attenuation measures will be used to achieve the 45-decibel average sound level and what additional measures will be taken to reduce sound levels in significantly noise-sensitive interior spaces, such as bedrooms;
 - Verify appropriate construction methods for attenuation and acoustical privacy with inclusion of certified wall system schedules in constructions drawing details;
 - Test and certify post-construction prior to occupancy that residential units meet required sound levels; and
 - Utilize quieter equipment and appliances where appropriate.

Timeline

- Proposal has not been accepted at this time, but, if accepted, construction is scheduled to occur in 2017.

.....

EXHIBIT D3

FUTURE COMPONENTS

Detailed project description (PROPOSED)

- Master plan currently shows a second institutional building with commercial/retail, additional structured parking, a hotel with ground floor commercial/retail, and residential units (on privately-owned property.)
 - Anticipated 5000 square feet of commercial/retail associated with institutional buildings;
 - Anticipated 15,000 square feet of commercial/retail associated with hotel;
 - Anticipated 100,000 square feet of institutional use;
 - Anticipated 90,000 square feet of hotel use;
 - Anticipated 200,000 square feet of structured parking; and
 - Anticipated 20,000 square feet of common areas.

Impact of findings

- Residential and hotel units are noise-sensitive uses and will need to meet HUD standards for attenuation.

Requirements

- The City of Greensboro will require proposed developer(s) to:
 - Acknowledge that sound attenuation will be required in all noise-sensitive areas as a condition of acceptance of proposal;
 - Ensure that the interior auditory environment does not exceed a day-night average sound level of 45 decibels;
 - Submit a detailed description of what attenuation measures will be used to achieve the 45-decibel average sound level and what additional measures will be taken to reduce

sound levels in significantly noise-sensitive interior spaces, such as bedrooms and hotel rooms;

- Verify appropriate construction methods for attenuation and acoustical privacy with inclusion of certified wall system schedules in constructions drawing details;
 - Test and certify post-construction prior to occupancy that residential units meet required sound levels; and
 - Utilize quieter equipment and appliances where appropriate.
- Residential units developed on private property will be subject to City requirements as a condition of development agreement if public assistance is requested.

Timeline

- No timeline has been established for development of future components; master developer is actively soliciting component developers.

EXHIBIT E

SOUTH ELM STREET BROWNFIELDS AGREEMENT

BK: R 7640

PG: 4-75

RECORDED:
10-08-2014

03:44:44 PM

BY: WILEY L COUSIN

DEPUTY-GB



2014051033

GUILFORD COUNTY, NC

JEFF L. THIGPEN

REGISTER OF DEEDS

NC FEE \$254.00

Property Owner: The Redevelopment Commission of Greensboro

Recorded in Book 87 **, Page** 117-120

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

pick-up city of Greensboro

NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 8 day of October, 2014 by The Redevelopment Commission of Greensboro (hereinafter "Prospective Developer").

The Notice concerns contaminated property.

A copy of this Notice certified by the North Carolina Department of Environment and Natural Resources (hereinafter "DENR") is required to be filed in the Register of Deeds' Office in the county or counties in which the land is located, pursuant to North Carolina General Statutes (hereinafter "NCGS"), Section (hereinafter "§") 130A-310.35(b).

This Notice is required by NCGS § 130A-310.35(a), in order to reduce or eliminate the danger to public health or the environment posed by environmental contamination at a property (hereinafter the "Brownfields Property") being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 (hereinafter the "Act").

Pursuant to NCGS § 130A-310.35(b), the Prospective Developer must file a certified copy of this Notice within 15 days of Prospective Developer's receipt of DENR's approval of the Notice or Prospective Developer's entry into the Brownfields Agreement required by the Act, whichever is later. Pursuant to NCGS § 130A-310.35(c), the copy of the Notice certified by DENR must be recorded in the grantor index under the names of the owners of the land and, if Prospective Developer is not the owner, also under Prospective Developer's name.

The Brownfields Property is comprised of fifteen parcels covering approximately 6.8 acres located at on the southern edge of the City of Greensboro's central business district, with East and West Bragg Street to the south, Arlington Street to the east, East and West Lee Street to the north, and railroads tracks to the west. It was first developed in the late 1800s for single family residences and a variety of commercial uses, including a bakery, fuel distributors, gasoline stations, automobile repair shops, print shops, a large coal yard, office space and retail. The

Redevelopment Commission of Greensboro has acquired the parcels that comprise the Brownfields Property over a period of years, and proposes to sell it to a qualified developer or developers for the purpose of constructing a mixed-use development, which may include office, hotel, educational, commercial, and high-density residential uses.

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

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

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location and quantity of regulated substances and contaminants known to exist on the Brownfields Property.

Attached hereto as **Exhibit C** is a legal description of the Brownfields Property that would be sufficient as a description of the property in an instrument of conveyance.

LAND USE RESTRICTIONS

The following Notices of Residual Petroleum previously recorded pursuant to N.C. Gen. Stat. § 143B-279.9 and N.C. Gen. Stat. § 143B-279.11 in the Guilford County Register of Deeds: Book 7572, Page 1506-1509, on February 10, 2014; Book 7572, Page 1510-1514, on February 10, 2014; and Book 7572, Page 1510-1514, on February 10, 2014; shall immediately be CANCELLED and SUPERSEDED upon the filing of this Notice of Brownfields Property.

NCGS 130A-310.35(a) also requires that the Notice identify any restrictions on the current and future use of the Brownfields Property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the Brownfields Property and that are designated in the Brownfields Agreement. **The restrictions shall remain in force in perpetuity unless canceled by the Secretary of DENR (or its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e). All references to DENR shall be understood to include any successor in function. The restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No use may be made of the Property other than for a mixed-use project, which may include office, hotel, educational, commercial, and high-density residential uses, and

contiguous ancillary uses. For purposes of this restriction, the following definitions apply:

i. “Hotel” refers to the provision of overnight lodging to paying customers, and to associated reservation, cleaning, utilities and on-site management and reception services.

ii. “Educational” refers to a university, college, or junior college, whether privately-owned, publicly-owned or under joint public-private ownership, providing education.

iii. “Commercial” refers to an enterprise carried on for profit by the owner, lessee or licensee.

iv. a. “High-density residential” refers to use of units in multi-unit buildings as permanent dwellings such as condominiums, apartments, group home or dormitory where residential units are attached to each other with common walls and any property outside the dwelling structure is common to the residents and not privately owned as part of an individual dwelling unit.

v. “Contiguous ancillary uses” refers to parking areas, service drives, pedestrian areas, and other facilities that are needed to support the above uses, and are within or adjacent to the area where those uses are occurring.

2. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with an Environmental Management Plan (“EMP”) approved in writing by DENR in advance (and revised to DENR’s written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes the planned redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment. A new EMP shall be developed, or the existing EMP shall be revised, to reflect redevelopment phases or activities not already included in an approved EMP. The EMP shall include, 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 Exhibit A hereto; and

iii. contingency plans for addressing newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields).

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

i. actions taken in accordance with the plan required by land use restriction

(LUR) 2 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, whether on site or off site, of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and
- v. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Property (copies of all legally required manifests shall be included).

4. Surface water and groundwater at the Property may not be used for any purpose without the prior written approval of DENR.

5. After the conclusion of the redevelopment period referenced in LUR 2 above, as determined by DENR, no activity that disturbs soil on the Property may occur unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in LUR 1 above while fully protecting public health and the environment, except: in connection with *de minimis* soil removals to depths not exceeding 24 inches, mowing and pruning of above-ground vegetation; and, for emergency repair of underground infrastructure, provided that DENR shall be given written notice (if only by email) of any such emergency repair no later than the next business day, and that any related assessment and remedial measures required by DENR shall be taken.

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

- i. DENR determines in writing, based on submittals from the building's proponent, that the building's users, and public health and the environment, would not be at risk from the Property's volatile contaminant plume; or
- ii. vapor mitigation measures are installed or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. All vapor mitigation measures shall be installed or implemented in accordance with a plan approved in writing by DENR in advance, including methodology(ies) for demonstrating performance of said measures.

7. None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Exhibit 2 to Exhibit A hereto and on the plat component of this Notice, may be used or stored at the Brownfields Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities, routine maintenance of buildings and grounds, or in sealed, pre-packaged containers sold in a retail context.

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

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

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

ii. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Property during the previous calendar year; and

iii. whether any vapor barrier and/or mitigation systems installed pursuant to LUR 6 above are performing as designed, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 36.a. of Exhibit A hereto, at the address stated therein.

ENFORCEMENT

The above land use restrictions shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. The land use restrictions shall be enforced by any owner of the Brownfields Property. The land use restrictions may also be enforced by DENR through the remedies provided in NCGS 130A, Article 1, Part 2 or by means of a civil action; by any unit of local government having jurisdiction over any part of the Brownfields Property; and by any person eligible for liability protection under the Brownfields Property Reuse Act who will lose liability protection if the restrictions are violated. Any attempt to cancel any or all of this Notice without the approval of the Secretary of DENR (or its successor in function), or his/her delegate, shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS

When any portion of the Brownfields Property is sold, leased, conveyed or transferred, pursuant to NCGS § 130A-310.35(d) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the Brownfields Property has been classified and, if appropriate, cleaned up as a brownfields property under the Brownfields Property Reuse Act.

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this 1st day of October, 2014.

The Redevelopment Commission of Greensboro

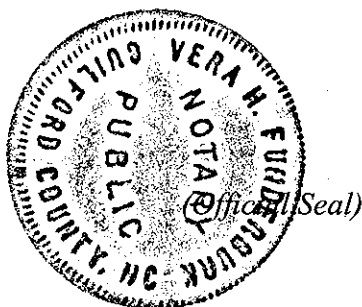
By: Dawn S. Chaney
Dawn S. Chaney, Chair

NORTH CAROLINA
Guilford 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: Redevelopment Commission Chair.

Date: 10/1/2014

Vera H Funderburk
Official Signature of Notary



Vera H Funderburk
Notary's printed or typed name, Notary Public
My commission expires: May 26, 2015

APPROVAL AND CERTIFICATION OF NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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

North Carolina Department of Environment and Natural Resources

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

9/29/14
Date

CERTIFICATION OF REGISTER OF DEEDS

The foregoing documentary component of the Notice of Brownfields Property, and the associated plat, are certified to be duly recorded at the date and time, and in the Books and Pages, shown on the first page hereof.

Register of Deeds for Guilford County

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

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: **Redevelopment Commission of Greensboro**

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>	)	<u>South Elm St. Redevelopment Area</u>
	)	104 & 124 East Lee St.; 121, 123 &
	)	125 West Lee St.; 700, 702-714, 724,
	)	725, 727, 728, 730, 734 & 736
	)	South Elm St.; and 508 & 518
	)	Arlington St.
Brownfields Project No. 09027-05-41	)	Greensboro, Guilford County

I. INTRODUCTION

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

The prospective developer for this brownfields property is the Redevelopment Commission of Greensboro, a legal entity of the City of Greensboro (City) formed for the purpose of conducting studies, formulating plans, and implementing redevelopment projects within the City. As such, it has the ability to enter into legally binding agreements to buy and sell land on behalf of the City. It is headquartered at 300 W. Washington St., P.O. Box 3136, Greensboro, NC 27402-2624. The Redevelopment Commission of Greensboro has acquired the parcels that comprise the brownfields property over a period of years, and proposes to sell it to a qualified developer or developers for the purpose of constructing a mixed-use project, which may include office, hotel, educational, commercial, and high-density residential uses.

The brownfields property is comprised of 6.80 acres on the southern edge of the City’s

central business district and, while some of the official addresses and parcel identification numbers assigned the individual parcels have changed over time, it presently includes 15 parcels identified by 15 discrete tax parcel identification numbers. For the purposes of performing environmental assessment, environmental remediation, and related reporting, the brownfields property was divided into Block 1, lying west of South Elm Street, and Block 2, lying east of South Elm Street. Each parcel has been historically referred to in reports and other project documents by the name of the parcel's owner at the beginning of the project, and this naming convention, as well as the use of Block 1 and Block 2, are used in this Agreement for continuity. A map showing the location of the property which is the subject of this Agreement is attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the potential liability of the Redevelopment Commission of Greensboro for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit the Redevelopment Commission of Greensboro shall provide to DENR, is in the public interest.

