

# North Carolina Brownfields Redevelopment Section

## External Land Use Restrictions Menu

May 2025

### Purpose

This document provides a reference menu of land use restrictions (LURs) for preparing Brownfields Agreements. It is primarily intended for the internal use of Brownfields Redevelopment Section project managers, but is being provided to Prospective Developers and their teams to communicate the acceptable options for land use restrictions.

### General Notes

1. For consistency sake, and to make it easier to locate a particular LUR later, use the following order when adding LURs to a BFA:

- I. **Land Uses**: Always start with the statement of land uses and their definitions in the order they are stated in the land use statement. The introductory paragraph should also introduce if we are superseding a NORP or other deed restrictions.
- II. **Specific Prohibitions**: If there is a specific prohibition for chlorinated solvents, residential use/townhomes or other, or adding an assessment requirement in the BFA, place those LURs after the land use definitions.
- III. **EMP & Redevelopment Report**: Place the introduction to the EMP and the redevelopment report LURs next.
- IV. **Demolition of Existing Structures**: If demolition of existing buildings applies, place the demolition LUR next.
- V. **Remediation Issues/Other Program Involvement**: If ongoing remediation by a responsible party or obligations/issues related to another division or section at DEQ (landfill/USTs at site, etc.), place the LUR re: PD's obligations if that party fails or other related LURs next.
- VI. **Media-specific LURs**: Place the LURs for addressing each medium, as appropriate, in this order: groundwater, soil, including not to disturb, soil import/export, soil cap, final grade sampling LURs if needed, followed by vapor, and then the surface water/stream restoration/sediment LURs if needed.
- VII. **Other Required LURs**: Then in order the other required LURs: access, well abandonment, damage to monitoring points, notification, known contaminants in onsite products.
- VIII. **Other Prohibited Uses**: Then in order the other LURs depending on situation: ground contact, mining, animal-related, & agricultural-related.

IX. **Land Use Restriction Update**: Lastly, the LURU LUR, referring back to all relevant LURs re: cap monitoring, mitigation, or remedial actions that are ongoing.

2. When evaluating which LURs to use, consider the environmental risk from exposure factors from each proposed land use and each of the applicable impacted media at the Brownfields Property (groundwater, surface water, soil, soil vapor, sub-slab vapor, indoor air, & sediment), and on- and off-site migration of contaminants in these media. Note that LURs fall into the following categories:

- **Required (R)** – Required for all sites
- **Required Under Specific Circumstances (RSC)** – Required when the Brownfields Property affected by those specified circumstances
- **Optional with Prerequisites (OP)**- options under the conditions noted subject to DEQ review.

## I. Land Uses

(R) No use may be made of the Brownfields Property other than for **[list use(s) approved by DEQ, and if commercial uses included add: “and, subject to DEQ’s prior written approval, other commercial uses.” ]**. These land uses and their definitions below apply solely for purposes of this Agreement, and do not waive any local zoning, rule, regulation, or permit requirements:

- i. **[definition 1]**;
- ii. **[definition 2]**; and so on

## **II. Specific Prohibitions**

### **L-001 (RSC) – two options. If there is a specified allowance for “commercial” use:**

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

\_. The Brownfields Property may not be used for residential use without the prior written approval of DEQ.

### **L-002 (RSC). If there is a specified allowance for “retail” use and chlorinated solvents are a contaminant at the Brownfields Property:**

\_. The Brownfields Property may not be used for dry cleaning operations using chlorinated solvents.

### **L-003 (RSC). If an exclusion area is deemed necessary:**

\_. No ground floor enclosed structure, excavation, or utility line installation, may occur in the area denoted on the plat component of the Notice of Brownfields Property referenced in paragraph **XX** below as “Excavation/Construction Exclusion Area” until such time as source-impacted materials are removed/remediated or otherwise shown to DEQ’s advance written satisfaction to be suitable for waiving of said enclosed structure/ excavation/ construction exclusion by way of alternative measures such as monitoring, engineering controls, and/or delineation. For purposes of this restriction, parking with open air ventilation is not considered an enclosed structure. Any source removal, monitoring, engineering controls, or delineation shall occur in accordance with a DEQ Brownfields approved work plan.

## **TOWNHOME & CONDOMINIUM OPTIONS:**

### **T-001. (RSC) If townhomes are contemplated:**

\_. Prior to constructing and/or marketing townhomes on the Brownfields Property, all owner(s) who construct and/or market townhomes on the Brownfields Property must comply, to DEQ's written satisfaction, with DEQ's *Minimum Requirements for Townhome Developments Under a Brownfields Agreement* attached hereto as Exhibit 3.

