

**STATE OF TENNESSEE**  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**DIVISION OF REMEDIATION**  
**BROWNFIELD VOLUNTARY AGREEMENT**

This Brownfield Voluntary Agreement addresses the 12.03-acre Site located at 1420 Adams Street in Nashville, Davidson County, Tennessee. The Site has been assigned site number 19-752 and is known as the Modera Germantown Site.

I. INTRODUCTION

This Brownfield Voluntary Agreement (hereinafter referred to as the "Agreement") is made and entered into as of the last date of execution shown herein below by and between the Tennessee Department of Environment and Conservation (hereinafter referred to as "TDEC" or the "Department") and Germantown JV, LLC, a limited liability company organized and existing pursuant to the laws of the State of Delaware (hereinafter "Voluntary Party") for the purpose of addressing the above-referenced site (hereinafter "Site"), which has the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or any other pollutant. The administrative record for the Site addressed in this Agreement is maintained by the Department's Division of Remediation. The Site has been assigned site number 19-752 and is known as the Modera Germantown Site.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department. James S. Sanders, Director of the Department's Division of Remediation, has been delegated the authority to enter into this Agreement.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into an Agreement with a party who is willing and able to conduct an investigation and/or

remediation of a hazardous substance site or Brownfield Project and who did not generate, transport or release the contamination that is to be addressed at the Site.

The Department and the Voluntary Party agree to undertake all actions required by this Agreement. The purpose of this Agreement is to set forth a scope and schedule of activities at the above-referenced Site and respond to the actual, threatened, or perceived release of hazardous substances at the Site. In addition, this Agreement is intended to settle and resolve completely the potential liability of the Voluntary Party for the real or perceived threat of the presence of hazardous substances, solid waste, or any other pollutant at the Site which might otherwise result if and when Voluntary Party becomes the owner and/or operator of the Property.

## II. REQUIREMENTS

### A. **SITE LOCATION**

The Site is located at 1420 Adams Street in Nashville, Davidson County, Tennessee. A legal description of the Site and a survey map showing the Site is attached as Exhibit A, which is incorporated herein by reference. The Site is made up of two separate parcels, as described in Exhibit A.

### B. **ELIGIBILITY**

As required by Tennessee Code Annotated § 68-212-224(a)(4), as of the effective date of this Agreement, the Department has determined that the Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency (“EPA”).

The Voluntary Party was accepted into the Brownfield Projects Voluntary Cleanup Oversight and Assistance Program on October 27, 2020. By entering into this Agreement, the Voluntary Party certifies to the best of the Voluntary Party’s knowledge that pursuant to Tennessee Code Annotated

§ 68-212-224(a)(1) the Voluntary Party did not generate, transport, or release the contamination that is to be addressed at the Site. As required by Tennessee Code Annotated § 68-212-224(a)(2), a summary description of all known existing environmental investigations, studies, reports, or documents concerning the Site's environmental condition has been submitted to the Department by the Voluntary Party (a copy of the Summary is attached hereto as Exhibit B).

### **C. FINANCIAL REQUIREMENTS**

Tennessee Code Annotated § 68-212-224 requires consideration of a fee to enroll in the Voluntary Cleanup Oversight and Assistance Program. The Commissioner has set the following schedule of fees that may apply to all sites working in cooperation with the Department to recover the expense of oversight. These fees are in place of hourly time charges and normal travel costs during the first 150 hours of oversight for the project.

Program Entry	\$ 3,000
Site Characterization	\$ 2,500
Remediation	\$ 3,000
Risk Assessment	\$ 2,500
Beneficial Use Determination	\$ 2,500
Vapor Intrusion Evaluation	\$ 2,500
Voluntary Agreement/Consent Order	\$ 4,000
Land Use Restrictions	\$ 1,000
Institutional and Engineering Controls Compliance	\$ 750

In addition to the fees identified previously, an annual longevity fee of \$4,000 will be charged to the Voluntary Party on the anniversary of the date the site was accepted into the Voluntary Program until a letter requiring no further action has been issued or this Agreement has been terminated.

Applicable fees and financial requirements must be timely paid by the applicable Voluntary Party to remain in the Voluntary Cleanup Oversight and Assistance Program and to receive a letter of

no further action under Section G of this Agreement. For the purpose of this Agreement, timely payment means the Department receiving payment from the Voluntary Party within 60 days of the first billing of a financial requirement or according to a payment plan agreed in writing between Voluntary Party and the Department.

Notwithstanding the foregoing, any and all cost recovery assessments arising from actions to comply with or modify a recorded Notice of Land Use Restrictions imposed pursuant to and recorded on any part of the Site under the terms of this Agreement, shall be due from and payable only from the particular Voluntary Party or Successor Party submitting the report to be reviewed and/or requesting or necessitating the related oversight action by TDEC that gives rise to the associated fees.

#### **D. IDENTIFICATION AND DOCUMENTATION OF MATTERS ADDRESSED**

Real or perceived hazardous substances, solid wastes or other pollutants are determined to be present on this Site to an extent that may or may not have yet been fully characterized. Pursuant to Tennessee Code Annotated § 68-212-224(a)(2) the Voluntary Party has submitted to the Commissioner a summary description of all known existing environmental investigations, studies, reports or documents concerning the site's environmental condition. Based on the information submitted to the Department by or on behalf of the Voluntary Party, and the Department's own review of this information, the Parties hereto agree that the environmental conditions identified in the reports referred to below and any reports generated pursuant to this Agreement, or in the Summary attached hereto as Exhibit B (and incorporated herein by reference, including the environmental conditions described below are to be addressed under this Agreement (collectively referred to as the "*Matters Addressed in this Agreement*"):

Centurion Stone currently leases the Site. Manufacturing activities associated with production of stone veneer products take place in the building(s) located on the south portion of the Site while offices, warehouses, and production of molds used in the manufacturing process are in the building on the north portion of the Site. Historical records reviewed indicate the Site was developed for

commercial/industrial uses as early as 1888 and has remained as such until the present. Historical and current Site uses include lumber mill and furniture manufacturing, grain elevator and warehouse, slaughter houses and meat processing, ceramic tile manufacturing, rendering plant and recycling, auto junk yard, and laminate stone manufacturing. Portions of the Site have also been historically residential in use.

A Phase I by S&ME dated August 27, 2019 identified several Historical Recognized Environmental Conditions, Recognized Environmental Conditions, and Vapor Encroachment Conditions, including historical use of the property; former USTs on Site; hazardous substances and petroleum stored on Site; and petroleum groundwater and soil gas contamination on adjacent property. A Limited Phase II by S&ME dated November 11, 2019 included 8 soil borings (3 of which were converted to monitoring wells) and 4 soil gas samples. Metals, one volatile organic compound (VOC), and 11 semi-volatile organic compounds (SVOCs) were detected in soils, but at levels below residential EPA Regional Screening Levels (RSLs) (except arsenic). Metals (barium and selenium) were detected in groundwater at levels below EPA MCL's and/or Tapwater RSLs. VOCs and SVOCs were detected in soil gas, but only 1,3-butadiene in one sample was present at levels that may exceed carcinogenic screening levels using VISL. Arsenic was detected in soil above the residential RSL at multiple locations. However, the detections are below the acceptable background levels, of 10mg/kg for the State of Tennessee.

S&ME conducted supplemental subsurface soil gas sampling at the Site in November 2020, as documented in a report dated December 10, 2020. S&ME collected soil gas samples from 16 locations within the footprints of the proposed multi-family residential buildings. Comparison of the results to the Target Sub-Slab and Near-Source Soil Gas screening levels indicated the reported concentrations of six (6) constituents (benzene, 1,3-butadiene, ethylbenzene, naphthalene, tetrachloroethene (PCE), and trichloroethene (TCE) were above their respective screening level. Results of the VISL calculator for each of the subsurface soil gas samples indicated Vapor Intrusion Carcinogenic Risk (VI CR) and Vapor Intrusion Hazard Quotient (VI HQ) for Non-Carcinogens values in some of the samples fall within ranges where vapor mitigation measures may be appropriate in future building design.

The Voluntary Party is proposing to acquire and redevelop this Site as a mixed use development, including retail and multi-family residential, in two phases. Pursuant to this Agreement, Voluntary Party is not being required to fully remediate the pre-existing environmental conditions noted above, but each is required to take certain actions specified in this Agreement to ensure that the identified environmental impacts and conditions do not pose a threat to human health or the environment during and after completion of the redevelopment.

The Voluntary Party agrees that criteria required in Tennessee Code Annotated § 68-212-206(d) shall be used in determining containment and cleanup actions, including monitoring and maintenance options to be followed under this Agreement.

**E. AGREED LIABILITY RELIEF**

As the current owner or operator, or upon becoming an owner or operator of the Site, the Voluntary Party may occupy the status of a “liable party” pursuant to the definition of that term contained in Tennessee Code Annotated § 68-212-202(4). The Commissioner is authorized by Tennessee Code Annotated § 68-212-224 to determine an apportionment of liability pursuant to factors in Tennessee Code Annotated § 68-212-207 as well as other equitable factors in an Agreement. Further, Tennessee Code Annotated § 68-212-224(a)(5) provides that the Commissioner is authorized to limit the liability of a participant in a voluntary agreement or consent order entered into pursuant to Tennessee Code Annotated § 68-212-224. Such voluntary agreement or consent order may limit the liability of such participant to the obligations set forth therein and exempt the participant from any further liability under any statute administered by the Department for investigation, remediation, monitoring, and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. The Commissioner may extend this liability protection to successors in interest or in title to the participant, contractors conducting response actions at the Site, developers, future owners, tenants, and lenders, fiduciaries, or insurers (collectively "Successor Parties"). The Commissioner agrees that the Voluntary Party’s implementation of the actions agreed upon in Section G will constitute satisfaction of the

apportioned liability of the Voluntary Party under all environmental statutes administered by the Department for the *"Matters Addressed in this Agreement"*.

The Voluntary Party and any of the Successor Parties, however, remain potentially responsible for any release of hazardous substances or other pollutants that occurs at the Site after the effective date of this Agreement while it owns or operates the Site or for environmental conditions other than *Matters Addressed in this Agreement*. Voluntary Party has no current interest in the Site. However, it is anticipated that it may acquire title to the two parcels that comprise the Site in two phases, pursuant to an agreement or option to purchase the Site. While Voluntary Party is a party to this Agreement, any obligation, responsibility, duty or benefit accruing to Voluntary Party as a party to this Agreement is contingent upon its acquisition of title to all or any part of the Site. No obligations of the Voluntary Party will attach to any portion of the Site unless and until that portion is acquired by the Voluntary Party. Conversely, no obligations under this Agreement shall apply to any owner of any portion of the Site that the Voluntary Party does not acquire.