II. DEFINITIONS

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

1. "Property" shall mean the Brownfields Property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean the Redevelopment Commission of Greensboro.

III. STATEMENT OF FACTS

3. The Property comprises 6.80 acres. Prospective Developer has committed itself to redevelopment for no uses other than for a mixed-use project, which may include office, hotel, educational, commercial, and high-density residential uses.

4. The Property is located in an older part of downtown Greensboro and was first developed in the late 1800s for single family residences and for a variety of commercial uses, including a bakery, fuel distributors, gasoline stations, automobile repair shops, print shops, a large coal yard, office space and retail. It consists of the majority of two city blocks, and is bisected by South Elm Street running north-south. It is bordered to the north by East and West Lee Street, to the south by East and West Bragg Street (closed to vehicular traffic adjacent to Block 1), to the east by Arlington Street, and to the west by railroad tracks owned by Norfolk Southern Corp., beyond which lies vacant land owned by the City of Greensboro.

5. For purposes of this Agreement, the Property is divided into Block 1, that portion lying west of South Elm Street, and Block 2, lying east of South Elm Street. Individual parcels comprising the Property were primarily referred to in the Environmental Reports (listed in

paragraph 6 below), by the parcel owners' names at the time Prospective Developer began acquiring them, and this naming convention is used in this Agreement for continuity. Addresses and Guilford County's tax parcel identification numbers (PINs) for some of the parcels that comprise the Property have changed over time; the current addresses and PINs are provided in paragraphs 7 and 8 below and are also shown in Exhibit 2 to this Agreement.

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

Title	Prepared by	Date of Report
Phase I ESA ¹ , Proposed Baseball Stadium (site wide)	ECS Carolinas	January 23, 2002
Phase II ESA ¹ , Proposed Baseball Stadium (site wide)	ECS Carolinas	February 27, 2002
Project Status Update Report, South Elm St. Redevelopment Project (site wide)	ECS Carolinas	August 23, 2005
Phase I LSA ² , Dwiggins Property (125 W. Lees St.)	ECS Carolinas	September 14, 2005
Phase I LSA ² , Elm St. LLC Property, 702-714 & 724 S. Elm St. (former Elm Street, LLC & former Elm CCM properties, later combined as Elm CCM Associates Property)	ECS Carolinas	September 14, 2005
Phase II LSA ² , Gaddy Property (124 East Lee St.)	ECS Carolinas	September 14, 2005
Phase I LSA ² , Sierra Property (725 S. Elm St.)	ECS Carolinas	September 14, 2005
Phase I LSA ² , Worth Property (728 & 730 South Elm St.)	ECS Carolinas	November 9, 2005
Phase II LSA ² , Martin Property, 734-738 South Elm St. & 116 West Bragg St. (former	ECS Carolinas	February 13, 2006

Martin and Gateco properties)		
Brownfields Receptor Survey	ECS Carolinas	August 21, 2006
Comprehensive Site Assessment Report (site wide)	ECS Carolinas	July 14, 2006, revised August 21, 2006
Soil Cleanup Report, Former Chevron Facility, 204 & 224 W. Lee St. and 700 S. Elm St. (former Jeong Property)	Arcadis	April 2007
Report of Environmental Services, S. Elm St. Project, Stockpile Sampling	ECS Carolinas	April 17, 2008
Report of Environmental Services. – McDonald Property (104-108 E. Lee St.)	ECS Carolinas	May 14, 2008, revised March 20, 2009
Report of Environmental Services – Geophysical Survey, S. Elm Redevelopment Project (site wide)	ECS Carolinas	October 8, 2008
Demolition Observation and Geophysical Evaluation Report (site wide)	ECS Carolinas	March 9, 2009
Remedial Action Plan	ECS Carolinas	June 30, 2009
Brownfields Phase II ESA ¹ Report, former Bragg St. Right of Way	Hart & Hickman	August 26, 2010
Brownfields Remediation Report – Block 1	ECS Carolinas	March 31, 2011, rev. September 1, 2011
20-Day & Initial Abatement Report, S. Elm Redevelopment, Worth Property	ECS Carolinas	July 9, 2012
Brownfields Remediation Report – Block 2	ECS Carolinas	July 22, 2011, revised September 1, 2011
Phase I ESA - Downtown Greenway Project, Bragg St. Corridor, Greensboro, NC	Hart & Hickman	December 22, 2011
20-Day & Initial Abatement Report, S. Elm Redevelopment, McDonald Property	ECS Carolinas	July 24, 2012
20-Day & Initial Abatement Report, S. Elm	ECS Carolinas	August 30, 2012

Redevelopment, Gaddy Property		
20-Day Initial Abatement Action & Phase I Limited Site Assessment Report, 725 S. Elm St. (former Sierra Property)	Hart & Hickman	July 26, 2012
Report of Soil Screening Services, S. Elm St. Brownfields Redevelopment	Progress Environmental, Inc.	March 29, 2013
Soil Gas Assessment Results (northern portion of former Macdonald Property & Gaddy Property)	Hart & Hickman	April 28, 2014

¹ ESA = Environmental Site Assessment

² LSA = Limited Site Assessment

7. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to use and ownership, relating to the following parcels that comprise Block 1 of the Property:

a. The former Dwiggins Property is located at 125 West Lee Street, with tax parcel identification number (PIN) 0499.

i. Historically, this parcel has been used as a coal storage facility for two coal companies, a gasoline station and, most recently, automobile repair facilities.

ii. A Phase I environmental site assessment (ESA) identified recognized environmental conditions at the site including the use of underground storage tanks (USTs) and above-ground storage tanks (ASTs). Results from environmental testing conducted by Prospective Developer in 2006 indicated soil and groundwater contamination were present on the parcel.

iii. Prospective Developer acquired the parcel in May 2007 and subsequently demolished the buildings. It is currently vacant.

iv. In 2009, Prospective Developer excavated approximately 122 tons of

petroleum-contaminated soil from the parcel and disposed of it offsite.

b. The former Agapion Property is located at 121 West Lee Street (PIN No. 0510) and at 123 West Lee Steet (PIN No. 0509):

i. These parcels were historically developed primarily for commercial uses. Prospective Developer conducted Phase I and II ESAs at adjacent parcels in 2002. At that time, a vacant commercial building with associated parking was noted to be present on the western part of the property.

ii. Because Prospective Developer did not have the parcel under a purchase contract at the time, a Phase I ESA was not conducted for this property during the Property-wide assessment in 2002. Groundwater contamination was detected on adjacent parcels surrounding the site on three sides and potential sources of petroleum and chlorinated solvent contamination were identified as located offsite in apparent hydrologically upgradient directions, so groundwater contamination may potentially be present underneath the parcels.

iii. Prospective Developer purchased the parcels in June 2007 and subsequently demolished the building. They are currently vacant.

c. The former Jeong Property is located at 700 South Elm Street (PIN No. 0500).

i. The parcel was originally occupied by a single-family residence. In the 1950s, it was developed with a gasoline station owned by Gulf Oil/Chevron. In approximately 1974, the gasoline dispensers were removed and the parcel was occupied by McAmps Muffler repair shop. A 4,000-gallon underground storage tank (UST) and two-6,000 gallon USTs were reportedly removed from the site in approximately 1988.

ii. Pursuant to the discovery of an apparent UST release during UST closure actions, five shallow groundwater monitoring wells were installed in 1989 and a deep monitoring well was installed in 1990. Petroleum constituents were detected in groundwater samples collected at that time.

iii. Prospective Developer conducted Phase I and Phase II ESA activities at the parcel in 2002. Test results indicated diesel range total petroleum hydrocarbons (TPH) were present in soil in concentrations which exceeded the DENR, UST Section's TPH action levels. In 2006, additional groundwater testing was done and petroleum-related compounds were detected in concentrations which exceeded DENR's groundwater standards.

iv. Prospective Developer acquired the parcel in June 2007 and then demolished the buildings.

v. Metallic anomalies identified as possible USTs were discovered during a Property-wide geophysical survey 2008.

vi. In 2009, Prospective Developer removed two 1,000-gallon USTs from the parcel. Analytical test results of soil samples collected from directly beneath the USTs showed both diesel range and gasoline range TPH was present in soil above the UST Section's TPH action levels. Approximately 270 tons of soil were excavated from the site and disposed of offsite. Soil samples were collected from the sidewalls of the excavation; laboratory analysis did not detect petroleum compounds above regulatory limits.

vii. In 2012, the UST Section issued a Notice of No Further Action to Prospective Developer for the UST release at the parcel.

d. The former Worth Property is located at 728 South Elm Street (PIN No.

0501), and at 730 South Elm Street (PIN No. 0503).

i. This property is comprised of two parcels which have been used since at least the 1940s for various commercial uses, including print shops and oil companies. The eastern portion of the property was developed with a commercial building until the 1950s. Coal companies and a stone crushing company occupied the western portion of the property until approximately 1957. From at least the 1960s on, several businesses occupied the large commercial structures on the property, including Shamrock Gravure Products, Atlantic Coal and Oil Company, and Innisbrook Wraps, Inc. Most recently, the property was used for warehousing. The parcels became vacant in the early 2000s. Prospective Developer acquired the parcels in June 2007 and subsequently demolished the buildings. The property is currently vacant.

ii. USTs were historically used at the parcel. The Environmental Reports indicated a 28,000 gallon fuel oil UST had reportedly been abandoned in place by filling it with water in approximately 1965. Geophysical assessment of the parcels detected two buried magnetic anomalies, which were interpreted to be possible USTs: one near the center of the parcel and one near the eastern boundary along South Elm Street.

iii. In 2002, Prospective Developer collected soil and groundwater samples at several locations on the parcels as part of a Property-wide Phase II ESA. Analysis of soil samples detected diesel range Total Petroleum Hydrocarbon (TPH) in concentrations that exceeded the DENR, UST Section's action level in some samples. Groundwater samples contained Tetrachloroethene (PCE) in concentrations which exceeded the groundwater standard.

iv. A Limited Site Assessment (LSA) was conducted in the vicinity of the possible UST located on the eastern portion of the property in 2005. Analysis of soil samples

detected petroleum hydrocarbon s (C9-C22 aromatics fraction) in concentrations which exceeded the UST Section's residential soil cleanup levels. Analysis of groundwater samples did not detect petroleum constituents or PCE in concentrations above the DENR's groundwater quality standards.

v. In 2009, Prospective Developer removed one UST from the eastern parcel and excavated approximately 1,050 tons of petroleum-contaminated soil from an UST basin on the eastern portion of the property. Confirmatory soil samples were taken from the side walls of the excavation to determine if petroleum contamination remained in soils at the site. Laboratory analysis of the soil samples indicated concentrations of some petroleum hydrocarbon compounds slightly exceeded applicable screening levels for unrestricted use of the property in some samples.

vi. In 2010, Prospective Developer excavated soil from the vicinity of a geophysical anomaly located near the center of the western parcel. This excavation was conducted in the general area where a Phase I Environmental Site Assessment indicated a large fuel oil UST may have been abandoned in place in the 1960s. No evidence of an UST was discovered during the excavation, which was approximately 20 feet wide by 30 feet long and eight feet deep. Laboratory analysis of soil samples collected from the side walls of the excavation did not report petroleum contamination above applicable screening levels.

vii. In 2012, the UST Section issued a Notice of No Further Action to Prospective Developer for the UST releases on the eastern parcel because confirmatory samples from the excavations did not contain petroleum contaminants in concentrations exceeding screening levels for unrestricted (residential) use.

