



required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of \$3,500 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 the second payment shall constitute, 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.

IV. BENEFIT TO COMMUNITY

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

- a. It will create jobs during demolition and construction at the Property;
- b. It will provide additional multi-family housing and office space in the area;
- c. It will provide tax revenue for affected jurisdictions;
- d. It will constitute “smart growth,” in that land in an already developed area will be reused, instead of land beyond the urban fringe (“greenfields”) being developed.

V. WORK TO BE PERFORMED

16. Based on the information in the Environmental Report, Prospective Developer shall ensure that the following work related to soil and groundwater contamination at the Property is completed to the satisfaction of DENR:

- a. The areas of stained soil located adjacent to the garage containing levels of diesel range TPH and oil and grease, and lead, in excess of their regulatory levels must be removed or remediated, after cessation of operations at the automotive repair shop currently at



the Property and prior to any construction on that portion of the Property (as determined by DENR), in accordance with the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, and soil remediation reports shall be submitted to DENR not later than thirty (30) days following completion of such remediation activities. Nothing in subparagraph 18.j. below shall be construed as prohibiting the normal operations of the automotive repair shop currently at the Property, so long as that business remains in operation.

17. Within thirty (30) days after the effective date of this Agreement, Prospective Developer shall notify DENR that it is ready to effect the abandonment of all water supply wells, 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 ten (10) days of receiving such notification to refrain from such abandonment, Prospective Developer shall effect said abandonment and shall, within thirty (30) days after concluding such abandonment, provide DENR a report setting forth the procedures and results.

18. By way of the Notice of Brownfields Property referenced below in paragraph 23, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property safe for the uses specified in this Agreement while fully protecting public health and the environment.

a. No use may be made of the Property other than for high-density residential and commercial/office purposes. The following definitions apply regarding this restriction:

i. "High-density residential" refers to structures used as multi-unit human dwellings, such as duplexes, triplexes, quadriplexes, condominiums, town homes and apartments, in



which units are attached to each other with common walls and any associated property outside the structure(s) may be used, but is not owned, by particular inhabitants.

ii. "Commercial/office" refers to wholesale, retail and entertainment uses, and the provision of business or professional services, plus related contiguous parking lots and driveways.

b. Surface water at the Property may not be used for any purpose without the approval of DENR.

c. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Property without prior sampling and analysis of groundwater to the satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results disclose to DENR contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the approval of DENR on such conditions as DENR imposes, including at a minimum compliance with plans and procedures, approved pursuant to applicable law, to protect public health and the environment during the proposed activities.

d. No building may be constructed on the Property until DENR has been consulted regarding the proximity of the planned building to the Property's volatile contaminant plume. If DENR determines that the footprint of a building proposed to be constructed on the Property would fall within 100 feet of said plume, it may not be constructed without a vapor barrier system and/or mechanical or passive vapor mitigation system, approved in writing in advance by DENR. Within 30 days following installation of the vapor barrier system and/or



mechanical or passive vapor mitigation system, DENR shall be provided certification of proper installation under seal of a professional engineer licensed in North Carolina, as well as photographs illustrating the installation and a brief narrative describing it. With DENR's prior written approval, additional investigation activities including, without limitation, soil gas samples, performed to DENR's written satisfaction, may be conducted, and installation of a barrier or mitigation system possibly excused, so long as the proponent makes an advance written commitment to install a barrier or mitigation system if DENR so requires based on review of a report DENR deems adequate of the investigation activities.

e. Soil underlying paved surfaces and buildings at the Property may not be exposed without prior sampling and analysis of such soil to the satisfaction of DENR, and submittal of the analytical results to DENR. If such results disclose contamination in excess of the applicable standards as determined by DENR, the soil may not be exposed without the approval of DENR on such conditions as DENR imposes, including at a minimum compliance with plans and procedures, approved pursuant to applicable law, to protect public health and the environment during the activities that would expose such soil.

f. Soil anywhere on the Property exhibiting any stain or odor may not be disturbed without prior sampling and analysis, to DENR's written satisfaction, of soil proposed to be disturbed. If sampling results disclose contamination that DENR determines renders the Property unsuitable for the uses specified in subparagraph 18.a. above, the soil may only be disturbed in conformance with procedures approved in writing in advance by DENR to protect public health and the environment while the disturbed soil is exposed, and if as much soil is treated, removed and disposed of in accordance with applicable law, or covered with an



impervious or hard pervious surface, as DENR determines is necessary to render the Property suitable for said uses. If treatment is chosen, it shall occur in conformance with procedures approved in writing in advance, and afterwards as to their implementation, by DENR. If covering the soil is chosen, said surface shall be maintained to DENR's satisfaction. If soil removal is chosen, information satisfactory to DENR regarding the transportation and disposition of such soil shall be supplied in a written report to DENR within 90 days following removal. For purposes of this land use restriction, the following definitions apply:

i. "Impervious surface" means 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.

ii. "Hard pervious surface" means 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. Pervious concrete and pervious tennis court materials are examples.

g. Soil, landscaping and contours at the Property may not be disturbed without the approval of DENR, except for mowing and pruning of above-ground vegetation.

h. No mining may be conducted on or under the Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

i. No basements may be constructed on the Property unless they are, as determined by DENR, vented in conformance with applicable building codes.

j. None of the contaminants known to be present in the environmental media at the Property, including those listed in paragraph 11 of this Agreement, may be used or stored at



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

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

l. The Property may not be used for agriculture, grazing, timbering or timber production.

m. The Property may not be used as a playground, or for child care centers or schools.

n. The Property may not be used for kennels, private animal pens or horse-riding.

o. The owner of any portion of the Property where any DENR-approved monitoring well installed after recordation of the Notice referenced in paragraph 23 below is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR.

p. No party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Property for purposes of conducting such assessment or remediation.

q. During January of each year after the year in which the Notice referenced below in paragraph 23 is recorded, the then current owner of any part of the Property shall submit a notarized Land Use Restrictions Update to DENR certifying that the Notice of Brownfields Property containing these land use restrictions remains recorded at the Orange 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 Land Use Restrictions Update if said owner acquired any part of the Property during the previous calendar year; and

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

iii. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 18.d. 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.

19. The desired result of the above-referenced remedial (or removal) and protective measures and land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

20. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, as embodied in their most current version.

21. The consequences of achieving or not achieving the desired results will be that the uses to which the Property is put are or are not suitable for the Property while fully protecting public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

22. In addition to providing access to the Property pursuant to subparagraph 18.p.above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives,