

**FORSYTH COUNTY**  
**BOARD OF COMMISSIONERS**

BRIEFING  
DRAFT

MEETING DATE: MARCH 28, 2019

AGENDA ITEM NUMBER: 7 A-C

- SUBJECT:**
- A. RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PERPETUAL LAND USE RESTRICTION AGREEMENT BETWEEN FORSYTH COUNTY AND THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR COUNTY OWNED PROPERTY, LOCATED AT SMITH REYNOLDS AIRPORT, WINSTON-SALEM, NORTH CAROLINA, AND AS DESCRIBED IN DEED BOOK 875, PAGE 103, IN THE OFFICE OF THE REGISTER OF DEEDS**
  - B. RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PERPETUAL LAND USE RESTRICTION AGREEMENT BETWEEN FORSYTH COUNTY AND THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR COUNTY OWNED PROPERTY LOCATED AT 3801 NORTH LIBERTY STREET, WINSTON-SALEM, NORTH CAROLINA**
  - C. RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PERPETUAL LAND USE RESTRICTION AGREEMENT BETWEEN FORSYTH COUNTY AND THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR COUNTY OWNED PROPERTY LOCATED AT 3817 NORTH LIBERTY STREET, WINSTON-SALEM, NORTH CAROLINA (AIRPORT DEPARTMENT)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:**

**SUMMARY OF INFORMATION:**

ATTACHMENTS:  YES  NO

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PERPETUAL  
LAND USE RESTRICTION AGREEMENT BETWEEN FORSYTH COUNTY AND THE  
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR  
COUNTY OWNED PROPERTY, LOCATED AT SMITH REYNOLDS AIRPORT,  
WINSTON-SALEM, NORTH CAROLINA, AND AS DESCRIBED IN DEED BOOK 875,  
PAGE 103, IN THE OFFICE OF THE REGISTER OF DEEDS  
(AIRPORT DEPARTMENT)**

**WHEREAS** Forsyth County owns real property located at Smith Reynolds Airport, Winston-Salem, North Carolina, and as legally described in Deed Book 875, Page 103, in the Office of the Register of Deeds, which is contaminated with hazardous substances;

**WHEREAS** the real property is part of an inactive hazardous substance or waste disposal site as defined by the North Carolina's Inactive Hazardous Sites Response Act of 1987; and

**WHEREAS** for the purpose of protecting public health and the environment, Forsyth County hereby declares that all the property designated in Declaration of Perpetual Land Use Restrictions Agreement shall be held, sold and conveyed subject to the restrictions stated within Agreement;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that the above-described property will be subject to the Declaration of Perpetual Land Use Restriction Agreement; and

**BE IT FURTHER RESOLVED**, that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the above-described Agreement with the North Carolina Department of Environmental Quality, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The proposed Agreement is attached hereto and incorporated herein by reference.

Adopted this 28<sup>th</sup> day of March 2019.

## **DECLARATION OF PERPETUAL LAND USE RESTRICTIONS**

**For Property Owned by: Forsyth County**

**The real property which is the subject of this Declaration of Perpetual Land Use Restrictions (“Declaration”) is contaminated with hazardous substances, and is an INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE (“the Site”) as defined by North Carolina's Inactive Hazardous Sites Response Act of 1987, which consists of Section 130A-310 through Section 130A-310.19 of the North Carolina General Statutes (“N.C.G.S.”). This Declaration is part of a Remedial Action Plan for the Site that has been approved by the Secretary of the North Carolina Department of Environmental Quality, Division of Waste Management, Superfund Section or its successor in function, or his/her delegate, as authorized by N.C.G.S. Section 130A-310.3(f). The North Carolina Department of Environmental Quality shall hereafter be referred to as “DEQ”. Hereafter, the Division of Waste Management, Superfund Section shall be referred to as “Superfund Section”.**

Forsyth County, Winston-Salem, North Carolina is the owner in fee simple of the property (“the Property”), which is located at the end of Airport Road in the County of Forsyth, City of Winston-Salem, State of North Carolina, and is the real property legally described in Deed Book 875, Page 103 in the Office of the Register of Deeds for Forsyth County. The Property is also shown on a Notice of Inactive Hazardous Substance or Waste Disposal Site, in the form of a survey plat (“Notice Plat”), which has been recorded prior to the recordation of this Declaration in Map Book \_\_\_\_ Page \_\_\_\_ in the Office of the Register of Deeds for Forsyth County.

