

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF North Carolina Warehouse LLC

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Color-Tex International
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	2555 Highway 29 North
BF Project Number 09002-05-80)	Salisbury, NC 28144

I. INTRODUCTION

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

North Carolina Warehouse LLC registered as a limited liability company in Massachusetts on March 1, 2002. It has reserved the same name in North Carolina. Its principal mailing address is 276 Washington Street, PMB 322, Boston, MA 02108, and its registered agent and managing member is David L. Risdon. The Property consists of an approximate 70-acre parcel and an approximate 130-acre parcel (Tax PIN 048-006) along Interstate 85 in Rowan County, bordering the Yadkin River to the south. On the 70-acre parcel the following buildings are located: a 400,000-square foot fabric finishing plant that is being demolished, a 54,000-square foot warehouse, an 18,000-square foot machine shop, a 12,000-square foot office building, a 6,000-square foot school house, a 3,500-square foot guard house and a 500-square foot garage. All structures will be retained except the 400,000 square foot finishing plant and will be part of the property development that will include residential, commercial, institutional and recreational uses. Located on the 130-acre parcel are a wastewater treatment plant and two closed debris landfills that are no longer in use. A map showing the location of the property

which is the subject of this Agreement is attached hereto as Exhibit 1.

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

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

The resolution of this potential liability, in exchange for the benefit North Carolina Warehouse LLC shall provide to **DENR**, is in the public interest.

II. DEFINITIONS

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

1. "Property" shall mean the Brownfields Property which **is** the subject of this Agreement, and which is described and depicted in Exhibit 1 of this Agreement.
2. "Prospective Developer" shall mean North Carolina Warehouse LLC.

III. STATEMENT OF FACTS

3. The Property comprises approximately 200 acres. Prospective Developer has committed itself to redevelopment for no uses other than residential, commercial, institutional

and recreational.

4. The Yadkin River forms the boundary of the Property to the east and northwest.

Across the river from the Property is land that is residential, agricultural and undeveloped. The Yadkin United Methodist Church is located adjacent to the site to the southwest; a residential area is also located southwest of the site. A former school is located along the western border of the Property.

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

Title	Prepared by	Date of Report
Phase II Environmental Investigation Report NC Finishing Company, Color-Tex Inc.	Arcadis Geraghty & Miller	May 1998
Remedial Investigation Report NC Finishing Site NCD 041 414 780 (Volumes I-III)	S&ME, Inc.	December 5, 2002

6. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to activities relevant to the Property:

a. The original mill structure is the fabric finishing plant on the 70-acre parcel; it was completed in 1916. “Wet finishing” occurred there; it involved the continuous dyeing and finishing of fabric. The most recent operations at the mill utilized the following types of dyes: sulfur, naphtha, vat, dispersion, pigment and exhaust dye.

b. Additions were made to the original mill structure from the 1920s to the 1960s. Most of the other structures on the 70-acre parcel were constructed in the 1960s.

c. The Property was acquired by the Erlanger Corporation in the 1920s. In the 1960s, Fieldcrest Cannon, Inc. acquired the property from Erlanger. In 1998, Pillowtex Corporation acquired Fieldcrest Cannon, Inc.; later that same year Color-Tex International, Inc. acquired the Property.

d. Pillowtex Corporation provided an environmental indemnification to Color-Tex as part of the terms of the sale.

e. Color-Tex International ceased operations in October of 2000. The Property has remained vacant and unused since that time.

f. In July 2003, Pillowtex Corporation declared bankruptcy and ceased remediation activities it had initiated with respect to the Property.

7. The most recent environmental sampling at the Property reported in the Environmental Reports occurred in the fall of 2002. The following tables set forth, for contaminants present at the Property above unrestricted use standards, the maximum concentration found at each sample location and the applicable standard:

a. Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule ,0202:

Groundwater Contaminant	Sample Location	Date of Maximum Concentration Sampling	Maximum Concentration above Std. (µg/L)	Most Recent Concentration (ug/L)	Standard (µg/L)
Benzene	MW-5	1998	1100		1
					3

