

## ***NOTICE OF INTENT TO REDEVELOP A BROWNFIELDS PROPERTY***

**Site Name: Former BASF Landfill  
Brownfields Project Number: 15011-11-11**

North Carolina's Brownfields Property Reuse Act (the "Act"), North Carolina General Statutes ("NCGS") § 130A-310.30 through 130A-310.40, provides for the safe redevelopment of properties that may have been or were contaminated by past industrial and commercial activities. One of the Act's requirements is this Notice of Intent to Redevelop a Brownfields Property approved by the North Carolina Department of Environmental Quality ("DEQ"). See NCGS § 130A-310.34(a). The Notice of Intent must provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with NCGS § 130A-310.35. The party ("Prospective Developer") who desires to enter into a Brownfields Agreement with DEQ must provide a copy of this Notice to all local governments having jurisdiction over the brownfields property. The proposed Notice of Brownfields Property for a particular brownfields project is attached hereto; the proposed Brownfields Agreement, which is attached to the proposed Notice of Brownfields Property as Exhibit A, contains the other required elements of this Notice. Written public comments may be submitted to DEQ within 30 days after the latest of the following dates: the date the required summary of this Notice is (1) published in a newspaper of general circulation serving the area in which the Property is located, (2) conspicuously posted at the Property, and (3) mailed or delivered to each owner of property contiguous to the brownfields property. Written requests for a public meeting may be submitted to DEQ within 21 days after the period for written public comments begins. Those periods will start no sooner than September 25, 2015, and will end on the later of: a) 30 and 21 days, respectively, after that; or b) 30 and 21 days, respectively, after completion of the latest of the three (3) above-referenced dates. All comments and meeting requests should be addressed as follows:

**Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environmental Quality  
1646 Mail Service Center  
Raleigh, North Carolina 27699-1646**

**Property Owner:** Enka Partners of Asheville, LLC  
**Recorded in Book** \_\_\_\_, **Page** \_\_\_\_  
**Associated plat recorded in Plat Book** \_\_\_\_, **Page** \_\_\_\_

**NOTICE OF BROWNFIELDS PROPERTY**

**This documentary component of a Notice of Brownfields Property (“Notice”), as well as the plat component, have been filed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by Enka Partners of Asheville, LLC (“Prospective Developer”).**

**This Notice concerns contaminated property.**

**A copy of this Notice certified by the North Carolina Department of Environmental Quality (“DEQ”) is required to be filed in the Register of Deeds’ Office in the county or counties in which the land is located, pursuant to North Carolina General Statutes ( “NCGS”), § 130A-310.35(b).**

**This Notice is required by NCGS § 130A-310.35(a), in order to reduce or eliminate the danger to public health or the environment posed by environmental contamination at a property ( “Brownfields Property”) being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 ( “Act”).**

**Pursuant to NCGS § 130A-310.35(b), the Prospective Developer must file a certified copy of this Notice within 15 days of Prospective Developer’s receipt of DEQ’s approval of the Notice or Prospective Developer’s entry into the Brownfields Agreement required by the Act, whichever is later. Pursuant to NCGS § 130A-310.35(c), the copy of the Notice certified by DEQ must be recorded in the grantor index under the names of the owners of the land and, if Prospective Developer is not the owner, also under the Prospective Developer’s name.**

The Brownfields Property is located at Sand Hill Road, Asheville, Buncombe County, North Carolina, which in total comprised approximately 228.4 acres. The subject 41.08 acres lies on the east side of the former plant property, and functioned as the corporations landfill. Enka Partners of Asheville, LLC intends to reuse the property for recreational purposes, concessions, public restroom facilities, open space, greenways, parking, and associated driveways.

**The Brownfields Agreement between Prospective Developer and DEQ is attached hereto as Exhibit A. It sets forth the use that may be made of the Brownfields Property and the measures to be taken to protect public health and the environment, and is required by NCGS § 130A-310.32. The**

**Brownfields Agreement's Exhibit 2 consists of one or more data tables reflecting the concentrations of and other information regarding the Property's regulated substances and contaminants.**

Attached as **Exhibit B** to this Notice is a reduction, to 8 1/2" x 11", of the survey plat component of this Notice. This plat shows areas designated by DEQ, has been prepared and certified by a professional land surveyor, meets the requirements of NCGS § 47-30, and complies with NCGS § 130A-310.35(a)'s requirement that the Notice identify:

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location and quantity of regulated substances and contaminants known to exist on the Brownfields Property.