e. The former Martin/Gateco Property is currently located at 734 & 736 South Elm Street (PIN No. 0505). (This parcel was historically located at 734, 736 & 738 South Elm Street and 114 West Bragg Street.)

i. Historical uses of the property include several automobile repair facilities, an automobile body shop, at least one gasoline station, a coal company, and a fuel distribution company. When Prospective Developer purchased the parcel, two open concrete bins which had formerly been used for coal storage, two 55-gallon drums with unknown contents, and an above-ground storage tank (AST) used for waste oil were located on the parcel.

ii. During a Property-wide Phase II ESA conducted in 2002, analysis of soil samples were collected near the former gas station, the AST, and the coal storage area detected diesel range and gasoline range TPH at concentrations which exceeded the UST Section's TPH Action Levels. Analytical results for groundwater samples collected in 2002 and 2005 near the location of the former gas station detected petroleum compounds and chlorinated hydrocarbons (1,2-DCA and PCE) in concentrations that exceeded DENR's groundwater quality standards.

iii. Additional soil contamination was discovered during a Property-wide site assessment in 2006 near the southeast corner of the property where a gas station was formerly located. A Limited Site Assessment for the USTs associated with this former gas station was performed in 2006 and petroleum compounds and lead were detected in groundwater in concentrations that exceeded DENR's groundwater standards. Due to the high concentrations of petroleum compounds detected in shallow groundwater, four deep monitoring wells were subsequently installed and groundwater samples were analyzed for petroleum compounds, which

were not detected at concentrations exceeding the groundwater standards.

iv. Prospective Developer purchased the parcel in June 2007 and demolished the two commercial buildings in 2013.

v. In 2009, 2 fuel oil USTs and 4 gasoline/diesel USTs were removed from the parcel. Soil samples collected from beneath the tanks contained diesel range-TPH and gasoline range-TPH in concentrations which exceeded the DENR, UST Section's action levels. Concurrent with the UST removal, approximately 2,160 tons of petroleum-contaminated soil were excavated and disposed of offsite. Confirmatory samples collected from the side walls of the excavation indicated petroleum contaminated soil remains onsite in concentrations which exceed the both the UST Section's maximum soil concentrations for residential property and the DENR, IHSB residential soil screening levels.

vi. Because residential contaminant limits were exceeded in soil at the parcel, the UST Section required Prospective Developer to place a Notice of Residual Petroleum prohibiting residential use on the deed for the property.

f. The Elm CCM, LLC (aka Elm St. LLC) Properties are comprised of two parcels: one currently located at 702 -714 South Elm Street (PIN No. 0502), and one located at 724 South Elm Street (PIN No. 0503).

i. Previous uses of these parcels included commercial printing operations at the 724 South Elm Street address, which presumably would have used inks and solvents.

ii. A subsurface metallic anomaly interpreted to be a possible UST was detected during a electromagnetic geophysical survey of the parcel. In 2002, groundwater samples were collected in the vicinity of possible UST during a Phase II ESA. Laboratory

analysis of the groundwater samples indicated the groundwater contained two petroleum compounds in concentrations which exceeded the groundwater quality standards.

iii. In 2005, one subsurface soil sample was collected in the vicinity of the buried metallic anomaly and was analyzed for petroleum compounds. The targeted compounds were not detected above the applicable standards; however, the soil sample was collected from a depth too shallow to correlate with the base of the tank. The UST Section subsequently requested additional soil investigation of this possible UST. Prospective Developer attempted to perform further soil testing on April 11, 2006 but the sampling technology at the site was not capable of reaching the necessary depth. An abandoned UST may still be located near the southern portion of the parcel located at 724 S. Elm St.

iv. Laboratory analysis of a groundwater sample collected in 2005 detected lead above groundwater quality standards. Petroleum compounds were analyzed for and not detected.

v. Prospective Developer acquired the parcel in March, 2007 and demolished the building on 724 South Elm Street in 2013.

8. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to use, ownership, and pertinent environmental information relating to the following parcels that comprise Block 2 of the Property:

a. The former McDonald Property is comprised of two parcels: one currently located at 104 East Lee Street (PIN No. 1145), and one located at 508 Arlington Street (PIN No. 1147). The parcels comprising this property were previously addressed at 701 – 723 South Elm Street, 104 – 108 East Lee Street & 508 Arlington Street.

i. Previous uses of the parcel have included: a gasoline service station on the northwestern part of the property, which was later converted into a fish market; an automobile repair shop on the northeast portion of the property; and the former Jones Brothers Bakery, built on the central part of the site in the 1920s. Several USTs were associated with the bakery, and are presumed to have been used for fuel oil to operate the bakery and to fuel delivery trucks. In addition, USTs and hydraulic lifts were used at the automobile service station were also located on the property.

ii. In 2002, Prospective Developer collected soil and groundwater samples at the parcel as part of a Property-wide Phase II. Diesel range TPH, gasoline range TPH, and Oil & Grease range TPH were detected in soil samples at levels above the DENR, UST Section's TPH action level. Petroleum compounds were also detected in groundwater in concentrations that exceeded DENR's groundwater quality standards.

iii. In 2005, additional soil and groundwater assessment was conducted on the property in response to a NCDENR Notice of Violation related to the documented release from USTs. Analysis of soil samples did not detect contaminant concentrations greater than the DENR, IHSB residential soil remediation goals. Analytical results of groundwater samples collected during this assessment detected PCE at concentrations which exceed DENR's groundwater quality standards and the DENR, IHSB residential screening levels for vapor intrusion. Additional groundwater assessment was conducted in 2008, the results of which indicated a probable offsite source for some of the PCE and petroleum compounds detected in groundwater at this parcel.

iv. Prospective Developer acquired the parcel in June 2007 and

demolished the buildings in 2008. Concurrent with demolition activities, two 5,000-gallon USTs were removed from beneath the building. In addition, one 280-gallon heating oil UST and three hydraulic fluid cylinders from hydraulic lifts in the automobile service station were also removed from the parcel. Field screening and observations made by the environmental contractor overseeing the demolition and UST closure activities indicated that petroleum-contaminated soils requiring remediation were present in the vicinity of the USTs.