Groundwater Contaminant	Sample Location	Date of Maximum Concentration Sampling	Maximum Concentration above Std. (µg/L)	Most Recent Concentration (ug/L)	Standard (µg/L)
phthalate					
MTBE	MW-5	1998	2500		200
Naphthalene	MW-5	1998	41		21
<u>Kerosene UST</u>					
Naphthalene	SB-30W	1998	110		21
2,4-Dichlorophenol	MW-30	1998	18		NS
Gasoline	MW-30	1998	4		NS
Diesel #2	MW-30		22		NS
<u>Chemic Area (chemical receiving and storage)</u>					
Arsenic	CMW-1	04/13/2001	24		10
Arsenic	FMW-103	04/12/2001	17		10
Benzene	FPH-103	06/26/2000	11		1
Benzene	Chemic MW-1	1998	3		1
Bis (ethyl hexyl) phthalate	Chemic MW-1	1998	26		3
Bromoform	CMW-1	10/09/2002	13		0.19
Lead	FPH-101	06/26/2000	29		15
Lead	FPH-102	06/26/2000	16		15
Lead	FPH-102	06/26/2000	38		15
Mercury	CMW-1	10/09/2002	3.2		1.1
<u>South Building Area (former 20,000 gallon UST)</u>					
Arsenic	MW-12	04/13/2001	20		10
Arsenic	MW-16	04/13/2001	15		10
Arsenic	MW-18	04/13/2001	19		10

Groundwater Contaminant	Sample Location	Date of Maximum Concentration Sampling	Maximum Concentration above Std. (µg/L)	Most Recent Concentration (ug/L)	Standard (µg/L)
Benzene	FMW-104	04/12/2001	5.7		1
Benzene	FMW-204	04/12/2001	6.8	10/09/2002 ND <5	1
Benzene	MW-7	10/09/2002	11		1
Benzene	VE-1	06/22/2001	12	10/09/2002 ND <5	1
Chlorobenzene	FMW-104	04/12/2001	170		50
Chlorobenzene	FMW-204	04/12/2001	160	10/09/2002 10	50
Chlorobenzene	MW-8	10/09/2002	57		50
Chlorobenzene	VE-1	06/22/2001	200	10/09/2002 31	50
1,2-Dichlorobenzene	VE-1	06/22/2001	780	10/09/2002 77	620
1,4-Dichlorobenzene	VE-1	10/09/2002	130		75
1,4-Dichlorobenzene	MW-7	10/09/2002	100		75
Lead	MW-13	10/09/2002	33		15
2-Methylnaphthalene	MW-13	10/09/2002	18		14
Pentachlorophenol	MW-7	10/09/2002	110		0.3
Trichloroethene (TCE)	VE-1	06/22/2001	17	10/09/2002 8	2.8
<u>Burn Pit/ Clarifier Area</u>					
Arsenic	FMW-206	04/13/2001	12	10/16/2002 ND < 25	10
Arsenic	FMW-107	04/13/2001	14	10/09/2002 ND <5	10

Groundwater Contaminant	Sample Location	Date of Maximum Concentration Sampling	Maximum Concentration above Std. (µg/L)	Most Recent Concentration (ug/L)	Standard (µg/L)
Arsenic	FMW-207	04/13/2001	22	10/16/2002 ND < 5	10
Arsenic	FMW-1	04/13/2001	14		10
Barium	FMW-206	10/16/2002	2200		2000
Chromium	FMW-206	10/16/2002	370		50
Chromium	FMW-1	04/13/2001	70		50
Lead	FMW-206	10/16/2002	1800		15
Mercury	FMW-206	10/16/2002	14		11
Bis (2-ethyl hexyl) phthalate	SB-27/MW	1998	12		3
Chloroform	FMW-206	04/13/2001	8.6	10/16/2002 10	0.19
Chloroform	FMW-108	10/09/2002	9		0.19
Tetrachloroethene (PCE)	FMW-206	04/13/2001	140	10/16/2002 68	0.7
Tetrachloroethene (PCE)	FMW-108	10/09/2002	30		0.7
Tetrachloroethene (PCE)	FMW-1	04/13/2001	60		0.7
Tetrachloroethene (PCE)	SB-25/MW	1998	16		0.7
1,2-Dichloropropane	FMW-109	10/09/2002	34		0.56
<u>Machine Shop Area</u>					
Arsenic	FMW-105	04/13/2001	16	10/09/2002 ND < 5	10
Arsenic	FMW-	04/13/2001	12	10/09/2002	10

Groundwater Contaminant	Sample Location	Date of Maximum Concentration Sampling	Maximum Concentration above Std. ($\mu\text{g/L}$)	Most Recent Concentration (ug/L)	Standard ($\mu\text{g/L}$)
	205			ND < 5	
Cadmium	FMW-105	10/06/2002	14		5
Chloroform	FMW-205	10/09/2002	6		0.19
		1998	10		0.19
		1998	2		0.19
		06/20/2000	37		0.7
		06/20/2000	110		0.7
		04/13/2001	28	10/09/2002 15	0.7
		04/13/2001	45	10/09/2002 29	0.7
(PCE)		1998	59		0.7
Tetrachloroethene (PCE)	SB-15	1998	3		0.7
Tetrachloroethene (PCE)	SB-17	1998	40		0.7

b. Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the standards for which are derived using the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section:

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
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Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
<u>Garage Area</u>					
Chromium	SB-1	10-13	03/02/1998	32.1	30
Chromium	SB-31	7 – 10	04/15/1998	82J	30
Naphthalene	SB-1	10 – 13	03/02/1998	16	11.2
TPH- Diesel	SB-1	10 – 13	03/02/1998	358	40
TPH-Diesel	SB-5	10 – 13	03/03/1998	476	40
TPH- Diesel	SB-29	7-10	04/15/1998	2310	40
<u>Chemic Area</u> (chemical receiving and storage)					
Arsenic	FPH-101	1.5 – 2.0	06/26/2000	6.1	4.4
Arsenic	FPH-102	1.5 – 2.0	06/26/2000	4.7	4.4
Arsenic	FPH-106	7 – 10	06/21/2000	5.1	4.4
Benzo (a) pyrene	FPH-104	2.0	06/27/2000	0.47	0.062
Chromium	FPH-101	1.5 – 2.0	06/26/2000	63	30
Chromium	FPH-102	1.5 – 2.0	06/26/2000	66	30
Chromium	FPH-103	1.5 – 2.0	06/26/2000	110	30
Chromium	FPH-103	8 – 11	06/26/2000	56	30
Chromium	FPH-104	1.5	06/26/2000	89	30
Chromium	FPH-104	2.0	06/26/2000	63	30
Chromium	FPH-106	1.5 – 2.0	06/21/2000	60	30
2-Hexanone	SB-23A	5	1998	5.6	NS
4-Isopropyltoluene	SB-32	Un-known	1998	0.6	NS

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
2-Methyl Naphthalene	SB-32	Un-known	1998	12	11.2
Phenanthrene	FPH-104	2.0	06/27/2000	1.1	NS
1,1,2,2-Tetrachloroethane	SB-23A	5	1998	6.1	0.41
Oil & Grease	SB-23A	5	1998	290	250
Diesel #2	SB-23A	5	1998	5280	40
Diesel #2	SB-32	Un-known	1998	4910	40
<u>South Building Area (former 20,000 gallon UST Area)</u>					
Naphthalene	GP-3	8-10	08/08/2002	36	11.2
Naphthalene	GP-3	16-17	08/08/2002	30	11.2
Naphthalene	GP-3	21-22	08/08/2002	44	11.2
2-Methylnaphthalene	GP-3	8-10	08/08/2002	52	11.2
2-Methylnaphthalene	GP-3	16-17	08/08/2002	52	11.2
2-Methylnaphthalene	GP-3	21-22	08/08/2002	83	11.2
Arsenic	FPH-116	8 - 20	06/20/2000	5.9	4.4
Chromium	FPH-116	8 - 20	06/20/2000	44	30
<u>Burn Pit/ Clarifier Area</u>					
Benzo (a) anthracene	FPH-113	1.5 - 2.0	06/26/2000	1.8	0.62
Benzo (a) anthracene	SB-26	2-3	03/02/1998	10	0.62
Benzo (a) pyrene	FPH-113	1.5 - 2.0	06/26/2000	1.8	0.062
Benzo (a) pyrene	FPH-115	1.5 - 2.0	06/22/2000	0.51	0.062

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
Benzo (a) pyrene	SB-26	2 - 3	03/12/1998	10	0.062
Benzo (b) fluoranthene	FPH-113	1.5 - 2.0	06/26/2000	1.4	0.62
Benzo (b) fluoranthene	FPH-115	1.5 - 2.0	06/22/2000	0.64	0.62
Benzo (b) fluoranthene	SB-26	2 - 3	1998	12	0.62
Benzo (g,h,i) perylene	FPH-113	1.5 - 2.0	06/26/2000	1.1	NS
Benzo (g,h,i) perylene	SB-26	2 - 3	03/12/1998	6.7	NS
Benzo (k) fluoranthene	SB-26	2 - 3	03/12/1998	8.2	6.2
Indeno (1,2,3-cd) pyrene	FPH-113	1.5 - 2.0	06/26/2000	1.0	0.62
Indeno (1,2,3-cd) pyrene	SB-26	2 - 3	03/12/1998	7.6	0.62
Phenanthrene	FPH-113	1.5 - 2.0	06/26/2000	3.1	NS
Arsenic	FPH-113	1.5 - 2.0	06/26/2000	10	4.4
Arsenic	FPH-113	15 - 19	06/26/2000	36	4.4
Arsenic	SB-8	16 - 20	03/03/1998	13.1	4.4
Arsenic	SB-25	2 - 4	03/12/1998	10.7	4.4
Arsenic	SB-26	2 - 3	03/12/1998	50.5	4.4
Cadmium	SB-26	2 - 3	03/12/1998	7.88	7.4
Cadmium	FPH-113	15 - 19	06/26/2000	22	7.4
Chromium	FPH-111	1.5 - 2.0	06/22/2000	43	30
Chromium	FPH-112	1.5 - 2.0	06/26/2000	280	30
Chromium	FPH-113	1.5 - 2.0	06/26/2000	50	30

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
Chromium	FPH-113	15 - 19	06/26/2000	140	30
Chromium	FPH-114	1.5 - 2.0	06/23/2000	46	30
Chromium	SB-9	12 - 16	03/03/1998	165	30
Chromium	SB-8	16 - 20	03/03/1998	165	30
Chromium	SB-25	2 - 4	03/12/1998	82	30
Chromium	SB-26	2 - 3	03/12/1998	120	30
Lead	SB-26	2 - 3	03/12/1998	1100	400
<u>Machine Shop Area</u>					
Arsenic	FPH-109	1.5 - 2.0	06/21/2000	4.6	4.4
Arsenic	HA-4	3 - 4	11/08/2002	11	4.4
Arsenic	HA-4	4 - 5	11/08/2002	19	4.4
Arsenic	HA-4	5 - 6	11/08/2002	4.8	4.4
Chromium	FPH-107	1.5 - 2.0	06/20/2000	56	30
Chromium	FPH-109	1.5 - 2.0	06/21/2000	53	30
Chromium	FPH-110	1.5 - 2.0	06/20/2000	33	30
Chromium	FPH-110	20 - 24	06/20/2000	44	30
Chromium	HA-5	5 - 6	11/08/2002	47	30
Chromium	HA-5	6 - 7	11/08/2002	34	30
<u>Debris Landfills</u>					
Benzo (a) anthracene	Test #3	10	1998	6.4	0.62
Benzo (a) pyrene	Test #3	10	1998	6.2	0.062
Benzo (b) fluoranthene	Test #3	10	1998	5.6	0.62
Benzo (g,h,i)	Test #3	10	1998	3.9	NS

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
perylene					
Arsenic	Test #2	10	1998	6.69	4.4
Arsenic	Test #4	10	1998	5.59	4.4
Chromium	Test #2	10	1998	71.7	30
Chromium	Test #3	10	1998	56	30
Chromium	Test # 4	10	1998	37.2	30
<u>Fly Ash Storage Area</u>					
Arsenic	Fly Ash #1	Un-known	1998	22.4	4.4
Chromium	Fly Ash #1	Un-known	1998	30.5	30
Arsenic	Fly Ash #2	Un-known	1998	47.3	4.4
Chromium	Fly Ash #2	Un-known	1998	57.2	30
<u>Coal Bin Area</u>					
Arsenic	Coal 1	Un-known	1998	22.7	4.4

J= estimated concentration

TPH = Total Petroleum Hydrocarbons

NS = no standard

8. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Letter of Intent dated **January** 7, 2005, acquiring the first mortgage on the Property from Patriarch Partners in October of 2001, and foreclosing on that mortgage and taking title to the Property in July of 2002.

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

a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);

b. As a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;

d. Prospective Developer has or can obtain the financial, managerial and technical means to fully implement this Agreement and assure the safe use of the Property; and

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

10. Prospective Developer has paid the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1). Pursuant to N.C.G.S. § 130A-310.39(a)(2), the procedure upon which Prospective Developer and DENR have agreed for payment of the full cost to DENR and the North Carolina Department of Justice ("DOJ") of all activities related to this Agreement is that Prospective Developer shall pay any amount by which DOJ's hours, multiplied by \$36.24, exceed the \$2,000 fee referenced above in this paragraph. (DENR has

incurred no costs.)