In accordance with the above referenced authority, the Department agrees that other than with respect to the obligations set forth in this Agreement, including without limitation the implementation of the actions agreed upon in Section G to the extent applicable to each, Voluntary Party and Successor Parties shall bear no liability to the State of Tennessee under any statute administered by the Department for investigation, remediation, monitoring, treatment, and/or maintenance of environmental conditions identified in and addressed in Section D of this Agreement; provided, however, that to the extent that the Voluntary Party or Successor Parties has or maintains an interest in the Site, or possesses and/or controls all or a portion of the Site, its liability protections herein are contingent upon its continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this Agreement. Nothing in this Agreement shall be construed as limiting the liability or potential liability of the Voluntary Party for environmental conditions occurring after the effective date of this Agreement or for environmental conditions other than Matters Addressed in this Agreement. This liability protection and all other benefits conferred by this Agreement are extended to all future "Successor Parties"

conditioned upon performance of the obligations contained in this Agreement and compliance with the Land Use Restrictions (hereinafter defined), if required; provided, that such liability protection to other persons does not apply to the extent that such liability arose prior to the effective date of this Agreement. For the avoidance of doubt, a breach of this Agreement by a successor-in-interest or a successor-in-title will not alter the liability protection provided to a predecessor-in-interest or in-title.

**F. ADMINISTRATIVE SETTLEMENT; THIRD PARTY LIABILITY**

Tennessee Code Annotated § 68-212-224(a)(6), subject to the notice requirements provided therein, provides that this Agreement also constitutes an administrative settlement of the Voluntary Party's entire liability for purposes of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for inactive hazardous substance sites. Voluntary Party and Successor Parties (as hereinafter defined) have, as of the effective date of this Agreement, resolved their entire liability to the State of Tennessee for *Matters Addressed in this Agreement*.

The Voluntary Party shall not be liable to third parties for contribution regarding *Matters Addressed in this Agreement*; provided that, the Voluntary Party gave the third party actual or constructive notice of this Agreement, and the third party was given an actual or constructive opportunity to comment upon this Agreement. The Voluntary Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this Agreement in the Nashville Ledger at least thirty (30) days prior to the Effective Date of this Agreement.

Nothing in this Agreement shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by this Agreement.

**G. AGREED ACTIONS TO BE TAKEN**



The Voluntary Party agrees to conduct the following activities in order to address remedial action(s) recommended for each parcel comprising the Site (which may be acquired by Voluntary Party in phases), including any monitoring and/or maintenance, pursuant to this Agreement. The Voluntary Party shall conduct all activities required by this Agreement in accordance with all applicable work plans, as approved by TDEC, all applicable laws and regulations, and any appropriate guidance documents. The Department has determined that the actions in this Agreement constitute “reasonable steps” with respect to *Matters Addressed in This Agreement*.

The Voluntary Party agrees as specified below to conduct the following activities for each parcel comprising the Site, if and when it acquires the parcel:

1. Voluntary Party shall record a Notice of Land Use Restrictions )“NLUR” ( attached hereto as Exhibit C for any parcel comprising the Site that it owns, within thirty (30) days of taking title to a parcel comprising part of the Site, or the effective date of this Agreement, whichever occurs later. Upon recording, a copy of the NLUR shall be mailed to all local governments having jurisdiction over any part of the subject property. Additionally, a copy of the recorded NLUR shall be provided to the Department. Any party receiving liability protection under this Agreement that seeks approval for restricted uses or seeks to cancel or make a restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.
2. Voluntary Party agrees to send notification of this Agreement by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. Voluntary Party shall provide adequate documentation to the Department to demonstrate that public notice has been accomplished.

Upon completion of all tasks set forth in this Agreement, the Department shall issue to Voluntary Party a letter stating the requirements of this Agreement have been fulfilled and no further action is required of the Voluntary Party concerning Matters Addressed in this Agreement. Upon the

request of a Voluntary Party from time to time, the Department shall issue an interim status letter identifying what specific obligations remain to achieve completion of the work under this Agreement. Issuance of a no further action letter shall not relieve the Voluntary Party receiving such letter of any responsibilities for operation and maintenance activities or continued adherence to and enforcement of land use restrictions, if any, pursuant to Tennessee Code Annotated § 68-212-225. The Department reserves the right to require a Voluntary Party to take additional action for contamination caused by such Voluntary Party occurring after the date of this Agreement or for environmental conditions other than *Matters Addressed in this Agreement*.

#### **H. ADDITIONAL REQUIREMENTS**

1. The Voluntary Party may request a time extension for any deadline included in this Agreement prior to the deadline. The time extension may be granted through mutual consent for good cause shown.
2. The Voluntary Party and Successor Parties agree not to disturb, move, or remove any areas of hazardous substances, solid waste, or other pollutant(s) that are subject to liability protection under this Agreement without written approval by the Department unless the activities are being conducted under the terms and conditions of this Agreement or necessitated by the normal day-to-day activities of any on-going business.
3. Pursuant to Tennessee Code Annotated § 68-212-222, whether or not permits are required for onsite cleanup activities related to *Matters Addressed in this Agreement*, such activities shall meet the standards that would apply if such permits were required.
4. The Department acknowledges that the Voluntary Party itself may conduct redevelopment activities at the Site in addition to preparing the Site for potential development for Successor Parties, and the Voluntary Party enters into this Agreement in order to facilitate Voluntary Party's potential development of the Site or Successor

Parties' potential development of the Site as herein agreed by Voluntary Party. The Department further acknowledges that Voluntary Party and more than one Successor Party may develop different portions of the Site. Accordingly, Voluntary Party and one or more Successor Parties may assume the obligations and liability protections provided under this Agreement upon such Successor Parties' acquisition of property interests in the Site. The Voluntary Party or any Successor Party that transfers its interest at the Site shall be relieved of any further obligations under this Agreement.

#### **I. SITE ACCESS**

During the effective period of this Agreement, and until the Department's issuance of a No Further Action Letter upon the Voluntary Party's completion of all activities under this Agreement, the Voluntary Party, and any Successor Party shall, to the extent it is in control of the Site, provide the Department and its representatives or designees access during normal business hours to the Site to the extent that the Voluntary Party has the power and authority to grant such access. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation, or permit. The Department and its representative shall comply with all reasonable health and safety plans published by the Voluntary Party, Successor Party or their contractors and used by Site personnel for the purpose of protecting life and property.

#### **J. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES**

The Department may deny submission or approval of any reports or studies performed by or on behalf of the Voluntary Party and submitted under the terms of this Agreement that do not contain the following statement:

"I certify under penalty of law, including but not limited to penalties for perjury, that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information contained in this document and on any attachment is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the

possibility of fine and imprisonment for intentional violation. As specified in Tennessee Code Annotated § 39-16-702(a)(4), this declaration is made under penalty of perjury.”

#### **K. RESERVATION OF RIGHTS**

1. This Agreement shall not be construed as waiving any right or authority available to the Commissioner to assess responsible parties other than the Voluntary Party or Successor Parties for liability for civil penalties or damages incurred by the State, including any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act )“CERCLA”( or any other statute, rule, regulation, or common law.

2. Nothing in this Agreement shall be construed as limiting or waiving any right or authority available to the Commissioner to require a liable party to address contamination occurring after the effective date of this Agreement or for environmental conditions other than *Matters Addressed in this Agreement*.

3. Nothing in this Agreement shall be interpreted as limiting the Voluntary Party’s right to preserve the confidentiality of attorney work product or client-attorney communication. Tennessee Code Annotated § 68-212-202 et seq. contains no provisions for confidentiality or proprietary information. Therefore, records, reports, test results, or other information submitted to the Department under this Agreement shall be subject to public review. Any and all records, reports, test results or other information relating to a hazardous substance site or the possible hazardous substance at the Site submitted under this Agreement may be used by the Department for all purposes set forth in Tennessee Code Annotated § 68-212-201 et seq.

4. Any Voluntary Party or any of their Successor Parties may terminate this Agreement as it pertains to such terminating party at any time upon written notice to the Department during the time period that such party owns the Site and/or conducts operations at the Site. Upon such termination, the terminating party shall have no further obligations hereunder

other than payment of outstanding oversight costs, if any, accrued to the date of notice of termination and adherence to any notice of land use controls filed under Tennessee Code Annotated § 68-212-225; provided, that all parties to this Agreement shall have and retain all authority, rights, and defenses as if this Agreement had never existed.

5. The Department may terminate this Agreement by written notice to the Voluntary Party in the event that the Department receives timely comments from third-party contribution claim holders pursuant to the notice sent under Section F of this Agreement, if any, and such comments disclose facts or considerations that indicate that the allocation of liability of the Voluntary Party under this Agreement is inappropriate, improper, or inadequate; provided, however, absent fraud or intentional misconduct, that in such event the Voluntary Party may elect to waive the protections set forth in Section F hereunder and in such event this Agreement shall not be terminated, but rather the remainder of the terms and conditions of this Agreement shall continue to be in full force and effect and without termination. The Department's notice of termination must be made within thirty (30) days of the end of the 30-day notice period required by Section F. The Voluntary Party's waiver notice must be made within fifteen (15) days after receipt of the Department's termination notice.

6. In the event a Voluntary Party or Successor Party does not fulfill all the requirements established in this Agreement, the Commissioner may seek to enforce the Agreement through any legal remedy.

7. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement will remain in full force and effect.

8. Nothing in this Agreement shall be interpreted as limiting the liability for the improper management and/or disposal of contaminated material removed from the Site.

The individual signing below on behalf of Voluntary Party represents that they are duly authorized

agents, capable of entering into a binding Agreement on behalf of the Voluntary Party. By entering into this Agreement, this individual certifies that the Voluntary Party did not generate or did not cause to generate, transport, or release contamination that is to be addressed at this Site.

The Effective Date of this Agreement is the last date of execution shown below.

GERMANTOWN JV LLC

STATE OF TENNESSEE  
DEPARTMENT OF  
ENVIRONMENT AND  
CONSERVATION

By: Luca Barber  
Luca Barber  
Vice President

By: James S. Sanders  
James S. Sanders  
Director, Division of Remediation

Date: 1-6-21  
3102 West End Ave  
(Address)  
Suite 780  
Nashville, TN 37203  
(City, State, Zip Code)

Date: 01/12/2021

Approved as to form and legality:  
TDEC Office of General Counsel Attorney  
Ellery R. Richardson  
Ellery R. Richardson

## EXHIBIT A

### TO BROWNFIELD AGREEMENT

#### SITE DESCRIPTION

##### North Tract:

Being a tract of land lying in the 19th Council District of Davidson County, Nashville, Tennessee, being a portion of Baugh & Pardue Properties, LLC, as recorded in Instrument Number 201502190014530, Register's Office of Davidson County, Tennessee (RODC), being Lots 1 - 9, 17 - 22, 35 - 37 and portions of Lots 23 - 26 and 38 of O'Shaughnessy Plan as recorded in Plat Book 21, Page 119, RODC, and being portions of rights of way closed by Metro Ordinances O83-1364 and BL2014-982. Said tract being bounded on the north by Metro Government Wastewater and Sewer as recorded in Book 7017, Page 341, RODC, and by River Cement Sales Company as recorded in Instrument Number 201001120002851, RODC, bounded on the east by the Cumberland River, bounded on the south remainder of said Baugh & Pardue Properties, LLC, and bounded on the west by the eastern right of way (ROW) of Adams Street. Said tract being more particularly described as follows:

POINT OF BEGINNING being a found p.k. nail with "DONLON" washer and being the southwest corner of said River Cement Sales Company; thence along the common line of said River Cement Sales Company North  $62^{\circ}54'02''$  East 411.99 feet more or less to a the low water line of said Cumberland River, having passed a found  $5/8''$  iron rod at 359.53 feet; thence generally along the low water line of said Cumberland River with the following: South  $11^{\circ}09'40''$  East 516.93 feet to a point; thence South  $11^{\circ}23'54''$  East 9.43 feet to a point; thence leaving said low water line of the Cumberland River and along a new severance line South  $63^{\circ}10'01''$  West 646.46 feet more or less to a set point lying on said eastern ROW of Adams Street; thence along said eastern ROW of Adams Street with the following: North  $27^{\circ}06'24''$  West 78.57 feet to a found p.k. nail; thence North  $33^{\circ}46'19''$  West 177.71 feet to a found iron rod with "DONLON" cap; thence along the common line of said Metro Government Wastewater and Sewer with the following: North  $63^{\circ}00'50''$  East 25.00 feet to a set iron rod with cap; thence along a curve to the right having an arc length of 184.32 feet, a radius of 358.28 feet, a central angle of  $29^{\circ}28'33''$  and having a chord bearing and distance of North  $04^{\circ}20'23''$  East 182.29 feet to a found p.k. nail with "DONLON" washer; thence North  $62^{\circ}34'26''$  East 268.54 feet to a found iron rod with "DONLON" cap; thence North  $20^{\circ}12'19''$  West 91.70 feet to the point of beginning.

Tract contains 323,615 square feet or 7.43 acres.

Bearings based on Tennessee State Plane Coordinate System.

**South Tract:**

Being a tract of land lying in the 19th Council District of Davidson County, Nashville, Tennessee, being a portion of Baugh & Pardue Properties, LLC, as recorded in Instrument Number 201502190014530, Register's Office of Davidson County, Tennessee (RODC), and being Lot 103 and a portion of Lot 102 of H.W. McGavock's Addition to Nashville as recorded in Plat Book 17, Page 640, RODC. Said tract being bounded on the north the remainder of said Baugh & Pardue Properties, LLC, bounded on the east by the Cumberland River, bounded on the south by Gateway TBR Hammer Mill, LLC, as recorded in Instrument Number 201611220123126, RODC, and bounded on the west by the eastern right of way (ROW) of Adams Street. Said tract being more particularly described as follows:

POINT OF BEGINNING being a set point lying on said eastern ROW of Adams Street and being the southwest corner of the herein described tract; thence along said eastern ROW of Adams Street North 27°06'24" West 289.76 feet to set point; thence leaving said ROW of Adams Street along a new severance line North 63°10'01" East 646.46 feet more or less to the low water line of said Cumberland River, thence generally along the low water line of said Cumberland River South 11°23'54" East 391.48 feet to a point; thence leaving said low water line of the Cumberland River and along the common line of said Gateway TBR Hammer Mill, LLC, South 72°22'01" West 547.94 feet to the point of beginning.

Tract contains 200,277 square feet or 4.60 acres.

Bearings based on Tennessee State Plane Coordinate System.



## EXHIBIT B

### TO BROWNFIELD AGREEMENT

#### SUMMARY OF TECHNICAL REPORTS FOR THE SITE

The following summary is a listing of technical reports for environmental investigations and assessments for the Site that are in the possession of the Voluntary Party. This summary is intended to fulfill the statutory disclosure requirements associated with the Brownfield agreement application process. All reports listed below are on file at TDEC.

*Phase I Environmental Site Assessment, Centurion Stone Site*, prepared by S&ME, Inc. (August 27, 2019). S&ME made the following findings with respect to the Site:

- The site was listed as Centurion Stone in the FINDS and SWM COMPLAINTS databases. These listings are related to air emissions for a closed incinerator. Site personnel indicated the incinerator operated for approximately two years and has been inactive for 15 years. These listings are not considered a REC.
- The site was listed as Nashville Recycling in the UST and HIST UST databases. Regulatory files and information provided by EDR indicated the USTs at this facility were closed in 1992. The former presence of USTs on the site with regulatory closure represents an HREC.
- Historical sources reviewed for this Phase I ESA indicated the site has been industrial/commercial in use since the late 1800s. Past site uses include a furniture/lumber company, grain elevator, slaughter house/meat processing, recycling/rendering facility, and laminate stone products manufacturing. The historical site uses are considered to represent a REC.
- Storage and use of hazardous substances and petroleum products were observed on the site during the reconnaissance. Materials observed included new and used oil, anti-freeze/coolant, acetone, isocyanate, resin, and mold compound (liquid rubber). Materials were stored in drums, tanks, and/or totes. The storage and use of these materials on the site are considered a REC.
- Six (6) pole-mounted electrical transformers were observed on and/or adjacent to the site. Each of the transformers was labeled as non-polychlorinated biphenyl (PCB)-containing. The transformers were observed to be in good condition with no visible evidence of releases of dielectric fluid. No other equipment potentially containing PCBs was noted on or adjacent to the site.
- Based upon the results of the Tier I Vapor Encroachment Screening (VES), a vapor encroachment condition (VEC) from offsite sources exists at the site. The offsite sources consist of the bulk petroleum storage and distribution facility (Delek/Lion Oil) and the former January Environmental property located adjacent to the west of the site and Adams Street. Petroleum constituents have been identified in groundwater beneath the Delek facility and subsurface volatile organic vapors have been documented at the former January Environmental property.

- Two adjacent properties west of the site and Adams Street, Delek/Lion Oil and former January Environmental, were identified in the federal and state environmental database search. Delek/Lion Oil has documented petroleum constituents in groundwater and subsurface volatile organic vapors have been documented at the former January Environmental property. Considering the close proximity to the site, these offsite properties with documented environmental conditions are considered RECs to the site.
- Numerous additional properties/facilities were identified in the vicinity of the site and within the ASTM standard radii. However, based on factors such as regulatory status, topographic position relative to the site, and distance from the site, none of the additional properties/facilities are considered RECs to the site.

The Phase I identified four RECs at the Site: (1) historical site uses; (2) storage and use of hazardous and potentially hazardous materials; (3) the Vapor Encroachment Condition resulting from two off-site sources (Delek/Lion Oil and former January Environmental); and (4) Former UST closed in 1992 is considered an HREC.

Limited Phase II Environmental Assessment, Centurion Stone, prepared by S&ME, Inc. (November 11, 2019). The Phase II included 8 soil borings (3 of which were converted to monitoring wells) and 4 soil gas samples. In summary, metals, one VOC and 11 SVOCs were detected in soils, but at levels below residential RSLs (except arsenic). Metals were detected in groundwater at levels below residential RSLs. VOCs and SVOCs were detected in soil gas at levels that may exceed carcinogenic screening levels using VISL. More detailed results follow.

#### Groundwater:

Groundwater samples collected from monitoring wells MW-1 through MW-3 were submitted under chain-of custody to Pace Analytical in Mt. Juliet, Tennessee for analysis. The groundwater samples were analyzed for VOCs, SVOCs, and RCRA metals.

##### *MW-1*

SVOCs were not detected above the laboratory reported detection limit (RDL) in the groundwater sample from this well.

Two (2) metals, barium and selenium, were detected above their respective RDL in the groundwater sample from this well. The concentration of barium detected, 0.115 milligrams/liter (mg/l), is below the MCL of 2.0 mg/l. The selenium concentration of 0.0141 mg/l detected in this sample was below the MCL of 0.05 mg/l.

Two (2) VOCs, methyl tert-butyl ether (MTBE) and toluene, were detected above their respective laboratory RDL. MTBE was detected at a concentration of 0.002 mg/l. EPA has not promulgated an MCL for MTBE. The concentration detected is below the Initial Screening Level (ISL) of 0.02 mg/l for a drinking water aquifer and 175 mg/l for a non-drinking water aquifer, as established by TDEC Division of Underground storage Tanks (DUST). The detected toluene concentration of 0.00224 mg/l is below the MCL of 1.0 mg/l.

##### *MW-2*

SVOCs were not detected above laboratory RDLs in the groundwater sample from this well.

Barium and selenium were detected above their respective laboratory RDL in this sample. The barium concentration of 0.803 mg/l detected in this sample was below the MCL of 2.0 mg/l and the selenium concentration of 0.0169 mg/l was below the MCL of 0.05 mg/l.

Two (2) VOCs, chlorobenzene and toluene, were detected above their respective laboratory RDL. The detected chlorobenzene concentration of 0.00112 mg/l is below the MCL of 0.1 mg/l and the detected toluene concentration of 0.00192 mg/l is below the MCL of 1.0 mg/l.

#### *MW-3*

SVOCs were not detected above laboratory RDLs in the groundwater sample from this well.

Metals, consisting of barium, chromium, and selenium, were detected above their respective laboratory RDL in this sample. The barium concentration of 0.0998 mg/l detected in this sample was below the MCL of 2.0 mg/l. Chromium was detected at 0.0274 mg/l below its MCL of 0.1 mg/l and selenium was detected at 0.0105 mg/l below its MCL of 0.05 mg/l.

Toluene was the only VOC detected above the laboratory RDL in the sample from MW-3 at a concentration of 0.004 mg/l. The MCL for toluene is 1.0 mg/l.

#### Soil:

A total of eight (8) soil samples, one (1) from each soil boring (B-1 through B-8), were submitted to the laboratory and analyzed for VOCs, SVOCs, and the eight RCRA metals.

#### *Metals*

Arsenic was detected above the laboratory RDL in each of the eight (8) soil samples analyzed at concentrations ranging from 2.22 milligrams/kilogram (mg/kg) in the soil sample from B-3, 0.0-2.5 feet bgs to 6.8 mg/kg in the soil sample from B-4, 5-8 feet bgs. All arsenic concentrations detected were above the residential soil RSL of 0.68 mg/kg. Arsenic is naturally occurring and concentrations of 10 mg/kg or less are generally considered to represent background concentrations in Tennessee. The detected concentrations of arsenic were all below the generally accepted background concentration of 10 mg/kg.

Barium was detected above the laboratory RDL in each of the eight (8) soil samples analyzed at concentrations ranging from 56.1 mg/kg in the soil sample from B-2, 2.5-5.0 feet bgs to 293 mg/kg in the soil sample from B-7, 5.0-7.5 feet bgs. The barium concentrations detected were all below the residential soil RSL of 15,000 mg/kg.

Chromium (total) was detected above the laboratory RDL in each of the eight (8) soil samples analyzed at concentrations ranging from 9.86 mg/kg in the soil sample from B-2, 2.5-5.0 feet bgs to 22.4 mg/kg in the soil sample from B-4, 5-8 feet bgs. The average chromium concentration for samples collected and analyzed at the site is 15.91 mg/kg. EPA has not established a residential soil RSL for chromium (total). Chromium is naturally occurring and background concentrations have been observed to range from

<0.91 mg/kg to 120 mg/kg, based on samples collected by States and/or EPA during Site inspections or expanded Site inspections. A concentration of 20 mg/kg total chromium is generally considered as naturally occurring background in Tennessee. Six (6) of the eight (8) soil samples analyzed had chromium concentrations below 20 mg/kg. The two samples above 20 mg/kg were 20.7 mg/kg in B-3, 0.0-2.5 feet bgs and 22.4 mg/kg in B-4, 5-8 feet bgs. Lead was detected above the laboratory RDL in each of the eight (8) soil samples analyzed at concentrations ranging from 3.83 mg/kg in the soil sample from B-3, 0.0-2.5 feet bgs to 49.1 mg/kg in the soil sample from B-2, 2.5-5.0 feet bgs. The lead concentrations detected were below the residential soil RSL of 400 mg/kg. Mercury was detected in four (4) of the eight (8) soil samples analyzed at concentrations ranging from 0.0355 mg/kg in the soil sample from B-8, 2.5-5.0 feet bgs to 0.0952 mg/kg in the soil sample from B-6, 2.5-5.0 feet bgs. The detected mercury concentrations were below the residential soil RSL of 11 mg/kg.

#### *Volatile Organic Compounds (VOCs)*

Only one VOC, 2-butanone (also known as methyl ethyl ketone/MEK), was detected above a laboratory RDL in seven (7) of the eight (8) soil samples analyzed. The MEK concentrations ranged from 0.0275 mg/kg in the sample from B-6, 2.5-5.0 feet bgs to 0.0453 mg/kg in the sample from B-8, 2.5-5.0 feet bgs. The detected MEK concentrations were below the residential soil RSL of 27,000 mg/kg.

#### *Semi-Volatile Organic Compounds (SVOCs)*

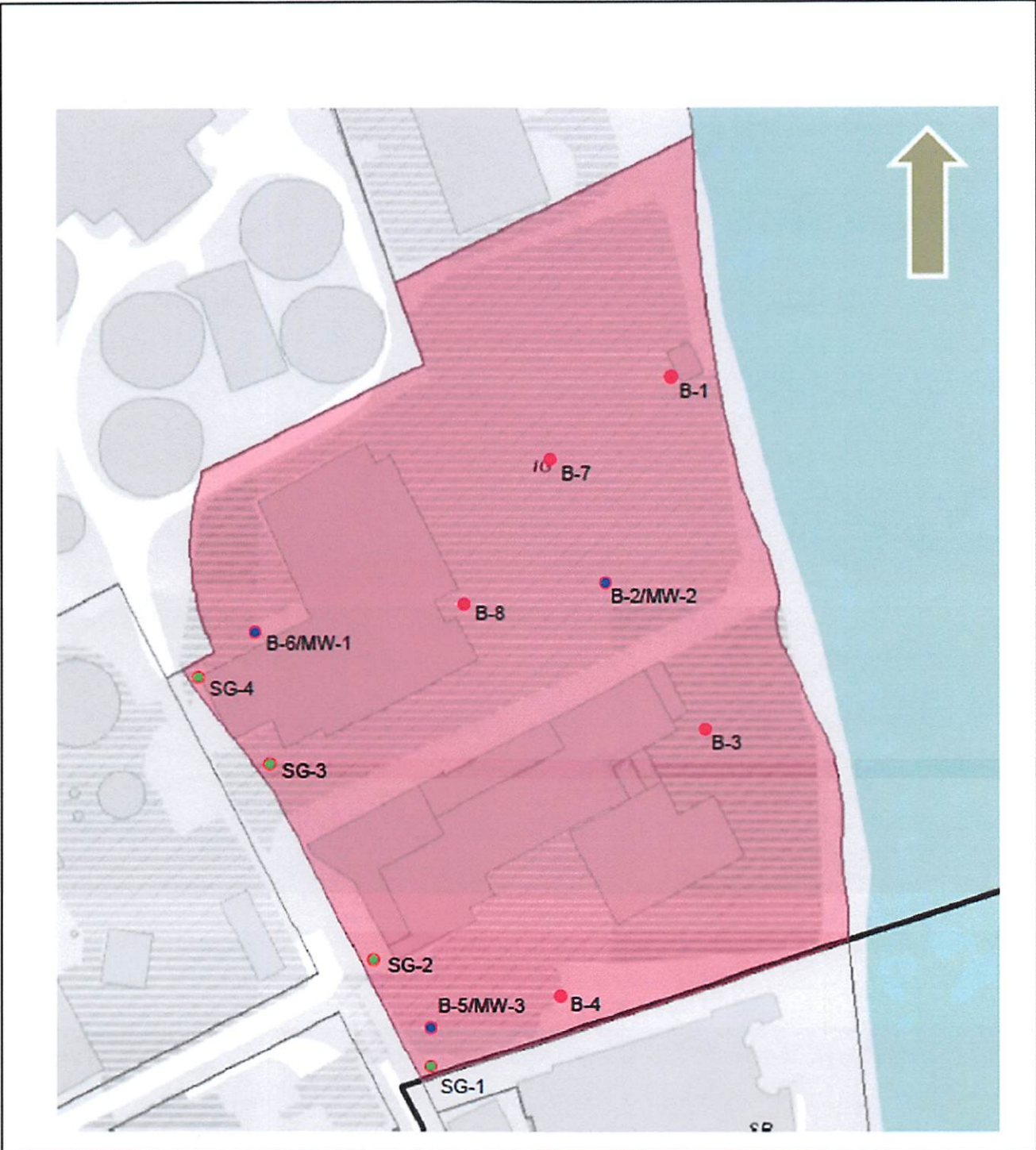
SVOCs were not detected above laboratory RDLs in three (3) of the eight (8) soil samples analyzed and include the following: B-4, 5-8 feet bgs; B-5, 7.5-10 feet bgs; and B-7, 5-7.5 feet bgs. Benzo(a)Anthracene was detected above the laboratory RDL in three (3) of the eight (8) soil samples analyzed at concentrations ranging from 0.034 mg/kg in the sample from B-2, 2.5-5 feet bgs to 0.162 mg/kg in the sample from B-1, 0.0-2.5 feet bgs. The detected concentrations were below the residential soil RSL of 1.1 mg/kg. Benzo(b)Fluoranthene was detected above the laboratory RDL in four (4) of the eight (8) soil samples analyzed at concentrations ranging from 0.0396 mg/kg in the sample from B-2, 2.5-5 feet bgs to 0.153 mg/kg in the sample from B-1, 0.0-2.5 feet bgs. The detected concentrations were below the residential soil RSL of 1.1 mg/kg. Benzo(k)Fluoranthene was detected above the laboratory RDL in only one (1) of the eight (8) soil samples analyzed, B-1, 0.0-2.5 feet bgs at a concentration of 0.0541 mg/kg. The detected concentration is below the residential soil RSL of 11. Benzo(g,h,i)Perylene was detected above the laboratory RDL in only one (1) of the eight (8) soil samples analyzed, B-1, 0.0-2.5 feet bgs at a concentration of 0.0579 mg/kg. The EPA has not established RSLs for this constituent. Benzo(a)Pyrene was detected above the laboratory RDL in only two (2) of the eight (8) soil samples analyzed, B-1, 0.0-2.5 feet bgs at a concentration of 0.104 mg/kg and B-8, 2.5-5 feet bgs at a concentration of 0.0448 mg/kg. The concentrations detected in both soil samples were below the residential soil RSL of 0.11 mg/kg. Chrysene was detected above the laboratory RDL in three (3) of the eight (8) soil samples analyzed at concentrations ranging from 0.0399 mg/kg in the sample from B-6, 2.5-5 feet bgs to 0.152 mg/kg in the sample from B-1, 0.0-2.5 feet bgs. The detected concentrations were below the residential soil RSL of 110 mg/kg. Fluoranthene was detected above the

laboratory RDL in four (4) of the eight (8) soil samples analyzed at concentrations ranging from 0.0465 mg/kg in the sample from B-6, 2.5-5 feet bgs to 0.244 mg/kg in the sample from B-1, 0.0-2.5 feet bgs. The detected concentrations were below the residential soil RSL of 2,400 mg/kg. Indeno(1,2,3-cd)Pyrene was detected above the laboratory RDL in only one (1) of the eight (8) soil samples analyzed, B-1, 0.0-2.5 feet bgs at a concentration of 0.07 mg/kg. The concentration detected is below the residential soil RSL of 1.1 mg/kg. Phenanthrene was detected above the laboratory RDL in three (3) of the eight (8) soil samples analyzed at concentrations ranging from 0.0482 mg/kg in the sample from B-8, 2.5-5 feet bgs to 0.12 mg/kg in the sample from B-1, 0.0-2.5 feet bgs. The EPA has not established RSLs for this constituent. Pyrene was detected above the laboratory RDL in four (4) of the eight (8) soil samples analyzed at concentrations ranging from 0.048 mg/kg in the sample from B-6, 2.5-5 feet bgs to 0.197 mg/kg in the sample from B-1, 0.0-2.5 feet bgs. The detected concentrations were below the residential soil RSL of 1,800 mg/kg. Phenol was detected above the laboratory RDL in only one (1) of the eight (8) soil samples analyzed, B-3, 0.0-2.5 feet bgs at a concentration of 0.511 mg/kg. The concentration detected is below the residential soil RSL of 19,000 mg/kg.

#### Soil Gas

Soil gas samples, SG-1 through SG-4, were collected at the Site and submitted to the laboratory for analysis by Method TO-15 for the presence of VOCs.

Comparison of the laboratory results with the screening levels indicated the concentration of 1,3-butadiene in SG-4 (4.85 micrograms/cubic meter  $\mu\text{g}/\text{m}^3$ ) was the only constituent above its respective screening level (3.12  $\mu\text{g}/\text{m}^3$ ). The 1,3-butadiene results were reported in SG-1, SG-2, and SG-3 as <4.43  $\mu\text{g}/\text{m}^3$ , which is above the screening level of 3.12  $\mu\text{g}/\text{m}^3$ . As such, it is possible for this constituent to be present at concentrations above the screening level of 3.12  $\mu\text{g}/\text{m}^3$  in these samples. The laboratory results for each soil gas sample, SG-1 through SG-4, were evaluated using the EPA VISL calculator, as discussed above. The VISL results for each sample are included in Appendix VIII. The Vapor Intrusion (VI) Carcinogenic Risk results were: 7.87E-07 in SG-1, 5.03E-07 in SG-2, 3.50E-07 in SG-3, and 2.11E-06 in SG-4.



Scale: NTS		Sample Location Map Centurion Stone Site 1420 Adams Street Nashville, Tennessee	Figure <h1>2</h1>
Checked By: VMA		S&ME Project No.: 4147-19-065	
Date: 11/8/19			

Subsurface Soil Gas Sampling, Modera Germantown Site, prepared by S&ME, Inc. (December 10, 2019). Supplemental soil gas sampling was conducted in November 2020 at the request of TDEC. S&ME collected subsurface soil gas samples at 16 locations (SG-1 through SG-16) within the footprints of the proposed multi-family residential buildings. The collected soil gas samples were submitted to a laboratory where they were analyzed for the presence of volatile organic compounds (VOCs) by Method TO-15 and the resulting data were evaluated using the Environmental Protection Agency (EPA) Vapor Intrusion Screening Level (VISL) calculator.

Thirty-five (35) VOCs were detected above their respective laboratory reported detection limit (RDL) in the soil gas samples. The concentrations of each soil gas parameter detected at each sample location were evaluated using the EPA VISL calculator with input values set to residential land use, a Target Risk (TR) of 1.00E-06 and a Target Hazard Quotient (THQ) of 0.2. Comparison of the laboratory results with the target concentrations indicated constituent concentrations above their respective target concentrations for the following constituents: benzene (8 samples), 1,3-butadiene (9 samples), ethylbenzene (1 sample), naphthalene (2 samples), tetrachloroethene (1 sample), and trichloroethene (1 sample).

The laboratory results for each soil gas sample SG-1 through SG-16 were further evaluated using the EPA VISL calculator, as discussed above. The VISL results are included in Appendix IV. The VISL calculator output values for Vapor Intrusion Carcinogenic Risk (VI CR) and Vapor Intrusion Hazard Quotient (VI HQ) were compared to the current TDEC DoR Guidelines relative to vapor intrusion. A summary of the TDEC DoR Guidelines follows.

<b>TDEC DoR Vapor Intrusion Carcinogenic Risk (VI CR) Guidelines</b>	
VI CR value less than $1 \times 10^{-6}$	Vapor mitigation is not required or recommended
VI CR value between $1 \times 10^{-6}$ and $1 \times 10^{-5}$	Vapor mitigation is recommended
VI CR value between $1 \times 10^{-5}$ and $1 \times 10^{-4}$	Passive vapor mitigation is required
VI CR value greater than $1 \times 10^{-4}$	Active vapor mitigation is required

<b>TDEC DoR Vapor Intrusion Hazard Quotient (VI HQ) for Non-Carcinogens Guidelines</b>	
VI HQ less than 0.2	Vapor mitigation is not required or recommended
VI HQ between 0.2 and 1.0	Vapor mitigation is recommended
VI HQ between 1.0 and 10	Passive vapor mitigation is required
VI HQ greater than 10	Active vapor mitigation is required

**VISL Calculator Results Suggesting Vapor Mitigation is Required**

The VI CR values at four (4) sample locations (SG-4A, SG-7, SG-10 and SG-16) for the constituent 1,3-butadiene were between  $1 \times 10^{-4}$  and  $1 \times 10^{-5}$  as follows:  $1.25 \times 10^{-5}$  (SG-4A);  $1.31 \times 10^{-5}$  (SG-7);  $1.55 \times 10^{-5}$  (SG-10);  $1.46 \times 10^{-5}$  (SG- 16). The VI HQ value for trichloroethene (TCE) in the SG-1 sample was 1.19. Based on these VI CR and VI HQ values and the TDEC DoR guidelines above, vapor mitigation is required beneath the proposed multi-family buildings.

**VISL Calculator Results Suggesting Vapor Mitigation is Recommended**

The VI CR values for the constituent 1,3-butadiene were between  $1 \times 10^{-5}$  and  $1 \times 10^{-6}$  for the following samples: SG- 2, SG-5, SG-6, SG-12, and SG-13. Additional constituents with VI CR values in the range included: TCE at SG-1; benzene at SG-3, SG-4A, SG-6, SG-7, SG-10, SG-11, SG-12, and SG-16; naphthalene

at SG-5 and SG-7; ethylbenzene at SG-16; and tetrachloroethene (PCE) at SG-8 where the value was  $1 \times 10^{-6}$ . VI HQ values were greater than 0.2 but less than 1.0 for the following: 1,3-butadiene at SG-4A, SG-6, SG-7, SG-10, SG-12, and SG-16; and, PCE at SG-8. These VI and CR values indicated vapor mitigation is recommended.





**EXHIBIT C**  
**TO BROWNFIELD AGREEMENT**  
**NOTICES OF LAND USE RESTRICTIONS**

This instrument prepared by:  
Edward M. Callaway, Esq.  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
(615) 850-8470

## NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to Tenn. Code Ann. § 68-212-225 of the *Hazardous Waste Management Act of 1983*, the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”) has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to Tenn. Code Ann. § 68-212-225(d) the Register of Deeds shall record this Notice and index it in the grantor index under the name of the below-referenced Grantor.

### Witnesseth:

WHEREAS, the Grantor, Germantown JV LLC, a Delaware limited liability company, is the real property owner of 7.43 acres located in Nashville, Davidson County, State of Tennessee, the same being more particularly described in a deed of record as Instrument No. \_\_\_\_\_ in the Register’s Office of Davidson County, Tennessee, identified as Map 82-5, Part of Parcel 158, herein after referred to as the “Property,” and which is more particularly described in Exhibit A hereto, and,

WHEREAS, the Property is shown on a survey drawn by L. Brandon Lambert (Tennessee LS# 2828), dated August 30, 2019, attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, Grantor, also sometimes referred to herein as the “Voluntary Party” entered into a Brownfield Voluntary Agreement with TDEC pursuant to Tennessee Code Annotated § 68-212-224 for the purpose of addressing the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or other pollutants; and

WHEREAS, TDEC has determined that this Notice of Land Use Restrictions is an appropriate remedial action for the protection of human health and the environment for the contamination identified herein, so long as these land use restrictions are instituted and observed for the Property; and...

WHEREAS, the Grantor has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to preserve and maintain these restrictions.

NOW, THEREFORE, in consideration of the foregoing, the Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following

Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

land use restrictions. Said land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and the respective successors and assigns of such parties:

### **Location of Contamination**

The Property is located at 1420 Adams Street in Nashville, Davidson County, Tennessee. Two drawings of the entire Site reflecting sample locations from investigations is attached as Exhibit C.

A Limited Phase II by S&ME, Inc. dated November 11, 2019, included 8 soil borings (3 of which were converted to monitoring wells) and 4 soil gas samples. Metals, one volatile organic compound (VOC), and 11 semi-volatile organic compounds (SVOCs) were detected in soils but at levels below residential EPA Regional Screening Levels (RSLs) (except arsenic). Arsenic was detected in soil above the residential RSL at multiple locations. However, the detections are below the acceptable background levels of 10mg/kg for the State of Tennessee. Metals (barium and selenium) were detected in groundwater at levels below EPA MCL's and/or Tapwater RSLs. VOCs and SVOCs were detected in soil gas, but only 1,3-butadiene in one sample was present at levels that may exceed carcinogenic screening levels using VISL.

S&ME conducted supplemental subsurface soil gas sampling at the Site in November 2020, as documented in a report dated December 10, 2020. S&ME collected soil gas samples from 16 locations within the footprints of the proposed multi-family residential buildings. Comparison of the results to the Target Sub-Slab and Near-Source Soil Gas screening levels indicated the reported concentrations of six (6) constituents (benzene, 1,3-butadiene, ethylbenzene, naphthalene, tetrachloroethene (PCE), and trichloroethene (TCE)) were above their respective screening level. Results of the VISL calculator for each of the subsurface soil gas samples indicated Vapor Intrusion Carcinogenic Risk (VI CR) and Vapor Intrusion Hazard Quotient (VI HQ) for Non-Carcinogens values in some of the samples fall within ranges where vapor mitigation measures may be appropriate in future building design.

### **Land Use Restrictions**

The Grantor agrees that the use of Property will be restricted as follows:

A vapor mitigation system shall be installed in future buildings intended for human occupation at the Property. TDEC approval of plans for such systems and of the systems as-built is required, and these protections shall be maintained going forward. No one shall disturb, modify, damage, or remove any vapor mitigation system installed at or within any structure at the Property unless first approved in

Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

writing by TDEC and pursuant to an approved work plan. Any future replacement of such structures shall be equipped with an equivalent vapor mitigation system or, if approved in writing by TDEC, another vapor mitigation system.

The Grantor shall follow a Soil Management Plan as approved by the Department in conducting any invasive activities at the Site, and activities undertaken in accordance with this plan will be deemed in compliance with this restriction. Any excavated soil or fill to be removed from the Site shall be managed, transported, and/or disposed of in compliance with all applicable federal, state, and local laws, regulations, and ordinances including, without limitation, those pertaining to environmental protection and occupational safety.

### **Enforcement**

Any owner of the land or any unit of local government having jurisdiction over any part of the Property may enforce this Notice of Land Use Restrictions by means of a civil action. The Commissioner of TDEC may enforce this Notice of Land Use Restrictions through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction. TDEC is granted full right of access to the Property for the purpose of implementation or enforcement of this Notice of Land Use Restriction. Pursuant to Tenn. Code Ann. § 68-212-213, any person who fails, neglects, or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

### **Term**

This Notice of Land Use Restrictions shall run with and bind the Property and shall be binding upon all holders and their grantees, lessees, authorized agents, employees, or persons acting under their direction or control unless/until these Land Use Restrictions are made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."

### **Amendment and Termination**

After public notice and an opportunity for public input, as provided in Tenn. Code Ann. § 68-212-225(e), this Notice of Land Use Restrictions may be made less stringent or canceled by the Commissioner of TDEC if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The Grantor, its successors, and/or assigns seeking approval to cancel or make a Land Use Restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.

Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

An amendment or termination of this land use restriction is subject to TDEC approval and must be approved in writing before any amendment or termination is made. No amendment to or termination of this Notice of Land Use Restrictions shall be effective until such amendment or instrument terminating this Notice of Land Use Restrictions is recorded in the Davidson County Register of Deeds.

Contact the Tennessee Department of Environment and Conservation, Division of Remediation, for further information concerning the Property and refer to site number 19-752

### **Severability**

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

*[TDEC approval and Grantor signature pages follow]*

Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

Real property described in a Deed of record with the Davidson County Register of Deeds  
as Instrument No. \_\_\_\_\_.