For the purpose of protecting public health and the environment, Forsyth County hereby declares that all of the Property shall be held, sold and conveyed subject to the following perpetual land use restrictions, which shall run with the land; shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall, as provided in N.C.G.S. Section 130A-310.3(f), 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. These restrictions shall continue in perpetuity and cannot be amended or canceled unless and until the Forsyth County Register of Deeds receives and records the written concurrence of the Secretary of DEQ or its successor in function, or his/her delegate. If

any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

### **PERPETUAL LAND USE RESTRICTIONS**

The following restrictions shall apply only to the Waste Disposal Area of the Property:

1. Activities necessary to maintain the security and structural integrity of the landfill at the Property shown as Waste Disposal Area on the Notice Plat are permitted, with prior written approval by the Superfund Section or its successor in function. All other uses at the Property are prohibited, except as approved in writing by the Superfund Section or its successor function.
2. Soil, landscaping, and contours at the Waste Disposal Area may not be disturbed without the approval of the Superfund Section or its successor in function, except for mowing and pruning of existing above-ground vegetation.
3. No surface or subsurface native or fill earthen materials may be removed from the Waste Disposal Area without written permission of the Superfund Section or its successor in function.
4. Unless approved by the Superfund Section or its successor in function, the landfill area shown as Waste Disposal Area on the Notice Plat shall not be paved with asphalt, concrete or other impervious materials.
5. No new trees or other vegetation except grass and shrubs not to exceed three feet in height may be planted on the Waste Disposal Area.
6. All fencing shall be inspected at least annually and maintained in the specific location depicted on the Notice Plat, in original or like condition, and in a manner that secures the Waste Disposal Area.

The following restrictions shall apply to both the Waste Disposal Area and the entire Property:

1. Surface water shall not be used for any purpose.
2. Underground water (groundwater) shall not be used for any purpose.
3. The installation of groundwater wells or other devices for access to groundwater for any purpose other than monitoring groundwater quality is prohibited without prior written approval by the Superfund Section or its successor in function.
4. No activities that would cause the exposure, removal, or use of groundwater, including but not limited to, installation of water supply wells, fountains, ponds, lakes, swimming pools or other features that use groundwater, or construction or excavation activities that would encounter or expose groundwater may occur on the Property without prior approval of Superfund Section or its successor in function.

5. No water supply wells may be installed or used at the property and groundwater may not be otherwise accessed or used at the Property for any purpose.
6. No above- or below-ground construction or improvements (including, but not limited to, utilities, roads, sidewalks, and landscaping) are allowed within 200 feet of the Waste Disposal Area without prior written approval by the Superfund Section or its successor in function.

Each person who owns any portion of the Property shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31<sup>st</sup>, to the Superfund Section or its successor in function, confirming the following:

1. This Declaration is still recorded in the Office of the Forsyth County Register of Deeds.
2. Activities and conditions at the Property remain in compliance with the land use restrictions herein.
3. The Property has not been subdivided since the last letter report submitted to the Superfund Section.

No person conducting environmental assessment or remediation at the Site or involved in determining compliance with applicable land use restrictions at the Property, at the direction of, or pursuant to a permit or order issued by the Superfund Section or its successor in function may be denied access to the Property for the purpose of conducting such activities.

Each person who owns any portion of the Property shall cause the instrument of any sale, lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Declaration. The failure to include such provision shall not affect the validity or applicability of any land use restriction in this Declaration.

### **REPRESENTATIONS AND WARRANTIES**

The owner of the Property hereby represents and warrants that the owner of the Property is the sole owner of the Property holding fee simple title to the Property free and clear;

that the owner of the Property has the power and authority to enter into this Declaration, to grant the rights and interests herein provided and to carry out all obligations hereunder; and

that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the owner of the Property is a party or by which the owner of the Property may be bound or affected.