IV. BENEFIT TO COMMUNITY

11. The redevelopment of the Property proposed herein would provide the following public benefits:
- a. a return to productive use of the Property and elimination of the drawbacks of unoccupied property;
 - b. a spur to additional community redevelopment, through improved neighborhood appearance and increased economic vibrancy;
 - c. temporary construction jobs and permanent retail, commercial, and industrial jobs;
 - d. increased tax base and tax revenue for affected jurisdictions;
 - e. additional retail, commercial and light industrial space for the area; and
 - f. "smart growth" through use of land in an already developed area, which avoids development of land beyond the urban fringe ("greenfields").

V. WORK TO BE PERFORMED

12. Prospective Developer shall complete the assessment and remedial actions prescribed by this Section V, to DENR's satisfaction, within 18 months after the effective date of this Agreement and prior to any use of the Property. Prospective Developer shall ensure that a qualified environmental professional acceptable to the DENR official identified in paragraph 39.a. below, in addition to performing any and all other duties assigned by Prospective Developer, oversees all removal of contaminated soil required pursuant to this Agreement and, post-removal, inspects the Property to verify that contaminated soil has been managed pursuant

to the methods specified in this Agreement. Analysis of all sampling required by this Agreement shall be by a laboratory certified by DENR's Division of Water Quality. To the extent any activities required of Prospective Developer by this Agreement would violate the land use restrictions set forth in this Section of the Agreement, the same shall not be considered violations.

13. Prospective Developer shall submit, for DENR's approval, an assessment plan for the following areas of the Property:

- a. the waste water treatment plant ("WWTP") area and the two debris landfills located on the 130-acre parcel referenced above as Tract 1.
- b. the pond east of the plant buildings on the 70-acre portion of the Property.
- c. any area of soil found, during redevelopment, to bear any stain or odor.

14. The assessment plan shall require, without limitation:

- a. a determination of whether methane gas is present in the two debris landfill areas and, if so, the subsurface pressure of the gas;
- b. an evaluation of the landfill caps;
- c. an assessment of the sludge produced by the Property's WWTP and of the sludge application areas;
- d. an assessment of pond water and pond sediment;
- e. an evaluation of the quality of the groundwater hydraulically downgradient of the WWTP and debris landfills; and
- f. a report setting forth the results of the assessment activities.

15. If DENR approves the assessment plan required by paragraph 13 above, within thirty

(30) days after Prospective Developer's receipt of written approval, Prospective Developer shall initiate implementation of the plan. Prospective Developer shall complete implementation of the plan in compliance with the approved plan's schedule, and shall, on a schedule established by DENR, correct any deficiencies DENR determines exist regarding implementation of the plan and/or the report on the results of assessment activities. Thereafter, on a schedule established by DENR, Prospective Developer shall conduct any additional sampling and remediation, including imposition of land use restrictions in addition to or different from those set forth below, and implement any protective measures, that DENR determines are necessary.

16. If Rowan County grants a conditional use permit to build a racetrack facility in the 130-acre parcel within the area of the Property referenced above as Tract 1 (where the former Waste Water Treatment Plant and two debris landfills are located), Prospective Developer shall submit for DENR's review and approval all plans for the racetrack. In addition, Prospective Developer shall submit for DENR's approval a Spill Prevention and Control Measures Plan and a Waste Management Plan for review prior to operation of the facility. The spill prevention and waste management plans shall:

- a. delineate areas where cars will be repaired,
- b. evaluate the potential for release of fuel, oil, antifreeze, brake fluid and any other materials associated with auto racing, and describe how any such releases shall be remediated: and
- c. describe a system for the collection and disposal of waste oil, waste antifreeze, waste brake fluid, other waste fluids and other automobile-related wastes such as used/broken automobile **parts** and tires,

17. Prospective Developer shall address contamination from the former 20,000-gallon fuel oil underground storage tank (DENR “UST Incident No. 16198”) to the satisfaction of **DENR’s** Underground Storage Tank (“UST”) Section. During January of each year after this Agreement becomes effective, until Prospective Developer submits to the DENR official identified in paragraph 39.a. below a copy of a “No Further Action” letter from DENR’s UST Section regarding the above-referenced UST incident, Prospective Developer shall, in writing, certify to DENR that Prospective Developer is continuing to cooperate with DENR’s UST Section to achieve full compliance with applicable provisions of law, and report progress towards that goal made since the last report.