### **T-002. (RSC) If there is a need to limit the townhome area of the Brownfields Property**

\_. Townhome redevelopment of the Brownfields Property may only occur in the area designated "Townhome Redevelopment Area" on the plat component of the Notice referenced in paragraph **XX** below, and such use may not occur unless and until DEQ determines in writing that all requirements in this Agreement pertaining to a particular townhome use, including without limitation the requirements set forth in Paragraph **1X** above, are completed to DEQ's written satisfaction.

### **T-003 (RSC) Always include Declaration LUR when townhomes and/or condominiums are contemplated:**

\_. Prior to the sale to a residential user of any dwelling constructed or to be constructed on the Brownfields Property that is a townhome or condominium, the then owner shall cause the Brownfields Property to be subject to a declaration of covenants, conditions, and restrictions, or a functionally equivalent instrument recorded or to be recorded in the \_\_\_\_\_ County Public Registry (the "Declaration"), and shall also establish or, if an existing homeowners' association is extended to serve the Brownfields Property, participate in a homeowners' association, a lot owners' association, or similar entity associated with the Brownfields Property

("Property Association") consistent with the Declaration and ensure it is initialized with resources consistent with subparagraph **IX.x.** below.

a. The Declaration shall provide that all owners of all or part of the Brownfields Property shall strictly comply with the terms and conditions of this Agreement and the Notice of Brownfields Property referenced below in paragraph **XX.**

b. For the purposes of N.C.G.S. §130A-310.35(f), which authorizes various persons to enforce land use restrictions, the Declaration shall provide that the Property Association is such a person so authorized by the Act to administer and enforce the land use restrictions as an owner of land and as a person eligible for liability protection pursuant to the Act. Further, the Declaration shall provide that the Property Association has the authority and obligation to administer and enforce the land use restrictions on behalf of all lot owners and members of the Property Association.

c. The Declaration shall provide the Property Association the authority and obligation, to the extent permissible under North Carolina law, to treat any violation of the terms and conditions of this Agreement or of the Notice of Brownfields Property referenced below in paragraph **XX** by any owner of any part of the Brownfields Property as a violation of the Declaration and to undertake any and all enforcement remedies provided in the Declaration for such a violation. The Declaration shall provide that, in the event a violation of this Agreement or the Notice of Brownfields Property referenced below in paragraph **XX** by any owner of any part of the Brownfields Property becomes known to the Property Association, the Property Association shall undertake reasonable enforcement actions to correct said violation. Furthermore, the Declaration shall specifically provide that failure by any owner of any part of the Brownfields Property to remedy or correct such violations of this Agreement and the Notice

of Brownfields Property referenced below in paragraph XX after any applicable notice and cure periods to the reasonable satisfaction of DEQ could result in that owner's loss of liability protection afforded by this Agreement and the Act.

d. The Declaration shall provide that the Property Association will notify DEQ of violations of this Agreement or the Notice of Brownfields Property referenced below in paragraph XX by any owner of any part of the Brownfields Property and any associated enforcement actions taken or planned within thirty (30) days of such violation becoming known to the Property Association.

e. The Declaration shall provide that the Property Association maintain a cash reserve dedicated for use in undertaking the obligations set forth in this Agreement, including, without limitation, potential legal fees. The cash reserve shall initially be maintained at not less than INSERT AMOUNT Dollars [Note: An Amount that is site-specific based on the work expected at the site and/or the number of townhomes/slabs], and shall be increased in the future as deemed necessary by the Property Association in order to ensure its obligations to enforce the land use restrictions can be carried out. The Declaration shall state that the cash reserve may only be used to fulfill the obligations set forth in this Agreement, provided that it is replenished annually. The amount of the cash reserve may be decreased with DEQ's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

f. The portions of the Declaration, and the portions of the bylaws of the Property Association, pertaining to the subject matter of this paragraph XX shall be submitted to DEQ for review and approval as to the subject matter of this paragraph XX, which shall not be unreasonably withheld, conditioned, or delayed, and shall be deemed approved if DEQ does not respond to such submittal within thirty (30) business days.

g. The Declaration shall further provide that the Property Association will be responsible for submission of copies of deeds and other instruments of conveyance, on behalf of the owners, to the persons listed in Section XVII (Notices and Submissions) of this Agreement in accordance with paragraph XX below.

**T-004. (RSC) Always include this LUR for individually-owned townhome and condominium**

\_. All owners of individually-owned townhome or condominium and other units with private land shall remain subject to and abide by the Declaration referenced in paragraph XX.