Approved by:

Tennessee Department of Environment and  
Conservation, Division of Remediation

By: \_\_\_\_\_  
James S. Sanders, Director

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

Before me, the undersigned, a Notary Public in and for the County and State  
aforesaid, personally appeared James S. Sanders, with whom I am personally acquainted (or  
proved to me on the basis of satisfactory evidence), and who upon oath acknowledged  
himself to be Director of Tennessee Department of Environment and Conservation, Division  
of Remediation, the within named bargainor, a state agency, and that he as such Director,  
being authorized so to do, executed the foregoing instrument for the purposes therein  
contained, by signing the name of the state agency by himself as Director.

Witness my hand and seal, at office in Nashville, Tennessee, this the  
\_\_\_\_\_ day of, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

IN WITNESS WHEREOF, the undersigned has executed this instrument this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Grantor

GERMANTOWN JV LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Luca Barber  
Vice President

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

Before me, the undersigned, a Notary Public in and for the County and State  
aforesaid, personally appeared Luca Barber, with whom I am personally acquainted (or  
proved to me on the basis of satisfactory evidence), and who upon oath acknowledged  
himself to be Vice President of Germantown JV LLC, the within named bargainor, a  
Delaware limited liability company, and that he as such Vice President, being authorized so  
to do, executed the foregoing instrument for the purposes therein contained, by signing the  
name of the limited liability company by himself as Vice President.

Witness my hand and seal, at office in Nashville, Tennessee, this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

## EXHIBIT A - DESCRIPTION

Being a tract of land lying in the 19th Council District of Davidson County, Nashville, Tennessee, being a portion of Baugh & Pardue Properties, LLC, as recorded in Instrument Number 201502190014530, Register's Office of Davidson County, Tennessee (RODC), being Lots 1 - 9, 17 - 22, 35 - 37 and portions of Lots 23 - 26 and 38 of O'Shaughnessy Plan as recorded in Plat Book 21, Page 119, RODC, and being portions of rights of way closed by Metro Ordinances O83-1364 and BL2014-982. Said tract being bounded on the north by Metro Government Wastewater and Sewer as recorded in Book 7017, Page 341, RODC, and by River Cement Sales Company as recorded in Instrument Number 201001120002851, RODC, bounded on the east by the Cumberland River, bounded on the south remainder of said Baugh & Pardue Properties, LLC, and bounded on the west by the eastern right of way (ROW) of Adams Street. Said tract being more particularly described as follows:

POINT OF BEGINNING being a found p.k. nail with "DONLON" washer and being the southwest corner of said River Cement Sales Company; thence along the common line of said River Cement Sales Company North  $62^{\circ}54'02''$  East 411.99 feet more or less to a the low water line of said Cumberland River, having passed a found  $5/8''$  iron rod at 359.53 feet; thence generally along the low water line of said Cumberland River with the following: South  $11^{\circ}09'40''$  East 516.93 feet to a point; thence South  $11^{\circ}23'54''$  East 9.43 feet to a point; thence leaving said low water line of the Cumberland River and along a new severance line South  $63^{\circ}10'01''$  West 646.46 feet more or less to a set point lying on said eastern ROW of Adams Street; thence along said eastern ROW of Adams Street with the following: North  $27^{\circ}06'24''$  West 78.57 feet to a found p.k. nail; thence North  $33^{\circ}46'19''$  West 177.71 feet to a found iron rod with "DONLON" cap; thence along the common line of said Metro Government Wastewater and Sewer with the following: North  $63^{\circ}00'50''$  East 25.00 feet to a set iron rod with cap; thence along a curve to the right having an arc length of 184.32 feet, a radius of 358.28 feet, a central angle of  $29^{\circ}28'33''$  and having a chord bearing and distance of North  $04^{\circ}20'23''$  East 182.29 feet to a found p.k. nail with "DONLON" washer; thence North  $62^{\circ}34'26''$  East 268.54 feet to a found iron rod with "DONLON" cap; thence North  $20^{\circ}12'19''$  West 91.70 feet to the point of beginning.

Tract contains 323,615 square feet or 7.43 acres.

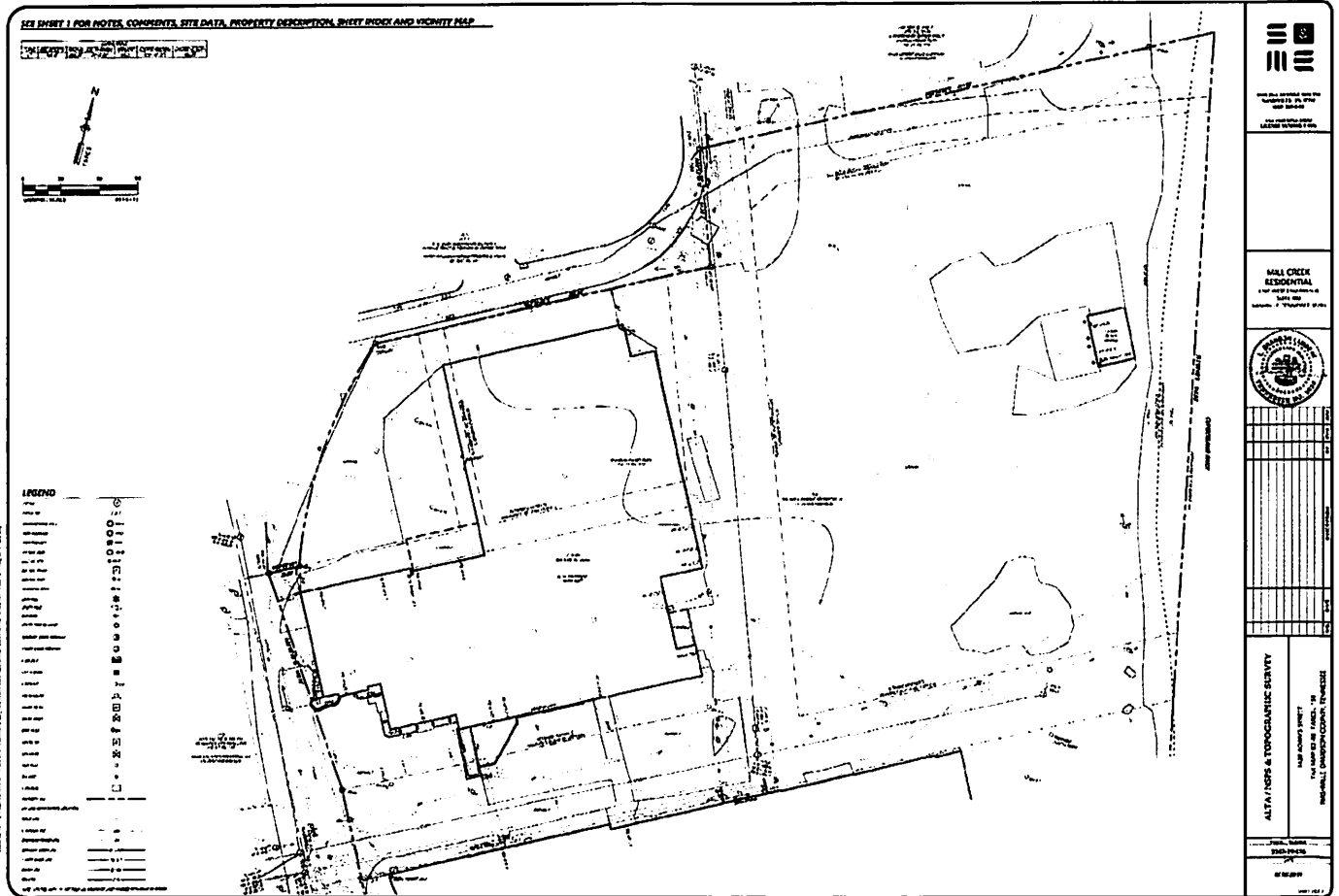
Bearings based on Tennessee State Plane Coordinate System.

Being property conveyed to Germantown JV, LLC, a Delaware limited liability company, by deed from Baugh & Pardue Properties, LLC, of record as Instrument No. \_\_\_\_\_, said Register's Office.



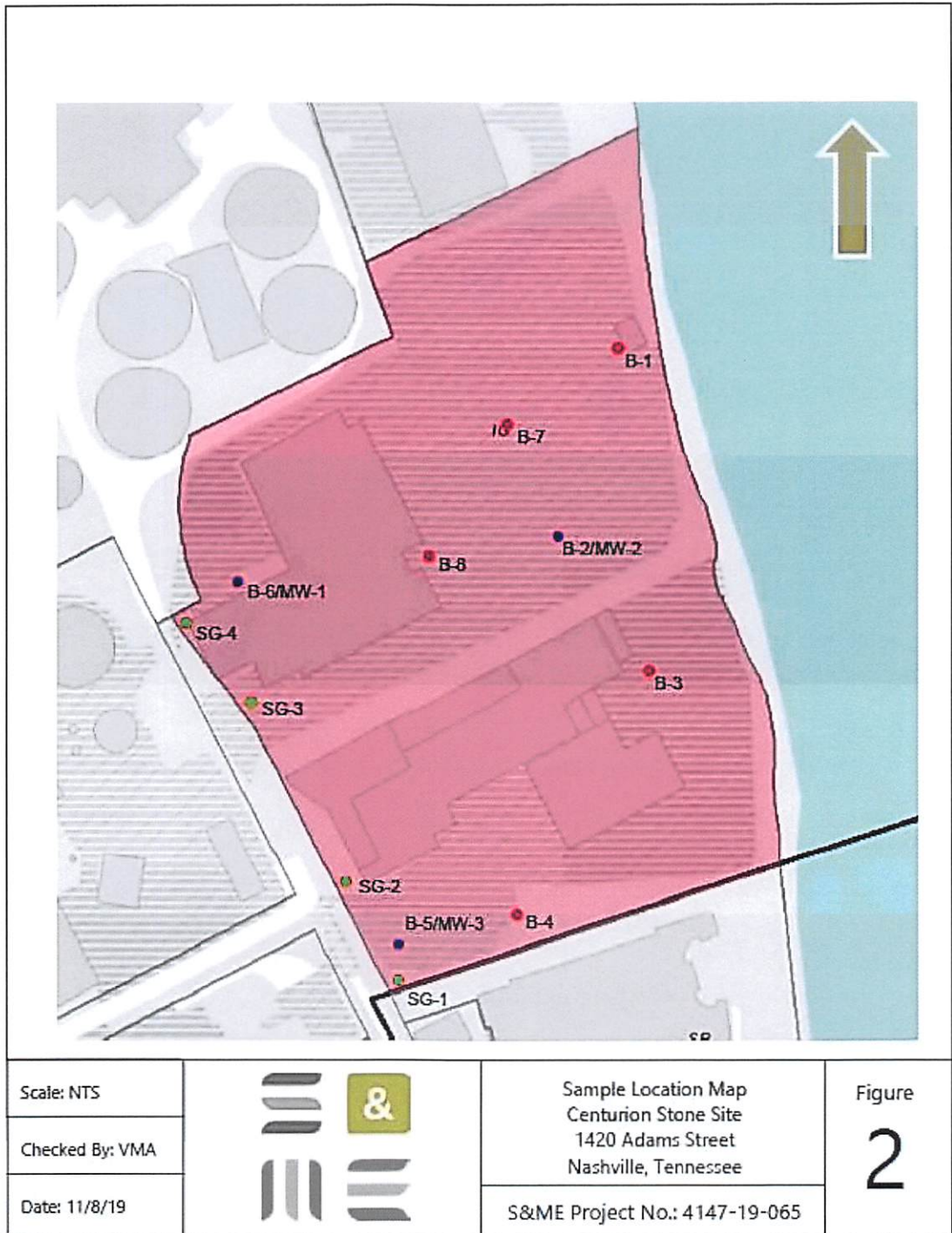
Notice of Land Use Restrictions for:  
 Site # 19-752  
 Nashville, Davidson County, Tennessee