18. 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 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 except for those wells that are required for monitoring or remediation of the petroleum UST contamination at the Property [**to be determined prior to Agreement finalization**]. 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.

19. Before restoring particular buildings, Prospective Developer shall backfill, with concrete or other material acceptable to DENR, any pits, sumps and other subsurface openings within them, and shall seal or otherwise secure access points to sub-floq areas. Prospective

Developer shall backfill, with clean soils or other suitable fill material, any pits, sumps and other subsurface openings in demolition areas.

20. Prospective Developer shall, to DENR's written satisfaction, sample soil in the area denominated "Former Burn Pit/Clarifier" on the plat component of the Notice referenced in paragraph 26 below. If DENR determines there is soil present that contains contaminant concentrations above the applicable remediation goals of DENR's Inactive Hazardous Sites Branch, Prospective Developer shall remove and backfill with clean fill as much soil as DENR requires, or cap the entire area with an impervious cover to DENR's written satisfaction in order to prevent exposure to the contaminated soil.

21. By way of the Notice of Brownfields Property referenced below in paragraph 26, 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. All references to DENR shall be understood to include any successor in function.

a. No use other than the following may be made of the Property, assuming all applicable legal approvals are obtained: mixed-use development consisting of residential, commercial, institutional, recreational, open space and racetrack uses, with associated impervious or hard pervious surface parking areas. Residential and racetrack use shall be restricted to specific areas of the Property as reflected on the plat component of the Notice referenced in paragraph 26 below unless prior approval is granted from DENR. The following definitions apply herein in connection with the foregoing uses:

i. Commercial: an occupation, employment, or enterprise carried on for

profit by the owner, lessee or licensee.

ii. Residential: use for a permanent dwelling of any single family, detached, duplex, triplex, quadraplex, attached or multifamily dwelling; any manufactured home; any mobile home; any group home; any boarding house or any dormitory.

iii. Recreational:

A. Outdoor: public or private tennis courts, ball fields, ball courts, places for public gatherings or similar uses not enclosed in buildings.

B. Indoor: public or private health or exercise clubs, tennis or other racquet courts, swimming pools, YMCAs, YWCAs, places for public gatherings or similar uses which constitute principal uses and are enclosed in buildings and operated on a commercial or membership basis.

iv. Institutional use: use of land, buildings or structures for a public purpose, in this case a museum .

v. Open space: an area of open space within a development site designed and intended for the use and enjoyment of residents of the development or for the general public, or a greenway/strollway, defined as a linear open space along a natural or constructed corridor, which may be used for pedestrian or bicycle passage.

vi. Impervious: prevents the absorption of surface water into the soil.

vii. Hard pervious: 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 underlying soil. Pervious concrete and pervious tennis court materials are examples of hard pervious surfaces.

h. Surface water and underground water at the Property may not be used for water supply wells, fountains, ponds, lakes, swimming pools or any other purpose without the approval of DENR, except that Yadkin River water may be used to fill ponds on the property.

c. Groundwater may not be encountered, exposed or removed (e.g., in connection with construction, excavation or landscaping) without prior analysis of relevant groundwater to the satisfaction of 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 to protect public health and the environment during the proposed activities.

d. Soil underlying paved surfaces and buildings at the Property, as denominated on the plat component of the Notice referenced below in paragraph 26, may not be exposed without the performance and analysis of any prior sampling that DENR requires, and submittal of the analysis of any such sampling to DENR. If the results of any such sampling 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.

e. If the area denominated "Former Burn Pit/Clarifier" on the plat component of the Notice referenced in paragraph 26 below is capped with an impervious cover, the owner(s) of the relevant portion of the Property shall maintain the cap in good repair and certify its good repair in each Land Use Restrictions Update required by paragraph 21, below.