Attached hereto as **Exhibit C** is a legal description of the Brownfields Property that would be sufficient as a description of the property in an instrument of conveyance.

### **LAND USE RESTRICTIONS**

NCGS § 130A-310.35(a) also requires that the Notice identify any restrictions on the current and future use of the Brownfields Property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the Brownfields Property and that are designated in the Brownfields Agreement. **The restrictions shall remain in force in perpetuity unless canceled by the Secretary of DEQ (or its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e). All references to DEQ shall be understood to include any successor in function. The restrictions are hereby imposed on the Brownfields Property, and are as follows:**

- 1. No use may be made of the Property other than for outdoor recreation, concessions, public restroom facilities, open space, greenways, parking, and associated driveways. For purposes of this restriction, the following definitions apply:**
  - a. "Outdoor Recreation" refers to tennis courts, ball fields, ball courts, play areas and similar uses which are not enclosed in buildings and are operated on a commercial or membership basis.**
  - b. "Concessions" refers to the sale of food prepared on site and vending type materials, already prepared and ready for sale to the consumer.**
  - c. "Public restroom facilities" refers to the provision of an enclosed public restroom with hand washing services.**
  - d. "Open space" refers to land used for recreation, natural resource protection, amenities, and/or buffers. An area of land or water which is open and unobstructed, including areas maintained in a natural or undisturbed character or areas improved for active or passive recreation.**
  - e. "Greenways" refers to a linear open space along a natural or constructed corridor, which may be used for pedestrian or bicycle passage. Greenways often link areas of activity, such as parks, cultural features, or historic sites with each other and with populated areas.**
  - f. "Parking and associated driveways" refers to an area designed and designated for temporary accommodation for motor vehicles whether for a fee or as a service. And areas that are predominantly used for vehicular transportation, these areas may also contain pedestrian walkway, utility easements, railroad crossings, and/or on-street parking areas.**

**2. No physical redevelopment of the Property may occur unless and until DEQ's Solid Waste Section and Brownfields Program conclude in writing that the proposed redevelopment will not negatively affect the cover, structural integrity and monitoring systems at the closed landfill facility.**

**3. No physical redevelopment of the Property may occur unless and until DEQ's Solid Waste Section and Brownfields Program review a plan for redevelopment (Redevelopment Plan) that will address:**

- a. public safety for all aspects of the redevelopment;**
- b. maintenance of the landfill cover, structural integrity and monitoring systems;**
- c. the plan shall include a minimum of 2 feet of clean fill for any waste containing area of the landfill and the maintenance thereof;**
- d. assessment and management of methane and landfill gases;**
- e. soil and groundwater management during the redevelopment phase;**
- f. the plan shall be certified by a licensed Professional Engineer in North Carolina;**

**and;**

**g. within 90 days after the conclusion of physical redevelopment, the then owner of the Property shall provide DEQ a report, subject to written DEQ approval, on environment-related activities conducted pursuant to the Redevelopment Plan, which report shall include a summary and drawings and describe how the physical redevelopment was accomplished in accordance with the Redevelopment Plan. DEQ agrees to review the Redevelopment Plan and to provide comments or questions to the Project Developer within 45 days of receipt of the Redevelopment Plan.**

**4. The owner of the Property shall, at its own expense, correct any impacts to the landfill, as determined by DEQ, that increase the cost of compliance or ability to comply with rules and regulations for environmental protection, or adversely affect environmental permits regarding the landfill that are caused by development on the landfill. Said corrections must be made with prior DEQ approval to the written satisfaction of DEQ's Brownfields Program and Solid Waste Section.**

**5. No building(s), lighting, or other development that poses risks of exposure or ignition of methane or landfill gases may be constructed on the Property until methane/landfill gas mitigation measures and/or a methane monitoring system are designed for such building(s), lighting, or other development by a professional engineer licensed in North Carolina. Should such methane/landfill gas mitigation or monitoring measures be necessary, the measures shall be implemented in accordance with a plan approved in writing by DEQ in advance. The methane/landfill gas measures shall include methodology(ies) for demonstrating performance of said measures. Prior to building occupancy, such mitigation measures and/or monitoring systems shall have been installed or implemented in accordance with such DEQ-approved plan and to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's seal on a report that includes photographs and a description of the installation and performance of said measures.**

**6. Unless approved by DEQ, driveway and parking surfaces shall not be paved with asphalt, concrete or other impervious materials. To the extent DEQ determines, in order to protect the public health, that driveways and parking surfaces require venting for methane/landfill gas, such venting will be implemented and installed. To the extent DEQ determines, in order to protect the public health, that any other impervious surfaces, including but not limited to building slabs, require venting for methane/landfill gas, such venting shall be implemented. The design plans for driving and parking**

surfaces and for any impervious surface covering shall require prior written DEQ approval. The Property may not be used as a recreational complex until DEQ has approved a report submitted by Prospective Developer on post-construction methane/landfill gas sampling at the sites of driveway and parking surfaces, and in the vicinity of any impervious surface covering installed at the Property.