**EXHIBIT B - SURVEY**

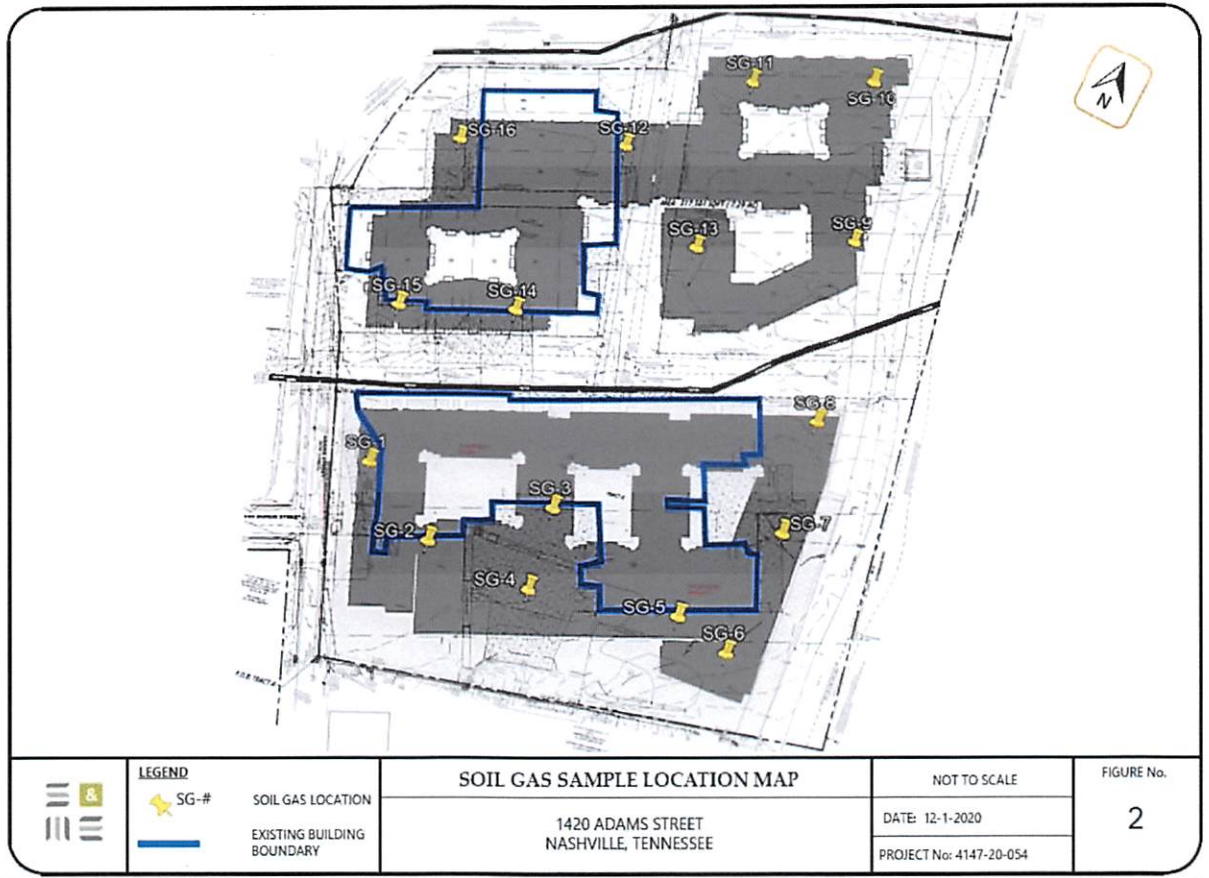


Notice of Land Use Restrictions for:  
Site # 19-752  
Nashville, Davidson County, Tennessee

EXHIBIT C - DRAWINGS OF SAMPLE LOCATIONS



Notice of Land Use Restrictions for:  
 Site # 19-752  
 Nashville, Davidson County, Tennessee



This instrument prepared by:  
Edward M. Callaway, Esq.  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
(615) 850-8470

## NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to Tenn. Code Ann. § 68-212-225 of the *Hazardous Waste Management Act of 1983*, the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”) has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to Tenn. Code Ann. § 68-212-225(d) the Register of Deeds shall record this Notice and index it in the grantor index under the name of the below-referenced Grantor.

### Witnesseth:

WHEREAS, the Grantor, Germantown JV LLC, a Delaware limited liability company, is the real property owner of 4.60 acres located in Nashville, Davidson County, State of Tennessee, the same being more particularly described in a deed of record as Instrument No. \_\_\_\_\_ in the Register’s Office of Davidson County, Tennessee, identified as Map 82-5, Part of Parcel 158, herein after referred to as the “Property,” and which is more particularly described in Exhibit A hereto, and,

WHEREAS, the Property is shown on a survey drawn by L. Brandon Lambert (Tennessee LS# 2828), dated August 30, 2019, attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, Grantor, also sometimes referred to herein as the “Voluntary Party” entered into a Brownfield Voluntary Agreement with TDEC pursuant to Tennessee Code Annotated §68-212-224 for the purpose of addressing the real or perceived threat of the presence on the Site of hazardous substances, solid waste or other pollutants; and

WHEREAS, TDEC has determined that this Notice of Land Use Restrictions is an appropriate remedial action for the protection of human health and the environment for the contamination identified herein, so long as these land use restrictions are instituted and observed for the Property; and...

WHEREAS, the Grantor has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to preserve and maintain these restrictions.

NOW, THEREFORE, in consideration of the foregoing, the Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following

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land use restrictions. Said land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and the respective successors and assigns of such parties:

### **Location of Contamination**

The Property is located at 1420 Adams Street in Nashville, Davidson County, Tennessee. Two drawings of the entire Site reflecting sample locations from investigations is attached as Exhibit C.

A Limited Phase II by S&ME, Inc. dated November 11, 2019, included 8 soil borings (3 of which were converted to monitoring wells) and 4 soil gas samples. Metals, one volatile organic compound (VOC), and 11 semi-volatile organic compounds (SVOCs) were detected in soils but at levels below residential EPA Regional Screening Levels (RSLs) (except arsenic). Arsenic was detected in soil above the residential RSL at multiple locations. However, the detections are below the acceptable background levels of 10mg/kg for the State of Tennessee. Metals (barium and selenium) were detected in groundwater at levels below EPA MCL's and/or Tapwater RSLs. VOCs and SVOCs were detected in soil gas, but only 1,3-butadiene in one sample was present at levels that may exceed carcinogenic screening levels using VISL.

S&ME conducted supplemental subsurface soil gas sampling at the Site in November 2020, as documented in a report dated December 10, 2020. S&ME collected soil gas samples from 16 locations within the footprints of the proposed multi-family residential buildings. Comparison of the results to the Target Sub-Slab and Near-Source Soil Gas screening levels indicated the reported concentrations of six (6) constituents (benzene, 1,3-butadiene, ethylbenzene, naphthalene, tetrachloroethene (PCE), and trichloroethene (TCE)) were above their respective screening level. Results of the VISL calculator for each of the subsurface soil gas samples indicated Vapor Intrusion Carcinogenic Risk (VI CR) and Vapor Intrusion Hazard Quotient (VI HQ) for Non-Carcinogens values in some of the samples fall within ranges where vapor mitigation measures may be appropriate in future building design.

### **Land Use Restrictions**

The Grantor agrees that the use of Property will be restricted as follows:

A vapor mitigation system shall be installed in future buildings intended for human occupation at the Property. TDEC approval of plans for such systems and of the systems as-built is required, and these protections shall be maintained going forward. No one shall disturb, modify, damage or remove any vapor mitigation system installed at or within any structure at the Property unless first approved in

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writing by TDEC and pursuant to an approved work plan. Any future replacement of such structures shall be equipped with an equivalent vapor mitigation system or, if approved in writing by TDEC, another vapor mitigation system.

The Grantor shall follow a Soil Management Plan as approved by the Department in conducting any invasive activities at the Site, and activities undertaken in accordance with this plan will be deemed in compliance with this restriction. Any excavated soil or fill to be removed from the Site shall be managed, transported, and/or disposed of in compliance with all applicable federal, state, and local laws, regulations, and ordinances including, without limitation, those pertaining to environmental protection and occupational safety.

### **Enforcement**

Any owner of the land or any unit of local government having jurisdiction over any part of the Property may enforce this Notice of Land Use Restrictions by means of a civil action. The Commissioner of TDEC may enforce this Notice of Land Use Restrictions through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction. TDEC is granted full right of access to the Property for the purpose of implementation or enforcement of this Notice of Land Use Restriction. Pursuant to Tenn. Code Ann. § 68-212-213, any person who fails, neglects, or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

### **Term**

This Notice of Land Use Restrictions shall run with and bind the Property and shall be binding upon all holders and their grantees, lessees, authorized agents, employees, or persons acting under their direction or control unless/until these Land Use Restrictions are made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."

### **Amendment and Termination**

After public notice and an opportunity for public input, as provided in Tenn. Code Ann. § 68-212-225(e), this Notice of Land Use Restrictions may be made less stringent or canceled by the Commissioner of TDEC if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The Grantor, its successors, and/or assigns seeking approval to cancel or make a Land Use Restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.

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An amendment or termination of this land use restriction is subject to TDEC approval and must be approved in writing before any amendment or termination is made. No amendment to or termination of this Notice of Land Use Restrictions shall be effective until such amendment or instrument terminating this Notice of Land Use Restrictions is recorded in the Davidson County Register of Deeds.

Contact the Tennessee Department of Environment and Conservation, Division of Remediation, for further information concerning the Property and refer to site number 19-752

### **Severability**

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

*[TDEC approval and Grantor signature pages follow]*

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Real property described in a Deed of record with the Davidson County Register of Deeds  
as Instrument No. \_\_\_\_\_.