### **ENFORCEMENT**

Adherence to the above land use restrictions is necessary to protect public health and the environment. The restrictions are an integral part of the remedy for the contamination at the Site

and 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. These land use restrictions shall be enforced by any owner, operator, or other party responsible for any part of the Site. The above land use restrictions may also be enforced by the Superfund Section through the remedies provided in N.C.G.S. Chapter 130A, Article 1, Part 2 or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site. Any attempt to cancel this Declaration without the approval of the Superfund Section or its successor in function shall constitute noncompliance with the Remedial Action Plan approved by the Superfund Section for the Site and shall be subject to enforcement by the Superfund Section 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 Property is sold, leased, conveyed or transferred, pursuant to N.C.G.S. Section 130A-310.8(e) 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 real property being sold, leased, conveyed, or transferred has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice of Inactive Hazardous Substance or Waste Disposal Site referenced in this Declaration.

**OWNER SIGNATURE**

IN WITNESS WHEREOF, I, exercising power of attorney for Forsyth County execute these presents on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signatory's name typed or printed: \_\_\_\_\_

Signatory's title typed or printed: \_\_\_\_\_

Owner name typed or printed: \_\_\_\_\_

Signature: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day, produced proper identification in the form of \_\_\_\_\_, and declared that he *or* she is acting on behalf of, Forsyth County and that by authority duly given and proven by the power of attorney attached hereto, and as the act of Forsyth County he *or* she has signed this Declaration.

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

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

The foregoing Declaration of Perpetual Land Use Restrictions is hereby approved and certified.

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

Jim Bateson, Chief  
Superfund Section  
Division of Waste Management  
North Carolina Department of Environmental Quality

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day, produced proper identification in the form of \_\_\_\_\_, and signed this Declaration.

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

**REGISTER OF DEEDS CERTIFICATION**

The foregoing Declaration of Perpetual Land Use Restrictions is certified to be duly recorded at the date and time, and the Book and Page, shown on the first page hereof.

Register of Deeds for Forsyth County

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

\_\_\_\_\_  
Type or print name and title



**RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PERPETUAL  
LAND USE RESTRICTION AGREEMENT BETWEEN FORSYTH COUNTY AND THE  
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR  
COUNTY OWNED PROPERTY LOCATED AT 3801 NORTH LIBERTY STREET,  
WINSTON-SALEM, NORTH CAROLINA  
(AIRPORT DEPARTMENT)**

**WHEREAS** Forsyth County owns real property located within Smith Reynolds Airport at 3801 North Liberty Street, Winston-Salem, North Carolina, which is contaminated with hazardous substances;

**WHEREAS** the real property is part of an inactive hazardous substance or waste disposal site as defined by the North Carolina's Inactive Hazardous Sites Response Act of 1987; and

**WHEREAS** for the purpose of protecting public health and the environment, Forsyth County hereby declares that all the property designated in the Declaration of Perpetual Land Use Restrictions Agreement shall be held, sold and conveyed subject to the restrictions stated within the Agreement;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that the above-described property will be subject to the Declaration of Perpetual Land Use Restriction Agreement; and

**BE IT FURTHER RESOLVED**, that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the above-described Agreement with the North Carolina Department of Environmental Quality, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The proposed Agreement is attached hereto and incorporated herein by reference.

Adopted this 28<sup>th</sup> day of March 2019.

*DRAFT*

## **DECLARATION OF PERPETUAL LAND USE RESTRICTIONS**

**For Property Owned by: Forsyth County, North Carolina**

**The real property which is the subject of this Declaration of Perpetual Land Use Restrictions (“Declaration”) is contaminated with hazardous substances, and is part of an INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE (“the Site”) as defined by North Carolina’s Inactive Hazardous Sites Response Act of 1987, which consists of Section 130A-310 through Section 130A-310.19 of the North Carolina General Statutes (“N.C.G.S.”). This Declaration is part of a Remedial Action Plan for the Site that has been approved by the Secretary of the North Carolina Department of Environmental Quality, Division of Waste Management, Superfund Section or its successor in function, or his/her delegate, as authorized by N.C.G.S. Section 130A-310.3(f). The North Carolina Department of Environmental Quality shall hereafter be referred to as “DEQ”. Hereafter, the Division of Waste Management, Superfund Section shall be referred to as “Superfund Section”.**

Forsyth County, North Carolina is the owner in fee simple of the property (“the Property”), which is located at 3801 North Liberty Street, in the County of Forsyth, City of Winston-Salem, State of North Carolina, and is the real property legally described in Deed Book 66, Page 66 in the Office of the Register of Deeds for Forsyth County. The Property is also shown on a Notice of Inactive Hazardous Substance or Waste Disposal Site, in the form of a survey plat (“Notice Plat”), which has been recorded prior to the recordation of this Declaration in Map Book \_\_\_\_ Page \_\_\_\_ in the Office of the Register of Deeds for Forsyth County.