v. Following demolition of the buildings, Prospective Developer conducted geophysical testing. Three subsurface metallic anomalies presumed to be USTs were identified on the parcel. Exploratory excavation in the vicinity of the anomalies did not find USTs. Additionally, field screening and laboratory analysis of soil samples from the excavations did not indicate contamination and the excavations were backfilled.

vi. As part of a Property-wide remedial program in 2009 and 2010, three hydraulic lifts and one 280-gallon fuel oil UST were removed from the site and approximately 1,800 tons of petroleum-contaminated soil was excavated from the vicinity of the former USTs. Laboratory analysis of confirmatory samples collected from the sidewalls of the excavation indicated some residual petroleum compounds remained in concentrations which exceeded the DENR, IHSB residential soil remediation goals.

vii. Because residential contaminant limits were exceeded in soil at the parcel, the UST Section required Prospective Developer to place a Notice of Residual Petroleum prohibiting residential use on the deed for the property.

b. The former Gaddy Property (PIN No. 1146) is located at 124 East Lee Street.

i. The parcel was most recently used for an automobile repair facility and, prior to that, a gasoline station. USTs had reportedly been removed from the parcel prior to Prospective Developer's involvement with the Property. An AST remained at the parcel and was associated with stained surface soils.

ii. Prospective Developer conducted Phase II ESA soil and groundwater testing in 2002. Soil samples were collected in the vicinity of the USTs, one AST, stained surface soils, and two hydraulic lifts, and a groundwater samples was collected near the UST basin. Laboratory analysis reported soil was contaminated with diesel range and gasoline range TPH above the DENR, UST Section's action levels; benzene was detected in groundwater.

iii. In 2005, Prospective Developer conducted a Phase II LSA in the vicinity of the USTs, the AST and the hydraulic fluid cylinders. Laboratory analysis of soil samples detected contaminants in concentrations exceeding the DENR, IHSB residential soil remediation goals. Analysis of groundwater from six monitoring wells located across the parcel detected several contaminants, including volatile organic compounds and lead, above groundwater quality standards and the DENR, IHSB screening levels for vapor intrusion in residential settings. In addition, two areas of soil contamination were identified during Property-wide comprehensive site assessment activities in 2006.

iv. The parcel was acquired by Prospective Developer in June 2007. In 2008, Prospective Developer demolished the buildings and removed two hydraulic cylinders (considered to be USTs) from beneath the service station building. Field screening and observations during demolition activities indicated petroleum-contaminated soil remained onsite that would require remediation.

v. In 2009 and 2010, Prospective Developer remobilized to the property and excavated approximately 5,500 tons of petroleum-contaminated soil from the former UST basins and the areas of soil contamination identified during previous site assessment activities. Laboratory results for confirmatory samples collected from the sidewalls of the excavation indicated that petroleum contaminated soil remained at the parcel in concentrations which exceeded the both the UST Sections residential maximum soil concentrations and the DENR, IHSB residential soil remediation goals.

vi. Because residential contaminant limits were exceeded in soil at the parcel, the UST Section required Prospective Developer to place a Notice of Residual Petroleum prohibiting residential use on the deed for the property.

c. The former Gray Properties is comprised of two parcels: one located at 518 Arlington Street (PIN No. 1148), and one located at 727 South Elm Street (PIN No. 1154).

i. The parcels have historically been developed for both residential and commercial purposes, including automobile repair facilities. They are currently vacant.

ii. A Phase I ESA conducted by Prospective Developer in 2002 identified one recognized environmental condition: an area of stained surficial soils on the western parcel located at 518 Arlington Street. Soil and groundwater testing was conducted in the area of stained soil during a Property-wide Phase II ESA in 2002. Laboratory analytical reports indicated no contamination detected in the samples above laboratory detection limits. No additional environmental assessment was deemed warranted on this parcel.

iii. Because Prospective Developer was unable to negotiate a purchase

contract with the owners of the parcel, in 2007 it removed this parcel from the original Property description provided in its 2005 application to the North Carolina Brownfields Program (NCBP). In 2012, the owners agreed to sell the parcel and Prospective Developer incorporated the parcel back into the Property in 2013 by amending its application to the NCBP. Prospective Developer subsequently acquired the parcel in 2013.

d. The former Sierra (Williams) Property is located at 725 South Elm Street (PIN No. 1155).

i. Because Prospective Developer was unable to negotiate a purchase contract with the owners of the parcel, in 2007 it removed this parcel from the original Property description provided in its 2005 application to the NCBP. In 2012, the owners agreed to sell Prospective Developer the parcel. At that time, the parcel was a vacant lot except for an aboveground fill port and vent pipe near the center of the parcel, which indicated the presence of an underground storage tank.

ii. Prior to its acquisition of the parcel, Prospective Developer contracted with an environmental consulting firm to remove a 2,000-gallon UST from the parcel. The type of fuel that had been stored in the tank is unknown.

iii. Prospective developer incorporated the parcel back into the Property by amending its application to the NCBP in 2013. Prospective Developer subsequently acquired the parcel later in 2013.

iv. In August 2012, the UST Section issued a Notice of No Further Action to Prospective Developer for the UST release at the parcel.

9. Pertinent environmental information regarding the Property includes the following:

a. Parcels on the Property were first developed in approximately the 1890s.