f. Any soil proposed to be removed from the Property must be characterized to the written satisfaction of **DENR**. If DENR determines that such soil is contaminated in excess of legally applicable soil standards, the soil may not be removed without the approval of DENR on such conditions as DENR imposes. However, if DENR determines such soil would likely contaminate groundwater even if capped, or may pose an imminent threat to public health or the environment if exposed, as much soil as DENR requires shall be removed and disposed of in accordance with applicable law, and any other actions that DENR requires to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment shall be taken. **As** to any soil removed from the Property, information satisfactory to **DENR** regarding the transportation and disposition of such soil must be supplied in a written report to DENR within ninety (90) days following removal

g. Following initial landscaping of the Property, as determined by DENR, soil, landscaping and contours on the Property may not be disturbed without the approval of **DENR**, except in connection with mowing, fertilizing, pruning and replacement of above-ground landscaping features.

h. No in-ground swimming pools may be constructed at the Property without advance written approval from **DENR** of a plan for disposition of the soil excavated.

i. 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.

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

k. None of the contaminants known to be present in the environmental media at

the Property, including those listed in paragraph 7 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.

1. The Property may not be used for agriculture, grazing, timbering or timber production.
 - m. No playground, child care center or school with an outdoor play area or sports fields (including, but not limited to, golf, football, soccer and baseball) may be used unless and until:
 - i. DENR is apprised in writing of areas proposed to be left uncovered by impervious surfaces; and
 - ii. as much clean fill is placed on top of these areas as DENR requires in writing, or surficial soil is characterized to DENR's written satisfaction and, if DENR deems it necessary based on the characterization, an impervious surface is installed or soil is removed to the extent required in writing by DENR;
 - n. Unless compliance with this land use restriction is waived in writing by DENR in advance in regard to particular buildings, no indoor space on the Property may be occupied until mechanical ventilation with outdoor air is provided in compliance with the most current version of the Mechanical Ventilation section of the Ventilation chapter of the North Carolina State Building Code ("Code"), the most current EPA guidance on radon-resistant techniques for new residential construction, or another standard approved in writing in advance by DENR. If the choice is made to comply with the Code, then i. or ii. below, as applicable, also applies
 - i. This subparagraph applies to buildings on the Property that already possess

mechanical ventilation systems.

A. A professional engineer registered in North Carolina shall inspect the mechanical ventilation system and shall document any measures required to bring the system into compliance with the Code.

B. A heating, ventilation and air-conditioning contractor shall implement any measures documented by the professional engineer.

C. A party certified by the American Association of Balancing Contractors or the National Environmental Balancing Bureau, other than the heating, ventilation and air-conditioning contractor, shall perform testing, adjusting **and** balancing of the system when any work by the contractor is complete. Within seven (7) days after its issuance, a copy of the Certified Test and Balance Report shall be submitted to DENR

D. The professional engineer shall provide **DENR** certification under seal that all possible entrances for vapors, including without limitation foundation cracks, holes in concrete floors, gaps around pipes **and** utility lines, major cracks in walls, sumps and floor drains, have been sealed, and that the ventilation system complies with the Code.

ii. As to new buildings constructed on the Property, and any existing buildings lacking mechanical ventilation but required by the Code to have it, within thirty (30) days following installation of mechanical ventilation, that fact shall be confirmed in writing to **DENR.**

o. No construction may occur on the Property until **DENR** has been consulted regarding proximity of the planned building(s) to the Property's volatile contaminant plume. If DENR determines that the footprint of the building(s) would fall within one hundred (100) feet

of said plume, a vapor barrier, at least four (4) millimeters thick and consisting of a material resistant to the contaminants listed in paragraph 7 above, shall be installed under the entire slab-on-grade foundation of the building. The vapor barrier shall be sealed around any vertical pilings and other support structures underneath the slab, overlapped, and taped or otherwise stabilized, so as to minimize air migration pathways. A spray membrane liner system consisting of a material resistant to the same contaminants may be installed in lieu of a vapor barrier. Within thirty (30) days following installation of the vapor barrier or spray membrane liner system, DENR shall be provided the certification under seal of a professional engineer registered in North Carolina that the installation has been proper, as well as photographs illustrating the installation and a brief narrative describing it,

p. In areas denominated “known or suspected surface soil contamination” on the plat component of the Notice referenced in Paragraph 26 below, greenway paths, strollway paths and parking areas shall be constructed of an impervious or hard pervious material.

q. All impervious surfaces at the Property shall be maintained in good repair by the owners of affected portions of the Property, whether or not another party has made a commitment to perform any **part** of said maintenance.

r. During January of each year after this Agreement becomes effective, the then current owner of any part of the Property shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR or its successor in function certifying that the Notice of Brownfields Property containing these land use restrictions remains recorded at the Rowan County Register of Deeds office, that the land use restrictions are being complied with, and that the impervious and pervious areas required to be inspected above are in good repair ~~such that~~ they are continuing to

functions as caps. Alternatively, the obligations of this subparagraph may be discharged on behalf of some or all owners by a party that satisfies DENR it is validly acting as agent for said owners, and that accepts responsibility for compliance with this subparagraph pursuant to a notarized instrument satisfactory to DENR.