For the purpose of protecting public health and the environment, Forsyth County North Carolina hereby declares that all of the Property shall be held, sold and conveyed subject to the following perpetual land use restrictions, which shall run with the land; shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall, as provided in N.C.G.S. Section 130A-310.3(f), 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. These restrictions shall continue in perpetuity and cannot be amended or canceled unless and until the Forsyth County Register of Deeds receives and records the written concurrence of the Secretary of DEQ or its successor in function, or his/her delegate. If any provision of this Declaration is found to be unenforceable in any respect, the validity,

legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

### **PERPETUAL LAND USE RESTRICTIONS**

The following restrictions shall apply to the entire Property:

1. No activities that would cause the exposure, removal, or use of groundwater, including but not limited to, installation of water supply wells, fountains, ponds, lakes, swimming pools or other features that use groundwater, or construction or excavation activities that would encounter or expose groundwater may occur on the Property without prior approval of Superfund Section or its successor in function.
2. Each person who owns any portion of the Property shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31<sup>st</sup>, to the Superfund Section or its successor in function, confirming the following:
  1. This Declaration is still recorded in the Office of the Forsyth County Register of Deeds.
  2. Activities and conditions at the Property remain in compliance with the land use restrictions herein.
  3. The Property has not been subdivided since the last letter report submitted to the Superfund Section.
3. No person conducting environmental assessment or remediation at the Site or involved in determining compliance with applicable land use restrictions at the Property, at the direction of, or pursuant to a permit or order issued by the Superfund Section or its successor in function may be denied access to the Property for the purpose of conducting such activities.
4. Each person who owns any portion of the Property shall cause the instrument of any sale, lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Declaration. The failure to include such provision shall not affect the validity or applicability of any land use restriction in this Declaration.

### **REPRESENTATIONS AND WARRANTIES**

The owner of the Property hereby represents and warrants that the owner of the Property is the sole owner of the Property holding fee simple title to the Property free and clear;

that the owner of the Property has the power and authority to enter into this Declaration, to grant the rights and interests herein provided and to carry out all obligations hereunder;

that the owner of the Property has provided to the Superfund Section the names of all other persons that own an interest in or hold an encumbrance on the Property and has notified such persons of the

owner's intention to enter into this Declaration; and

that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the owner of the Property is a party or by which the owner of the Property may be bound or affected.

### **ENFORCEMENT**

Adherence to the above land use restrictions is necessary to protect public health and the environment. The restrictions are an integral part of the remedy for the contamination at the Site and 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. These land use restrictions shall be enforced by any owner, operator, or other party responsible for any part of the Site. The above land use restrictions may also be enforced by the Superfund Section through the remedies provided in N.C.G.S. Chapter 130A, Article 1, Part 2 or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site. Any attempt to cancel this Declaration without the approval of the Superfund Section or its successor in function shall constitute noncompliance with the Remedial Action Plan approved by the Superfund Section for the Site and shall be subject to enforcement by the Superfund Section 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 Property is sold, leased, conveyed or transferred, pursuant to N.C.G.S. Section 130A-310.8(e) 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 real property being sold, leased, conveyed, or transferred has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice of Inactive Hazardous Substance or Waste Disposal Site referenced in this Declaration.

**OWNER SIGNATURE**

IN WITNESS WHEREOF, I, exercising power of attorney for Forsyth County, North Carolina execute these presents on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signatory's name typed or printed: \_\_\_\_\_

Signatory's title typed or printed: \_\_\_\_\_

Signature: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day, produced proper identification in the form of \_\_\_\_\_, and that by authority duly given, and as the act of Forsyth County, North Carolina he/she has signed this Declaration

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

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

The foregoing Declaration of Perpetual Land Use Restrictions is hereby approved and certified.

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

Jim Bateson, Chief  
Superfund Section  
Division of Waste Management  
North Carolina Department of Environmental Quality

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day, produced proper identification in the form of \_\_\_\_\_, and signed this Declaration.

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

**REGISTER OF DEEDS CERTIFICATION**

The foregoing Declaration of Perpetual Land Use Restrictions is certified to be duly recorded at the date and time, and the Book and Page, shown on the first page hereof.

Register of Deeds for Forsyth County

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

\_\_\_\_\_  
Type or print name and title

**RESOLUTION AUTHORIZING EXECUTION OF A DECLARATION OF PERPETUAL LAND USE RESTRICTION AGREEMENT BETWEEN FORSYTH COUNTY AND THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR COUNTY OWNED PROPERTY LOCATED AT 3817 NORTH LIBERTY STREET, WINSTON-SALEM, NORTH CAROLINA (AIRPORT DEPARTMENT)**

**WHEREAS** Forsyth County owns real property located within Smith Reynolds Airport at 3817 North Liberty Street, Winston-Salem, North Carolina, which is contaminated with hazardous substances;

**WHEREAS** the real property is part of an inactive hazardous substance or waste disposal site as defined by the North Carolina's Inactive Hazardous Sites Response Act of 1987; and

**WHEREAS** for the purpose of protecting public health and the environment, Forsyth County hereby declares that all the property designated in the Declaration of Perpetual Land Use Restrictions Agreement shall be held, sold and conveyed subject to the restrictions stated within the Agreement;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that the above-described property will be subject to the Declaration of Perpetual Land Use Restriction Agreement; and

**BE IT FURTHER RESOLVED**, that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute the above-described Agreement, on behalf of Forsyth County, with the North Carolina Department of Environmental Quality, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The proposed Agreement is attached hereto and incorporated herein by reference.

Adopted this 28<sup>th</sup> day of March 2019.

*DRAFT*

## **DECLARATION OF PERPETUAL LAND USE RESTRICTIONS**

**For Property Owned by: Forsyth County, North Carolina**

**The real property which is the subject of this Declaration of Perpetual Land Use Restrictions (“Declaration”) is contaminated with hazardous substances, and is part of an INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE (“the Site”) as defined by North Carolina's Inactive Hazardous Sites Response Act of 1987, which consists of Section 130A-310 through Section 130A-310.19 of the North Carolina General Statutes (“N.C.G.S.”). This Declaration is part of a Remedial Action Plan for the Site that has been approved by the Secretary of the North Carolina Department of Environmental Quality, Division of Waste Management, Superfund Section or its successor in function, or his/her delegate, as authorized by N.C.G.S. Section 130A-310.3(f). The North Carolina Department of Environmental Quality shall hereafter be referred to as “DEQ”. Hereafter, the Division of Waste Management, Superfund Section shall be referred to as “Superfund Section”.**

Forsyth County, North Carolina is the owner in fee simple of the property (“the Property”), which is located at 3817 North Liberty Street, in the County of Forsyth, City of Winston-Salem, State of North Carolina, and is the real property legally described in Deed Book 66, Page 66 in the Office of the Register of Deeds for Forsyth County. The Property is also shown on a Notice of Inactive Hazardous Substance or Waste Disposal Site, in the form of a survey plat (“Notice Plat”), which has been recorded prior to the recordation of this Declaration in Map Book \_\_\_\_ Page \_\_\_\_ in the Office of the Register of Deeds for Forsyth County.

For the purpose of protecting public health and the environment, Forsyth County, North Carolina hereby declares that all of the Property shall be held, sold and conveyed subject to the following perpetual land use restrictions, which shall run with the land; shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall, as provided in N.C.G.S. Section 130A-310.3(f), 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. These restrictions shall continue in perpetuity and cannot be amended or canceled unless and until the Forsyth County Register of Deeds receives and records the written concurrence of the Secretary of DEQ or its successor in function, or his/her delegate.



If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

### **PERPETUAL LAND USE RESTRICTIONS**

The following restrictions shall apply only to *Area A* of the Property:

1. The concrete flooring shall be maintained across Area A in good condition. Cracks shall be repaired promptly upon discovery. No slab penetrations shall be made in this area without prior written approval by the Superfund Section or its successor in function.