### **III. EMP & Redevelopment Report(s)**

#### **EMP-001 (R)**

\_. Physical redevelopment of the Brownfields Property may not occur other than in accordance, as determined by DEQ, with an Environmental Management Plan (“EMP”) approved in writing by DEQ in advance (and revised to DEQ’s written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Brownfields Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Brownfields Property during construction or redevelopment in any other form, including without limitation:

- i. demolition of existing buildings, if applicable;
- ii. issues related to known or potential sources of contamination, including without limitation those resulting from contaminants referenced in Exhibit 2 to this Agreement;
- iii. contingency plans for addressing, including without limitation the testing of soil and groundwater, newly discovered potential sources of environmental contamination (e.g., USTs, drums, septic drain fields, oil-water separators, soil contamination); and
- iv. plans for the proper characterization and DEQ approval of both fill soil before import to the Brownfields Property and the disposition of all soil excavated from the Brownfields Property during redevelopment.

#### **EMP-002 (R): Reporting**

\_. No later than January 31 of each calendar year after each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Brownfields

Property continues (except that the final deadline shall fall 90 days after the conclusion of physical redevelopment), the then-owner of the Brownfields Property shall provide DEQ a report on environment-related activities since the last report, with a summary and drawings, that describes:

i. actions taken on the Brownfields Property in accordance with Section

VI: Work to be Performed above;

ii. soil grading and cut and fill actions;

iii. methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;

iv. stockpiling, containerizing, decontaminating, treating, handling, laboratory analysis and ultimate disposition of any soil, groundwater, or other materials suspected or confirmed to be contaminated with regulated substances; and

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

#### **IV. Demolition of Existing Structures**

##### **M-002 (RSC). If Buildings on the Brownfields Property will be demolished:**

\_. Unless compliance with this Land Use Restriction is waived in writing in advance by DEQ in relation to particular buildings, demolition and/or renovation of any or all buildings on the Brownfields Property depicted on the plat component of the Notice referenced in paragraph \_\_\_ below shall be in accordance with applicable legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.

## V. Remediation Issues/Other Program Involvement

**L-004 (OP). The Brownfields Property contains a landfill (replace site-specific language as necessary):**

\_. No physical redevelopment of the Brownfields Property may occur unless and until DEQ's Brownfields Redevelopment Section, and as applicable the Solid Waste Section or Division of Water Resources conclude in writing that the proposed redevelopment will not negatively affect the cover, structural integrity and monitoring systems at the closed landfill facilities or the Aeration Stabilization Basin (ASB).

**M-001 (RSC). If DEQ determines that the Brownfields Property requires ongoing remediation or monitoring under the [Program Name] Program:**

\_. If DEQ determines that **[name of RP]** will not complete implementation of the Remedial Action Plan approved by DEQ's **[Program Name, e.g. Registered Environmental Consultant Program]** for a site that includes a part or all of the Brownfields Property, DEQ may require the then current owner of all or any portion of the Brownfields Property to conduct such assessment and/or remedial activities DEQ's Brownfields Redevelopment Section determines are necessary to make the Brownfields Property suitable for the uses specified in subparagraph \_\_.\_\_. above while fully protecting public health and the environment.

OR

\_. If any remedial obligations under DEQ's oversight are discontinued prior to completion to the satisfaction of DEQ, DEQ may require the then owner of the Brownfields Property to assess the risk remaining to public health and the environment at or from the Brownfields Property. DEQ may **also require the then owner of the Brownfields** Property to impose additional land use restrictions on the Brownfields Property or require the Brownfields Property owner to conduct additional actions as necessary to prevent or mitigate

unacceptable risks imposed by said discontinued remedial obligations in order to achieve the goals of this Brownfields Agreement as set forth in NCGS §130A-310.32(2) to the written satisfaction of DEQ.

**M-003 (RSC). The Brownfields Property has a known petroleum tank (UST or AST):**

\_. Not later than completion of redevelopment, the known [USTs or ASTs], identified above in subparagraph \_\_. \_ shall be removed and addressed to the satisfaction of DEQ

## VI – Media-specific LURS

### 1) Groundwater

**GW-001. (R)** Groundwater at the Brownfields Property may not be used for any purpose without the prior written approval of DEQ along with any measures DEQ deems necessary to ensure that the Brownfields Property will be suitable for the uses specified in subparagraph **1X.x** above while fully protecting public health and the environment. Should groundwater be encountered or exposed during any activity on the Brownfields Property, it shall be managed in accordance with the DEQ-approved EMP outlined in subparagraph **XX.x.**, or a plan approved in writing in advance by DEQ.