Historical uses of the parcels that comprise the Property have included a bakery, fuel distributors, gasoline stations, automobile repair shops, print shops, coal storage and retail, office space, retail, other commercial uses, and single family residences.

b. Prospective Developer used Environmental Protection Agency brownfields assessment and other funds to perform Phase I and II environmental site assessments (ESAs), and soil gas assessment across the Property from 2002 through 2013. Numerous areas of environmental concern were identified at the Property during the ESAs, including several abandoned petroleum underground storage tanks (USTs), petroleum contaminated soil, and a large area of residual coal from previous use for coal storage and distribution. Phase II ESA testing demonstrated that groundwater in several areas of the Property was contaminated, primarily with petroleum hydrocarbons and chlorinated solvents.

c. Research into the historical uses of properties in the vicinity of the Property was conducted as part of a Phase I ESA identified several potential offsite sources of groundwater contamination located hydraulically upgradient of the Property, including potential sources of chlorinated solvents and petroleum hydrocarbons.

d. A geophysical survey performed across the Property in 2008 identified several metallic anomalies, at least six of which were interpreted to be probable underground storage tanks (USTs).

e. Prospective Developer received additional brownfields grants from the Environmental Protection Agency to remediate petroleum-contaminated soils resulting from leaking underground storage tanks (USTs) at the Property. Prospective Developer conducted

UST and AST closures across the Property, and excavated petroleum-contaminated soil from several UST basins and from other areas of soil contamination. A large surficial deposit of residual coal from one or more historic coal yards that covered portions of the Martin, Worth and Jeong Properties to a depth of up to five feet was also excavated. Approximately 5,800 tons of coal and coal dust-contaminated soil were removed from Block 1 of the Property and disposed of offsite.

f. Various physical factors limited the horizontal and vertical extent of the excavations (e.g., roads, underground infrastructure, property boundaries, above ground structures) and, thus, soil contamination remains at the Property. Because some soil contaminants remain in concentrations which exceed their DENR UST Section's maximum contaminant levels for residential settings, Prospective Developer placed Notices of Residual Petroleum (NORPs) on the deeds for several parcels in accordance with UST Section requirements. The NORPs prohibit residential use of those parcels because soil contamination exceeds allowable limits; however, the NORPs may be superseded by this Agreement where DENR determines the Property can be made suitable for residential use with site-specific land use restrictions in force.

g. The groundwater beneath some areas of the Property is contaminated, primarily with petroleum fuel constituents and chlorinated hydrocarbons. Both onsite and offsite contaminant sources appear to have contributed to the groundwater contamination at the Property.

h. Concentrations of volatile groundwater contaminants underneath some portions of the Property have been documented to exceed DENR's IHSB industrial and/or

residential risk-based screening levels for vapor intrusion to indoor air. In order to determine if the migration of volatile contaminants from the subsurface could potentially pose a risk to indoor air quality in future buildings, Prospective Developer performed soil gas testing on the northern portion of Block 2 in 2013. Eight soil gas samples were collected across the area to coincide with historical groundwater contamination. Laboratory analytical results indicated that one of the eight samples collected contained contaminant concentrations which exceeded the IHSB screening levels for both residential and industrial settings.

i. One or more data tables reflecting the concentrations of, and other information regarding the Property's contaminants in various environmental media, appear in Exhibit 2 to this Agreement.

10. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Property Application dated May 5, 2005, which it amended on July 18, 2007, and amended again on November 5, 2012, and the following:

a. purchasing the parcels comprising the Property on various dates from June 2006 through October 2013;

b. performing environmental site assessment, geotechnical testing, and other redevelopment-related testing activities across the Property;

c. demolishing buildings and other above ground structures, and removing pavement, in accordance with a DENR-approved plan for environmental oversight, testing and soil management;

- d. conducting UST and AST closures, debris removal, coal removal and soil remediation actions at several of the parcels on the parcels comprising the Property; and
- e. backfilling surface and UST excavations and establishing and maintaining a vegetative cover on exposed soil to minimize the potential for erosion.

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

- a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);
- b. as a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;
- c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;
- d. Prospective Developer has or can obtain the financial, managerial and technical means to fully implement this Agreement and assure the safe use of the Property; and
- e. Prospective Developer has complied with all applicable procedural requirements.

12. Prospective Developer has paid to DENR the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of

\$6,000 at the time Prospective Developer and DENR enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that such fees will suffice as the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DENR and the North Carolina Department of Justice of all activities related to this Agreement, unless a change is sought to a Brownfield document after it is in effect, in which case there shall be an additional fee of at least \$1,000.

IV. BENEFIT TO COMMUNITY

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

- a. a return to productive use of the Property;
- b. a spur to additional community redevelopment, through improved neighborhood appearance and otherwise;
- c. the creation of approximately 1150 permanent jobs and 1120 temporary jobs during the construction phase and post-redevelopment phase combined;
- d. an increase in tax revenue for affected jurisdictions;
- e. additional commercial, office, educational, hotel and residential space for the area; 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

14. Within 90days after the effective date of this Agreement and prior to commencement

of redevelopment activities, Prospective Developer shall notify DENR that it is ready to effect the abandonment of all groundwater monitoring wells, injection wells, recovery wells, piezometers and other man-made points of groundwater access at the Property in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code. Unless DENR notifies Prospective Developer within 10 days of receiving such notification to refrain from such abandonment, Prospective Developer shall, on a schedule acceptable to DENR, effect said abandonment and, within 30 days after doing so, provide DENR a report, subject to DENR approval, setting forth the procedures and results.

15. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DENR's Covenant Not to Sue and Reservation of Rights), DENR is not requiring Prospective Developer to perform any active remediation at the Property other than remediation that may be required pursuant to a DENR-approved Environmental Management Plan (EMP) required by subparagraph 16.b below.

16. By way of the Notice of Brownfields Property referenced below in paragraph 21, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. The following Notices of Residual Petroleum previously recorded pursuant to N.C. Gen. Stat. § 143B-279.9 and N.C. Gen. Stat. § 143B-279.11 in the Guilford County Register of Deeds: Book 7572, Page 1506-1509, on Feb. 10, 2014; Book 7572, Page 1510-1514, on Feb. 10, 2014; and Book 7572, Page 1510-1514, on Feb 10, 2014; shall immediately be CANCELLED and SUPERSEDED upon the filing of the Notice of

Brownfields Property to which this Brownfields Agreement is attached as Exhibit A. Land Use restrictions set forth in this Brownfields Agreement and authorized by N.C. Gen. Stat. § 130A-310.35 shall become immediately applicable. All references to DENR shall be understood to include any successor in function.

a. No use may be made of the Property other than for a mixed-use project, which may include office, hotel, educational, commercial, and high-density residential uses, and contiguous ancillary uses. For purposes of this restriction, the following definitions apply:

i. "Hotel" refers to the provision of overnight lodging to paying customers, and to associated reservation, cleaning, utilities and on-site management and reception services.