Painted markings and signs indicating the presence of contamination and restricting access shall be located at each corner and along the perimeter of Area A such that they are easily visible along the perimeter of Area A at all times. The signs shall state the following using similar font with a minimum of one-half (0.5) inch font size:

**NOTICE**  
**RESTRICTED ACCESS - CONTAMINATED AREA**  
Contact the Property Owner  
Regarding Land Use Restrictions  
Prior to Slab Penetration

The following restrictions shall apply to both Area A and the entire Property:

1. The Property shall be used exclusively for commercial or industrial purposes but shall not be used for or contain child care facilities, schools, parks, recreational areas, athletic fields, farms, or pastures for grazing.

2. No activities that would cause the exposure, removal, or use of groundwater, including but not limited to, installation of water supply wells, fountains, ponds, lakes, swimming pools or other features that use groundwater, or construction or excavation activities that would encounter or expose groundwater may occur on the Property without prior approval of Superfund Section or its successor in function.

3. No surface or subsurface native or fill earthen materials may be removed from the Property without prior written approval by the Superfund Section or its successor in function.

4. Each person who owns any portion of the Property shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31<sup>st</sup>, to the Superfund Section or its successor in function, confirming the following:

1. This Declaration is still recorded in the Office of the Forsyth County Register of Deeds.

2. Activities and conditions at the Property remain in compliance with the land use restrictions herein.
3. The Property has not been subdivided since the last letter report submitted to the Superfund Section.
5. No person conducting environmental assessment or remediation at the Site or involved in determining compliance with applicable land use restrictions at the Property, at the direction of, or pursuant to a permit or order issued by the Superfund Section or its successor in function may be denied access to the Property for the purpose of conducting such activities.
6. Each person who owns any portion of the Property shall cause the instrument of any sale, lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Declaration. The failure to include such provision shall not affect the validity or applicability of any land use restriction in this Declaration.

### **REPRESENTATIONS AND WARRANTIES**

The owner of the Property hereby represents and warrants that the owner of the Property is the sole owner of the Property holding fee simple title to the Property free and clear;

that the owner of the Property has the power and authority to enter into this Declaration, to grant the rights and interests herein provided and to carry out all obligations hereunder;

that the owner of the Property has provided to the Superfund Section the names of all other persons that own an interest in or hold an encumbrance on the Property and has notified such persons of the owner's intention to enter into this Declaration; and

that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the owner of the Property is a party or by which the owner of the Property may be bound or affected.

### **ENFORCEMENT**

Adherence to the above land use restrictions is necessary to protect public health and the environment. The restrictions are an integral part of the remedy for the contamination at the Site and 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. These land use restrictions shall be enforced by any owner, operator, or other party responsible for any part of the Site. The above land use restrictions may also be enforced by the Superfund Section through the remedies provided in N.C.G.S. Chapter 130A, Article 1, Part 2 or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site. Any

attempt to cancel this Declaration without the approval of the Superfund Section or its successor in function shall constitute noncompliance with the Remedial Action Plan approved by the Superfund Section for the Site and shall be subject to enforcement by the Superfund Section 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 Property is sold, leased, conveyed or transferred, pursuant to N.C.G.S. Section 130A-310.8(e) 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 real property being sold, leased, conveyed, or transferred has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice of Inactive Hazardous Substance or Waste Disposal Site referenced in this Declaration.

**OWNER SIGNATURE**

IN WITNESS WHEREOF, I, exercising power of attorney for Forsyth County, North Carolina execute these presents on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signatory's name typed or printed: \_\_\_\_\_

Signatory's title typed or printed: \_\_\_\_\_

Signature: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day, produced proper identification in the form of \_\_\_\_\_, and that by authority duly given, and as the act of Forsyth County, North Carolina he/she has signed this Declaration

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

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

The foregoing Declaration of Perpetual Land Use Restrictions is hereby approved and certified.

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

Jim Bateson, Chief  
Superfund Section  
Division of Waste Management  
North Carolina Department of Environmental Quality

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day, produced proper identification in the form of \_\_\_\_\_, and signed this Declaration.

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

**REGISTER OF DEEDS CERTIFICATION**

The foregoing Declaration of Perpetual Land Use Restrictions is certified to be duly recorded at the date and time, and the Book and Page, shown on the first page hereof.

Register of Deeds for Forsyth County

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

\_\_\_\_\_  
Type or print name and title