### 2) Soil LURs

**S-001 (RSC).** The Brownfields Property may be subject to risk related to soil contamination (whether capped or not) and/or risk from soil grading or movement:

\_. No activity that disturbs soil on the Brownfields Property [***add where applicable: in the “Area of Potential Soil Contamination” as delineated on the plat component of the Notice of Brownfields Property referenced below in paragraph \_\_\_\_***], may occur unless and until DEQ states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DEQ deems necessary to ensure the Brownfields Property will be suitable for the uses specified in subparagraph \_\_\_\_\_. above while fully protecting public health and the environment, except:

- i. in connection with landscape planting to depths not exceeding 24 inches [***add: site specific safe depth if less than 24 inches***];
- ii. mowing and pruning of above-ground vegetation;
- iii. for repair of underground infrastructure, provided that DEQ shall be given

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

iv. in connection with work conducted in accordance with a DEQ-approved Environmental Management Plan (EMP) as outlined in subparagraph \_\_. \_\_.

**S-002 (OP unless for a Townhome site, then R). An area of soil at the Brownfields Property planned to be exposed as surface soil is not adequately sampled for final grade risk protections:**

\_\_. No use of the Brownfields Property for the uses authorized in subparagraph \_\_\_\_ above may occur until the then owner of the Brownfields Property conducts representative final grade soil sampling, pursuant to a plan approved in writing by DEQ, of any area that is not covered by building foundations, sidewalks, or asphaltic or concrete parking areas and driveways, or another cover approved in advance by DEQ in writing. [if only related to a specific area of the BF property add:] within the [specific Brownfields Property area] of the Brownfields Property as delineated on the plat component of the Notice of Brownfields Property referenced in paragraph XX of this Agreement.

**OR if modifying to only particular use/area:**

\_\_. No residential use of the Brownfields Property may occur until the then owner of the Brownfields Property conducts representative final grade soil sampling, pursuant to a plan approved in writing by DEQ, of any area within the Brownfields Property, as said area is depicted on the plat component of the Notice of Brownfields Property described in paragraph \_\_ below, that is not covered by building foundations, sidewalks, or asphaltic or concrete parking areas and driveways, or another cover approved in advance by DEQ in writing. The provisions

of this subparagraph shall not be applicable in areas of the Brownfields Property that have not been, or will not be, disturbed or altered during redevelopment activities.

**S-007 (R). The Brownfields Property may be subject to risks due to excavation/soil disturbance with the subsequent importing or exporting of soil:**

\_. Soil may not be removed from, or brought onto, the Brownfields Property without prior sampling and analysis to DEQ's satisfaction and the written approval of DEQ, unless conducted in accordance with an approved EMP as outlined in paragraph **IX.x.**

**L-005 (OP). The Brownfields Property has no potential vapor intrusion issues and is to be used as a playground, childcare center, or school:**

\_. The Brownfields Property may not be used as a playground, or for child care centers or schools, except in areas where sampling has shown that clean soils are present, or two feet [**or another number as appropriate for site**] of demonstrably clean fill, or another cover approved in writing in advance by DEQ, are installed to DEQ's written satisfaction, delineated to DEQ's written satisfaction on the plat component of the Notice referenced below in paragraph \_\_, maintained, and left undisturbed other than through normal playground, child care center or school use.

**S-00X (RSC). Community gardens contemplated (may drop plat reference if applies to whole site):**

\_\_\_\_. The Brownfields Property may not be used for community gardens unless they are constructed in raised beds so as not to disturb native soil, and may only be located within the "Community Garden Approved" area depicted on the plat component of the Notice referenced below in paragraph XX, unless compliance with this land use restriction is waived in writing in advance by DEQ.



**S-00X (RSC). Soil will be capped**

\_. Soil at the Brownfields Property that DEQ determines through a site-specific risk assessment would not likely contaminate groundwater if capped, or would not likely pose an imminent threat to public health or the environment if exposed, may be covered with an impervious or hard pervious surface, to the written satisfaction of DEQ. Said cover shall be maintained to DEQ's satisfaction and may include any structure or groundcover consisting of asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or other natural or man-made material that prevents the absorption of surface water into the soil, or any structure or groundcover that allows absorption of surface water into the soil, but has a hard surface formed or cast in place that protects land users from exposure to any contaminants in the soil.