21. 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.

22. 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.

23. The consequences of achieving or not achieving the desired results will be that the Property is or is not suitable for the uses specified in the Agreement while fully protecting public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

24. Commencing upon the effective date of this Agreement, Prospective Developer agrees to provide to DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by the Prospective Developer, for the purposes of performing or overseeing response actions at the Property under applicable law. DENR agrees to provide reasonable notice to the Prospective Developer of the timing of response actions to be undertaken at the Property.

Notwithstanding any provision of this Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

25. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, inter alia, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Property. Pursuant to N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the Rowan County, North Carolina register of deeds' office. Within three days thereafter, Prospective Developer shall furnish **DENR** a copy of the documentary component of the Notice containing a certification by the register of deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

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

27. The Prospective Developer shall ensure that assignees, successors in interest, lessees and sublessees of the Property shall provide the same access and cooperation. The Prospective

Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section V (Work to be Performed) and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

VII. DUE CARE/COOPERATION

28. The Prospective Developer shall exercise due care at the Property with respect to regulated substances and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. DENR agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Prospective Developer's operations by any such remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S. 130A-310.1 and 143-215.84, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

VIII. CERTIFICATION

29. By entering into this agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property, assuming applicable legal approvals are

obtained, other than that committed to in the Brownfields Letter of Intent dated January 7, 2005 by which it applied for this Agreement. That use is residential, recreational, retail, commercial and industrial. Racetrack use is also approved, assuming applicable legal approvals are obtained. See the plat component of the Notice referenced in paragraph 26 above regarding geographic limitations on residential and racetrack use. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any regulated substances at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

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

30. Unless one of the following applies, Prospective Developer shall not be liable to DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement:

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the **risk** of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.
- c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in

which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.

d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

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

g. The Department obtains new information about a contaminant associated with

the Property or exposures at or around the Property that raises the **risk** to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

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

31. Except as may be provided herein, DENR reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act, including those regarding petroleum underground storage tanks pursuant to Part 2A, Article 21A of Chapter 143 of the General Statutes

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

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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

XI. PARTIES BOUND & TRANSFER/ASSIGNMENT NOTICE

34. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this

Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

35. No later than fourteen (14) days prior to any transfer or assignment by Prospective Developer of any interest in the Property, Prospective Developer shall provide in writing to DENR the transferee or assignee's name, mailing address, telephone and facsimile numbers, and e-mail address.

XII. DISCLAIMER

36. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-3 10.37.

XIII. DOCUMENT RETENTION

37. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for ten years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR

XIV. PAYMENT OF ENFORCEMENT COSTS

38. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be

liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

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

- a. for DENR:

Ms. Sandra Moore
N.C. Division of Waste Management
Brownfields Program
401 Oberlin Road, Suite 150
Raleigh, NC 27605

- b. for Prospective Developer:

David Risdon
NC Warehouse, LLC
276 Washington Street
PMB 322
Boston, MA 02108

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

XVI. EFFECTIVE DATE

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

XVII. TERMINATION OF CERTAIN PROVISIONS

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

XVIII. CONTRIBUTION PROTECTION

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

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

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

XIX. PUBLIC COMMENT

45. This Agreement shall be subject to a public comment period of at least sixty days starting the day after publication of the approved **summary** of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-3 10.34 in the North Carolina Register, or the

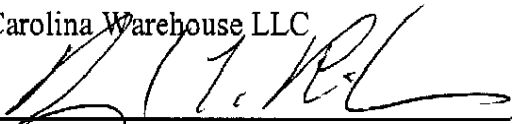
day after publication of the same in a newspaper of general circulation serving the area in which the Property is located, whichever occurs later. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
By:

Linda M. Culpepper
Deputy Director, Division of Waste Management

Date

IT IS SO AGREED:
North Carolina Warehouse LLC
By:



4.7/05

David L. Risdon
Managing Member

Date