ii. "Educational" refers to a university, college, or junior college, whether privately-owned, publicly-owned or under joint public-private ownership, providing education.

iii. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

iv. a. "High-density residential" refers to use of units in multi-unit buildings as permanent dwellings such as condominiums, apartments, group home or dormitory where residential units are attached to each other with common walls and any property outside the dwelling structure is common to the residents and not privately owned as part of an individual dwelling unit.

v. "Contiguous ancillary uses" refers to parking areas, service drives, pedestrian areas, and other facilities that are needed to support the above uses, and are within or adjacent to the area where those uses are occurring.

b. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with an Environmental Management Plan ("EMP") approved in writing by DENR in advance (and revised to DENR's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes the planned redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment. A new EMP shall be developed, or the existing EMP shall be revised, to reflect redevelopment phases or activities not already included in an approved EMP. The EMP shall include, 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; and
- iii. contingency plans for addressing newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields).

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

- i. actions taken in accordance with the plan required by subparagraph 16.b

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, whether on site or off site, of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and

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

d. Surface water and groundwater at the Property may not be used for any purpose without the prior written approval of DENR.

e. After the conclusion of the redevelopment period referenced in subparagraph 16.b above, as determined by DENR, no activity that disturbs soil on the Property may occur unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in subparagraph 16.a above while fully protecting public health and the environment, except: in connection with *de minimis* soil removals to depths not exceeding 24 inches, mowing and pruning of above-ground vegetation; and, for emergency repair of underground infrastructure, provided that DENR shall be given written notice (if only by email) of any such emergency repair no later than the next business day, and that any related assessment and remedial measures required by DENR shall be taken.

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

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

ii. vapor mitigation measures are installed or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. All vapor mitigation measures shall be installed or implemented in accordance with a plan approved in writing by DENR in advance, including methodology(ies) for demonstrating performance of said measures.

g. None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Exhibit 2 to this Agreement and on the plat component of the Notice of Brownfields Property referenced in paragraph 21 below, may be used or stored at the Brownfields Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities, routine maintenance of buildings and grounds, or in sealed, pre-packaged containers sold in a retail context.

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

i. During January of each year after the year in which the Notice referenced

below in paragraph 21 is recorded, the owner of any part of the Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR, and to the chief public health and environmental officials of Guilford County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Guilford County Register of Deeds office and that the land use restrictions are being complied with, and stating:

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

ii. the transferee’s name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address, if said owner transferred any part of the Property during the previous calendar year; and

iii. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 16.f above are performing as designed, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

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

18. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are, as to field procedures and laboratory testing, the Guidelines of the Inactive Hazardous Sites Branch of DENR’s Superfund Section, as embodied

in their most current version.

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

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

20. In addition to providing access to the Property pursuant to subparagraph 16.h above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective Developer owns the Property, DENR shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DENR at the Property. Except as may be set forth in the Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

21. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, inter alia, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Property. Pursuant to N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the Guilford County, North Carolina,

Register of Deeds' office. Within three (3) days thereafter, Prospective Developer shall furnish DENR a copy of the documentary component of the Notice containing a certification by the Register of Deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

22. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Guilford County land records, Book ____, Page ____." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

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

VII. DUE CARE/COOPERATION

24. The Prospective Developer shall exercise due care at the Property with respect to the manner in which regulated substances are handled at the Property and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to

cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S. 130A-310.1 and 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

VIII. CERTIFICATION

25. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no uses of the Property other than that committed to in the Brownfields Property Application dated May 5, 2005, and amended July 18, 2007 and November 5, 2012, by which it applied for this Agreement, which may include office, educational space, meeting space, commercial, and high density residential uses. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any past use of regulated substances or known contaminants at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

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

26. Unless any of the following apply, Prospective Developer shall not be liable to

DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement:

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.
- c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.
- d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.
- e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further

remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

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

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

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

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

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

29. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 26 through 28 above, apply to all of the persons listed

in N.C.G.S. § 130A-310.33, including future owners of the property, to the same extent as Prospective Developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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

XI. PARTIES BOUND

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

XII. DISCLAIMER

32. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

33. Except for the Land Use Restrictions set forth in paragraph 16 above and N.C.G.S. §

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

XIII. DOCUMENT RETENTION

34. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of six (6) years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR. To the extent DENR retains any copies of such documents, Prospective Developer retains all rights it then may have to seek protection from disclosure of such documents as confidential business information.

XIV. PAYMENT OF ENFORCEMENT COSTS

35. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

36. Unless otherwise required by DENR or a Party notifies the other Party in writing of a change in contact information, all notices and submissions pursuant to this Agreement shall be sent by prepaid first class U.S. mail, as follows:

- a. for DENR:

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

- b. for Prospective Developer:

Chair
Redevelopment Commission of Greensboro
c/o Planning Department
P.O. Box 3136
Greensboro, NC 27402-3136

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

37. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving it, signed, from DENR. Prospective Developer shall sign the Agreement within seven (7) days following such receipt.

XVII. TERMINATION OF CERTAIN PROVISIONS

38. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

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

40. The Prospective Developer agrees that, with respect to any suit or claim for contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

41. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify DENR in writing within 10 days of service of the complaint on it.

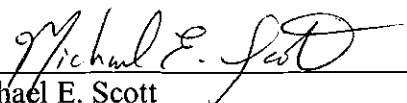
XIX. PUBLIC COMMENT

42. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in a newspaper of general circulation serving the area in which the Property is located, conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

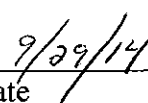
IT IS SO AGREED:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By:



Michael E. Scott



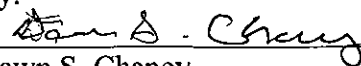
Date

Deputy Director, Division of Waste Management

IT IS SO AGREED:

Redevelopment Commission of Greensboro

By:



Dawn S. Chaney



Date

Title: Chair, Redevelopment Commission of Greensboro