**OR**

**S-00X (RSC) – When there are areas of known contaminated and noncontaminated portions of the BF Property that may be capped differently:**

\_. No use may be made of the Brownfields Property, [or of the “Former Industrial Area” of the Brownfields Property as denoted in the plat component of the Notice of Brownfield Property referenced in paragraph XX below], without the prior written approval of DEQ, except in areas where an underlying geotextile material and a cap consisting of a minimum of two feet of compacted, demonstrably clean fill (as demonstrated through pre-installation sampling and geotechnical testing) in accordance with the design plans referenced below in this paragraph, or another cover approved in writing in advance by DEQ, is installed to DEQ's written satisfaction. Areas outside of the “Former Industrial Area” shall be covered with vegetative cover, asphalt, concrete, or building foundations such that DEQ concludes in writing that the Brownfields

Property is suitable for the uses specified in subparagraph 1X.a. above and that public health and the environment are fully protected, and shall be maintained, and left undisturbed other than through normal use.

**AND**

\_. When soil at the Brownfields Property is capped, a written report verifying cap installation, compaction and final grade thickness and elevations, and summarizing any sampling or geotechnical testing of the cap or cap materials in areas that will not be covered by buildings or other impermeable surfaces prior to the Brownfields Property reuse, as well as a plan for the cap's inspection and maintenance, shall be submitted to DEQ no later than 30 days following installation. Any deficiencies DEQ identifies in the report or plan shall be corrected to DEQ's written satisfaction within 30 days after DEQ provides written notice of such deficiencies.

### **3) Vapor (either soil gas or sub-slab)**

#### **VI-001 (R). The Brownfields Property may be subject to risk related to vapor intrusion:**

\_. No enclosed building may be constructed on the Brownfields Property and no existing building, defined as those depicted on the plat component of the Notice of Brownfields Property referenced in paragraph **XX** below, may be occupied until DEQ determines in writing that:

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

ii. a vapor intrusion mitigation system (VIMS) has been:

1. designed to mitigate the intrusion of subsurface vapors into building features in accordance with the most recent and applicable DWM Vapor Intrusion Guidance, Interstate Technology & Regulatory Council (ITRC) guidance, and American National Standards Institute (ANSI)/American Association of Radon Scientists and Technologists (AARST) standards, or alternative standards approved in writing in advance by DEQ, and that a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal, is satisfied that the system has been designed so as to be fully protective of public health within the meaning of NCGS § 130A-310.32 (a)(2), from known Brownfields Property contaminants, and shall include a performance monitoring plan detailing methodologies and schedule, both of which are subject to prior written DEQ approval; and

2. installed and an installation report is submitted for written DEQ approval that includes as-built diagrams, photographs, and a description of the installation, with said engineer's professional seal confirming that the engineer is satisfied that the system has been designed and installed so as to be fully protective of public health within the meaning of NCGS 130A-310.32(a)(2), from known Brownfields Property contaminants. If any deviations from the system design were necessary during installation, then the report shall include details on said deviations, as well as the engineer's seal certifying the VIMS, as installed, was installed in such a manner so as to be fully protective of public health; and

3. confirmed to be effective through the implementation of a VIMS pre-occupancy confirmation sampling event pursuant to a plan approved in advance and in writing by DEQ.

#### **4) VI-002 (OP) Vapor Intrusion & Methane**

\_\_\_ No enclosed building may be constructed or occupied on the Brownfields Property until DEQ determines in writing that:

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

ii. a vapor intrusion and methane mitigation system (VIMS and MMS) has been:

1. designed to mitigate the intrusion of subsurface vapors and methane into building features in accordance with the most recent and applicable DWM Vapor Intrusion Guidance, Interstate Technology & Regulatory Council (ITRC) guidance, American National Standards Institute (ANSI)/American Association of Radon Scientists and Technologists (AARST) standards, as well as the *NCDEQ Brownfields Program Threshold Criteria for Methane Site Development* (December 2020, or the most current version thereof), or alternative standards approved in writing in advance by DEQ, and that a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal, is satisfied that the system has been designed so as to be fully protective of public health within the meaning of NCGS § 130A-310.32 (a)(2), from known Brownfields Property contaminants, and shall include a performance monitoring plan detailing methodologies and schedule, both of which are subject to prior written DEQ approval;

2. designed to address electrical wiring, gas flame for heat or cooking, or other potential sources of risk of ignition of methane or landfill gases that poses potential risks of exposure or ignition of methane or landfill gases on the Brownfields Property;

3. installed and an installation report is submitted for written DEQ approval that includes as-built diagrams, photographs, and a description of the installation, with said engineer's professional seal confirming that the engineer is satisfied that the system has been designed and installed so as to be fully protective of public health within the meaning of NCGS 130A-310.32(a)(2), from known Brownfields Property contaminants, and was installed in accordance with the <<Name of the report>> accepted by NCDEQ . If any deviations from the system design were necessary during installation, then the report shall include details on said deviations, as well as the engineer's seal

certifying the VIMS, as installed, was installed in such a manner so as to be fully protective of public health; and

4. confirmed to be effective through the implementation of a VIMS pre-occupancy confirmation sampling event pursuant to a plan approved in advance and in writing by DEQ.

**(5) VI-003 (OP) BF Property situated on top of a methane-generating site, such as a landfill**

-. Unless otherwise approved by DEQ, no portion of the Brownfields Property containing driveway, parking surfaces, nor unenclosed impervious surfaces may be used for the uses defined above in subparagraph 1X.a. until a professional engineer licensed in North Carolina provides a signed and sealed methane/landfill gas venting evaluation and plan to address such surfaces to protect public health from risks posed by subsurface methane/landfill gas, such plan is implemented to the satisfaction of DEQ, and DEQ has approved a report on post-construction methane/landfill gas sampling for such portion of the Brownfields Property, and in the vicinity of any impervious surface covering installed at such portion of the Brownfields Property. To the extent DEQ determines that such venting is required in order to protect public health from risks posed by subsurface methane/landfill gas, the proponent of such planned surfaces shall install and maintain such venting.

**(6) VIMS and/or Methane Mitigation System OMM Plan**

\_. when vapor and/or methane mitigation systems have been installed, a written Vapor Intrusion (and/or methane) Mitigation System (VIMS) Operations, Maintenance, and Monitoring Plan (OMM) Plan prepared in accordance with the most current versions of the *VIMS O&M Plan Checklist* and the *DEQ Minimum Mitigation and Sampling Requirements for Reuse*, and signed and sealed by the VIMS Professional Engineer of record, shall be submitted to DEQ no later than 30 days following VIMS installation, or an alternative schedule approved in advance by DEQ. Any deficiencies DEQ identifies in the OMM Plan shall be corrected to DEQ's written

satisfaction within 30 days after DEQ provides written notice of such deficiencies, or an alternative schedule approved in advance by DEQ.

## **7) Surface Water**

### **SW-001 (RSC). The Brownfields Property may be subject to risk related to surface water contamination:**

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

### **SW-002 (RSC). Surface water at the Brownfields Property may represent an exposure hazard that needs physical barriers as institutional controls to prevent exposure as approved by DEQ:**

\_. No occupancy or opening of the Brownfields Property for any on-site activities shall occur unless an access control barrier is designed and installed along the entire bank of [\_\_\_\_\_] Creek [Or appropriately named water body or impoundment] at the Brownfields Property to DEQ's written satisfaction. The barrier shall be constructed of fencing and/or another material approved by DEQ in advance, and shall be permanently maintained and annually inspected.

### **SW-003 (RSC). Surface water at the Brownfields Property may represent an exposure hazard that requires physical barriers or signage to prevent exposure as approved by DEQ:**

\_. No occupancy or opening of the Brownfields Property for any on-site activities shall occur unless a plan for placing institutional controls that prevent access and/or use of the on-site

**[pond, impoundment, creek or other appropriately names water body]** as denoted on the survey plat component of the Notice of Brownfields Property referenced below in paragraph \_\_\_ is submitted and implemented to DEQ’s written satisfaction. Such a plan may include, without limitation, physical barriers such as fencing, and/or the posting of signs prohibiting activities that include fishing, wading, swimming, and boating. Such plan shall be implemented within 30 days after written approval of DEQ is granted.

**STW-001(RSC) Stormwater retention measures implemented on the Brownfields Property:**

Surface waters at the Brownfields Property may not be used except as approved by DEQ in advance and in writing. For the purposes of this Agreement, the collection and management of stormwater consistent with applicable law or rules is not considered “use”. Rain, snow and ice on the Brownfields Property may be collected in a manner that prevents contact with impacted soil and used in accordance with any and all applicable regulations.

**M-004 (RSC). Stream restoration activities are to take place on the Brownfields Property:**

\_. No occupancy or opening of the Brownfields Property to any on-site activities shall occur unless any and all stream restoration activities conducted on the Brownfields Property are implemented in accordance with requirements imposed by, and to the satisfaction of, the United States Army Corps of Engineers and/or the North Carolina Division of Water Quality.

## **VII. Other Required LURs**

### **N001 (R) Access**

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

### **SD001 (RSC) Slab Disturbance**

\_. No disturbance or alteration of the slab within the existing building footprint, as depicted on the plat component of the Notice of Brownfields Property referenced in paragraph **XX** below, may occur unless in accordance with a DEQ-approved EMP, or unless in the case of emergency circumstances for repair of underground infrastructure, in which case DEQ shall be provided written notice no later than the next business day and any related assessment and remedial measures required by DEQ shall be taken.

### **MW-001 (RSC) Monitoring wells**

\_. Within 60 days after the effective date of this Agreement or prior to land disturbance activities, whichever occurs first, Prospective Developer shall abandon all monitoring wells, injection wells, recovery wells, piezometers and other man-made points of groundwater access at the Brownfields Property, **except those wells required by INSERT PROGRAM and as identified in [either list document here or paragraph below or on plat map]**, in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code, unless an alternate schedule is approved by DEQ. Within 30 days after doing so, the Prospective Developer shall



provide DEQ a report, setting forth the procedures and results.

**MW-002 (R) Damage to Monitoring Points:**

\_. [If using paragraph above, add initial clause:] Except for the work related to subparagraph \_\_ above, the owner of any portion of the Brownfields Property where any existing, or subsequently installed, DEQ-approved monitoring well or other monitoring point is damaged by the owner, its contractors, or its tenants, shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ, unless compliance with this Land Use Restriction is waived in writing by DEQ in advance.

**N-002 (R). Notifications upon Transfer**

\_. Any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: "This property is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the \_\_\_\_\_ County land records, Book \_\_\_\_, Page \_\_\_\_." A copy of any such instrument shall be sent to the persons listed in Section XVII (Notices and Submissions), though financial figures and other confidential information related to the conveyance may be redacted to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. The owner conveying a leasehold interest may use the following mechanisms to comply with the obligations of this subparagraph: (i) If every lease or rider is identical in form, the owner conveying an interest may provide DEQ with a copy of a form lease or rider evidencing compliance with this subparagraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XVII (Notices and Submissions); or (ii) The owner conveying an interest may provide abstracts of leases, rather than full copies of said

leases, to the persons listed in Section XVII. The then-current owner of any portion of the Brownfields Property with any current lessee or sublessee as of the effective date of this Agreement shall provide a copy of this Agreement to any such lessee or sublessee within seven days of the effective date of this Agreement.

**EC-001 (R). Separating old from new contaminants**

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

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

**ADD one or more of the following depending on the situation:**

**EC-002. If fuels, lubricants, and oils, vehicles, and/or emergency generators must be present on the Brownfields Property:**

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

**EC-003. If contaminants will be sold as part of a retail product:**

\_. as constituents of products and materials customarily used and stored in **[insert uses from section a., i.e. office, retail, etc.]** environments, provided such products and materials are stored in original retail packaging and used and disposed of in accordance with applicable laws;

**EC-004. ONLY if vehicle maintenance must be performed:**

\_. for vehicle maintenance, service, car wash and body work in compliance with applicable law (though vehicle parts and tools may not be washed in chlorinated solvents containing any contaminants known to be present in the environmental media at the Brownfields Property);

**EC-006. If products containing known contaminants are to be brought onto the Brownfields Property:**

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

**EC-007. Only if known contaminants absolutely must be stored or used on the Brownfields Property:**

\_. Substances containing contaminants known to be present in the environmental media at the Brownfields Property shall be managed in compliance with a site-specific plan prepared by the then owner of the Brownfields Property and approved in writing by DEQ such that, should a release of those substances occur at the Brownfields Property, the subject contaminants in that release would be distinguishable with certainty from the subject contaminants in any known release at the Brownfields Property that predates this Agreement.

## **VIII. Other Prohibited Uses**

**S-003 (OP). Users of the Brownfields Property may be subject to risk from existing contamination should there be ground contact sports allowed:**

\_. The Brownfields Property may not be used for ground-contact sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DEQ.

**S-004 (OP). The Brownfields Property may be subject to risk should there be excavations or soil disturbance from animals:**

\_. The Brownfields Property may not be used for kennels, private animal pens or horse-riding unless approved in writing in advance by DEQ.

**S-005 (OP). The Brownfields Property may be subject to risk should there be excavations or soil disturbance from mining operations:**

\_. No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas, sand, or any other minerals or non-mineral substances unless approved in writing in advance by DEQ.

**S-006 (OP). The Brownfields Property situation is such that agricultural use is projected as plausible, and agricultural uptake of contaminants may present an unevaluated risk should agricultural products produced thereon be sold:**

\_. The Brownfields Property may not be used for agriculture or grazing, without the prior written approval of DEQ.