Approved by:

Tennessee Department of Environment and  
Conservation, Division of Remediation

By: J. S. Sanders  
James S. Sanders, Director

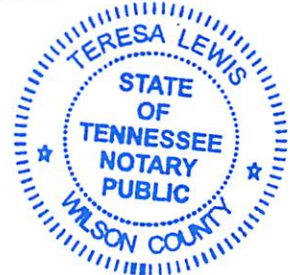
STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared James S. Sanders, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be Director of Tennessee Department of Environment and Conservation, Division of Remediation, the within named bargainor, a state agency, and that he as such Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the state agency by himself as Director.

12<sup>th</sup> Witness my hand and seal, at office in Nashville, Tennessee, this the  
day of January, 2021.

My Commission Expires: 10/7/2023

Teresa Lewis  
NOTARY PUBLIC





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Site # 19-752  
Nashville, Davidson County, Tennessee

IN WITNESS WHEREOF, the undersigned has executed this instrument this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Grantor

GERMANTOWN JV LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Luca Barber  
Vice President

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Luca Barber, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be Vice President of Germantown JV LLC, the within named bargainor, a Delaware limited liability company, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Vice President.

Witness my hand and seal, at office in Nashville, Tennessee, this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Notice of Land Use Restrictions for:  
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### EXHIBIT A - DESCRIPTION

Being a tract of land lying in the 19th Council District of Davidson County, Nashville, Tennessee, being a portion of Baugh & Pardue Properties, LLC, as recorded in Instrument Number 201502190014530, Register's Office of Davidson County, Tennessee (RODC), and being Lot 103 and a portion of Lot 102 of H.W. McGavock's Addition to Nashville as recorded in Plat Book 17, Page 640, RODC. Said tract being bounded on the north the remainder of said Baugh & Pardue Properties, LLC, bounded on the east by the Cumberland River, bounded on the south by Gateway TBR Hammer Mill, LLC, as recorded in Instrument Number 201611220123126, RODC, and bounded on the west by the eastern right of way (ROW) of Adams Street. Said tract being more particularly described as follows:

POINT OF BEGINNING being a set point lying on said eastern ROW of Adams Street and being the southwest corner of the herein described tract; thence along said eastern ROW of Adams Street North  $27^{\circ}06'24''$  West 289.76 feet to set point; thence leaving said ROW of Adams Street along a new severance line North  $63^{\circ}10'01''$  East 646.46 feet more or less to the low water line of said Cumberland River, thence generally along the low water line of said Cumberland River South  $11^{\circ}23'54''$  East 391.48 feet to a point; thence leaving said low water line of the Cumberland River and along the common line of said Gateway TBR Hammer Mill, LLC, South  $72^{\circ}22'01''$  West 547.94 feet to the point of beginning.

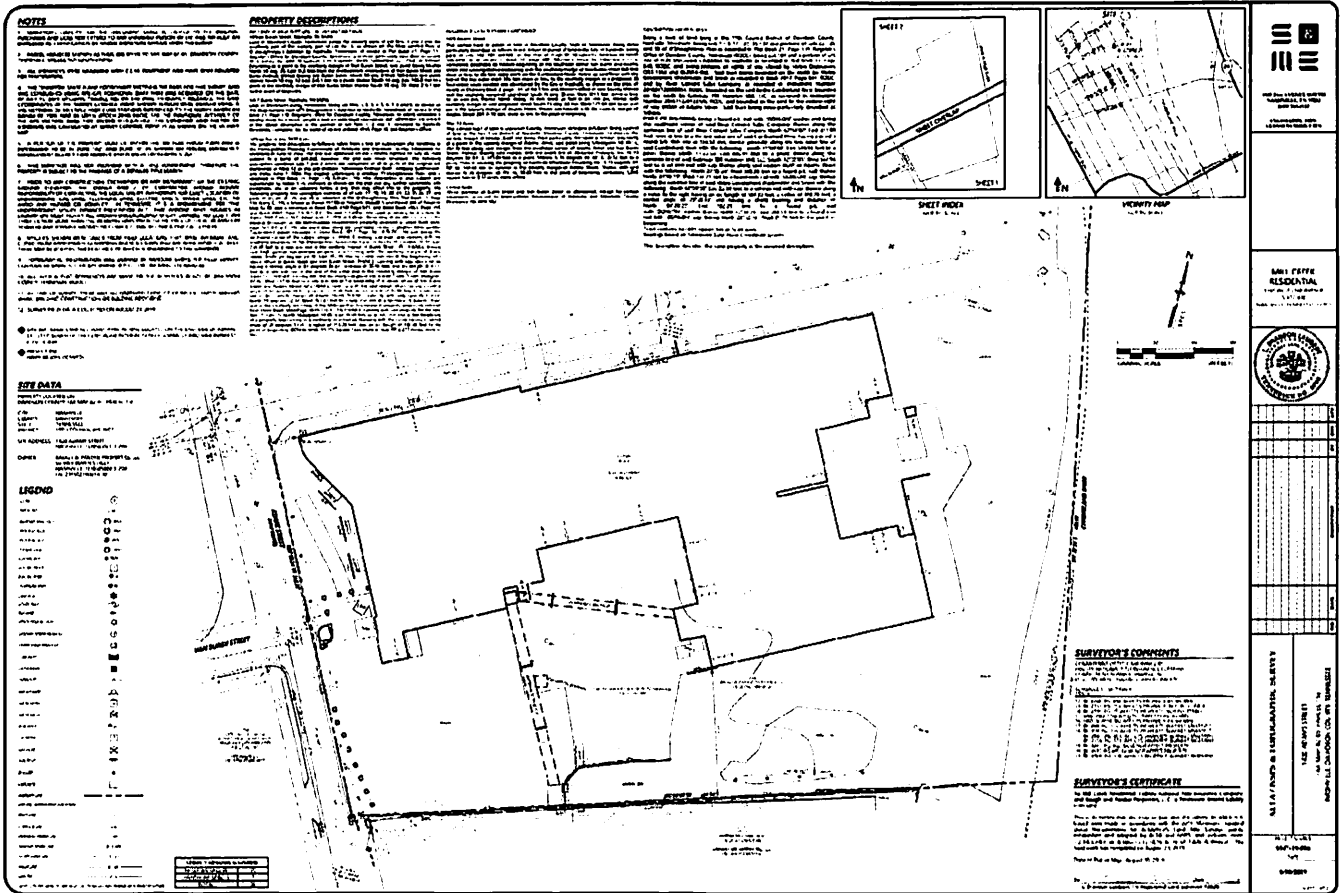
Tract contains 200,277 square feet or 4.60 acres.

Bearings based on Tennessee State Plane Coordinate System.

Being property conveyed to Germantown JV, LLC, a Delaware limited liability company, by deed from Baugh & Pardue Properties, LLC, of record as Instrument No. \_\_\_\_\_, said Register's Office.

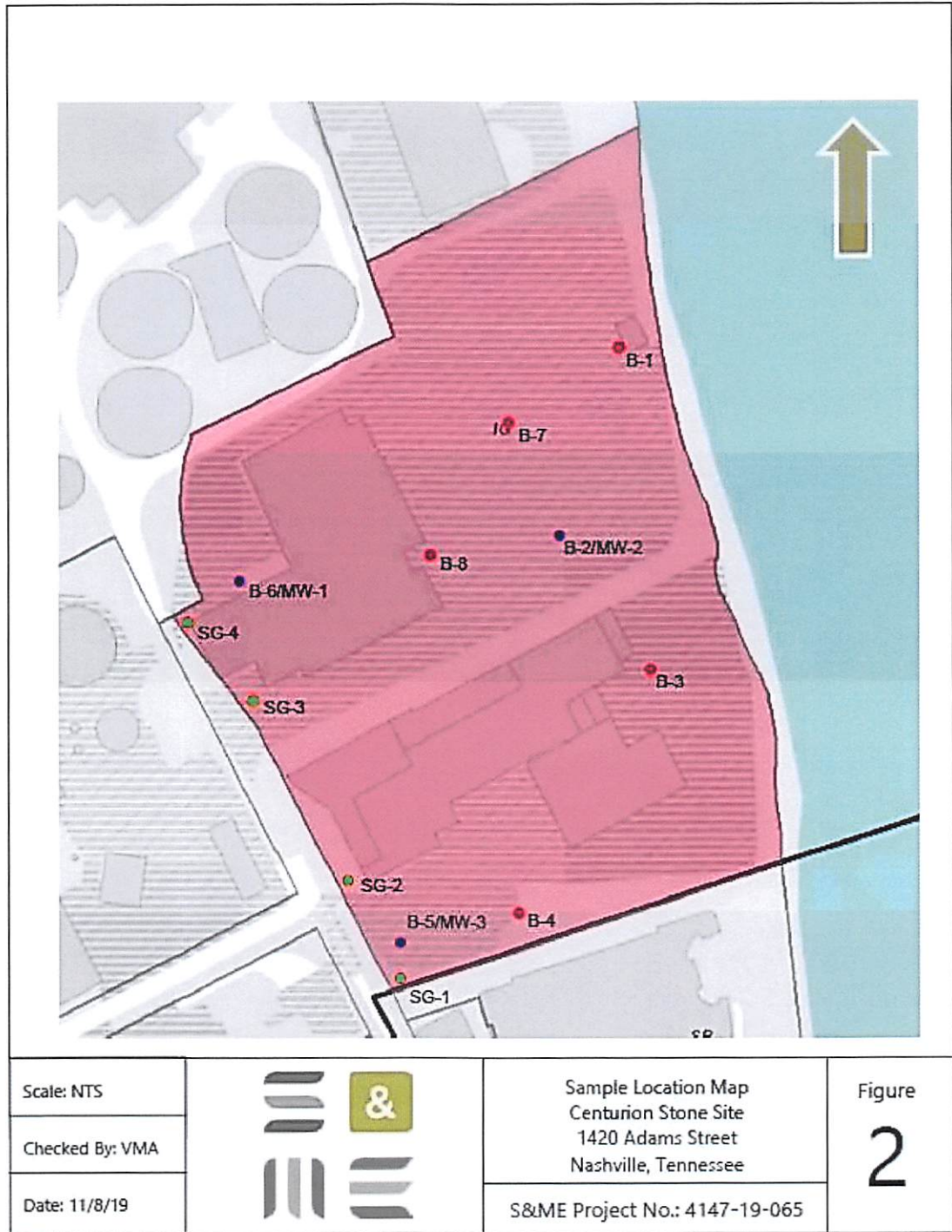
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**EXHIBIT B - SURVEY**



Notice of Land Use Restrictions for:  
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### EXHIBIT C - DRAWINGS OF SAMPLE LOCATIONS



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