## **IX. Land Use Restriction Update**

### **LURU-001. (R)**

\_. During January of each year after the year in which the Notice referenced below in paragraph \_\_ is recorded, the owner of any part of the Brownfields Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DEQ, and to the chief public health and environmental officials of \_\_\_\_\_ County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the \_\_\_\_\_ County Register of Deeds office and that the land use restrictions are being complied with. If ownership of any portion of the Brownfields Property is transferred, the grantor shall submit a LURU (as outlined above) which covers the period of time they owned such portion of the Brownfields Property during the calendar year of the transfer. The submitted LURU shall state the following:

i. the Brownfields Property address, and the name, mailing address, telephone number, and contact person’s e-mail address of the owner, or board, association or approved entity, submitting the LURU if said owner, or each of the owners on whose behalf a joint LURU is submitted, acquired any part of the Brownfields Property during the previous calendar year;

ii. the transferee’s name, mailing address, telephone number, and contact person’s e-mail address, if said owner, or each of the owners on whose behalf a joint LURU is submitted, transferred any part of the Brownfields Property during the previous calendar year;

**use any of the following that would be required under the situation placing the word “and” after the next to the last subparagraph:**

### **LURU-002. (RSC) If the Brownfields Property has a vapor barrier or mitigation system:**

\_. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph

\_\_\_ above are performing as designed, and whether the uses of the ground floors, including any tenant renovations, of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how, and under which precautions so as not to interfere with the operation of said system.

OR another option for VI

\_\_\_ a summary record of all vapor intrusion monitoring data taken during the preceding year as a result of implementation of any vapor intrusion assessment or design performed under the requirements of subparagraph \_\_\_\_.

**LURU-003. (RSC) If the Brownfields Property has soil caps or landscaping is required:**

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

**OR**

\_. whether any soil caps installed pursuant to subparagraph \_\_. \_ above are being maintained such that they are intact, uncompromised, in good condition and continuing to serve as barriers to the soil contamination in relation to which they were installed.

**OR**

\_. whether the “Area of Potential Soil Contamination” pursuant to subparagraph \_\_. \_ above remains properly covered by impervious surface.

**LURU-004. (RSC) If there are hazardous substances used or stored on the Brownfields Property:**

\_. whether all products containing hazardous substances used or stored at the Brownfields Property are being managed in compliance with the plan required by paragraph \_\_ above.

**LURU-005. (RSC) If DEQ determines that periodic sampling is required:**

\_. the data acquired from annual [a designated period, e.g. quarterly, annual, etc.,]  
[type of sampling i.e. indoor air, soil vapor, etc.] sampling in [location] in accordance with the  
requirements of subparagraph \_\_ above. [Note: this could reference multiple plans]

**LURU-006. (RSC) If a joint LURU is to be submitted for multiple owners, such as for a condominium:**

\_. A joint LURU may be submitted for multiple owners by a duly constituted board or association and shall include the Brownfields Property address, and the name, mailing address, telephone number, and contact person's e-mail address of the entity submitting the joint LURU as well as for each of the owners on whose behalf the joint LURU is submitted.

**LURU-007. (RSC) The Brownfields Property is rented out to tenants (including self-storage units):**

v. A LURU submitted for rental units shall include enough of each lease entered into during the previous calendar year (or form lease, form lease rider, or lease abstract) to demonstrate compliance with lessee notification requirements in subparagraph \_\_\_\_\_ of this Agreement.

**LURU-008. (RSC) A Brownfields Property Owners Association submits the LURU:**

\_. A property owners' association or other entity may perform this LURU duty, on behalf of some or all owners of the Brownfields Property, if said association or entity has accepted responsibility for such performance pursuant to a notarized instrument satisfactory to DEQ that includes at a minimum, the Brownfields Property address, and the name, mailing address, telephone number, and e-mail address of each owner on whose behalf the LURU is proposed to be submitted.

## **LURU-009 (RSC) if VIMS and MMS**

**NOTE: remove methane references if not applicable to site.**

\_\_ whether any vapor barrier and/or vapor intrusion/methane mitigation systems installed pursuant to subparagraph \_\_. above, and operated, maintained, and monitored pursuant to subparagraph \_\_. above, are performing as designed, and whether the uses of the ground floors, including any tenant renovations, of any buildings containing such vapor barrier and/or vapor intrusion/methane mitigation systems have changed, and if so, how, and under which precautions so as not to interfere with the operation of said system.

\_\_. a summary record of all vapor intrusion/methane monitoring data taken during the preceding year as a result of implementation of any vapor intrusion assessment or design performed under the requirements of subparagraph XX.x. accepted by DEQ;

## **LURU-010 (RSC) if No Slab Disturbance LUR is used.**

\_\_. whether any existing building slabs remain undisturbed and unaltered as required by subparagraph \_\_. above and are being inspected annually, including an annual photograph, and maintained to prevent exposure to soil vapors or other media.