7. DEQ and Prospective Developer acknowledge and agree that BASF is currently sampling groundwater on the Property on a periodic basis. If DEQ determines that BASF and Colbond, Inc., have discontinued the groundwater monitoring program for the Property, and, after the exercise of all reasonable efforts, DEQ is unable to compel BASF or Colbond, Inc., to perform such monitoring, DEQ may require the then current owner of the Property to conduct groundwater monitoring at the Property. DEQ may require the then current owner of all or any portion of the Property to conduct such monitoring activities as DEQ's Brownfields Program determines are reasonably necessary to make the Property suitable for the uses specified in subparagraph 1.a. above while fully protecting public health and the environment. Such activities, if required by DEQ of the then current owner, shall be conducted pursuant to a plan submitted to, and approved by, DEQ in advance. The plan shall include, but is not limited to, sampling methodology, analytes, analytical methods, a schedule for sampling, and criteria for cessation of monitoring.

8. Only areas designated "Play Areas" or "Ball Fields" on the plat component of this Notice may be used for playground facilities or designed ball fields, and neither of those uses may occur in any such area unless and until:

- a. a minimum of 2 feet of clean fill is installed per a plan DEQ's Solid Waste Section and Brownfields Program approves in writing in advance, including sampling and analysis of the fill to DEQ's satisfaction;
- b. methane and landfill gases are evaluated, managed, and/or mitigated to DEQ's satisfaction; and
- c. DEQ approves in writing a report regarding the plan that is submitted within 30 days thereafter. Any deficiencies noted by DEQ shall be corrected to DEQ's satisfaction within 30 days of DEQ's notification of said deficiency.

9. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) or surface water may occur on the Property without any prior sampling (and sampling analysis) DEQ deems desirable, and any remediation DEQ deems desirable based on the analysis, to ensure the Property is suitable for the uses specified in subparagraph 1.a. above and that public health and the environment are fully protected.

10. None of the contaminants known to be present in the environmental media at the Property, including those listed in Exhibit 2 hereto, may be used or stored at the Property without the prior written approval of DEQ, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

11. The owner of any portion of the Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ.

12. Neither DEQ, nor any party conducting environmental assessment or remediation at

the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into by DEQ, may be denied access to the Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Property.

13. During January of each year after the year in which this Notice is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DEQ, and to the chief public health and environmental officials of Buncombe County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Buncombe County Register of Deeds office and that the land use restrictions are being complied with, and stating:

a. the name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

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

c. whether any methane monitoring and/or mitigation systems installed pursuant to subparagraphs 3.d., 5., and 8.b., above are performing as designed, and whether the uses of the ground floors of any buildings containing such monitoring and/or mitigation systems have changed, and, if so, how.

For purposes of the land use restrictions set forth above, the DEQ point of contact shall be the DEQ official referenced in paragraph 36.a. of Exhibit A hereto, at the address stated therein.

### ENFORCEMENT

The above land use restrictions shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. The land use restrictions shall be enforced by any owner of the Brownfields Property. The land use restrictions may also be enforced by DEQ through the remedies provided in NCGS § 130A, Article 1, Part 2 or by means of a civil action; by any unit of local government having jurisdiction over any part of the Brownfields Property; and by any person eligible for liability protection under the Brownfields Property Reuse Act who will lose liability protection if the restrictions are violated. Any attempt to cancel any or all of this Notice without the approval of the Secretary of DEQ (or its successor in function), or his/her delegate, shall be subject to enforcement by DEQ to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

### FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS

When any portion of the Brownfields Property is sold, leased, conveyed or transferred, pursuant to NCGS § 130A-310.35(d) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the Brownfields Property has been classified and, if appropriate, cleaned up as a brownfields property under the Brownfields Property Reuse Act.



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

The foregoing Notice of Brownfields Property is hereby approved and certified.

North Carolina Department of Environmental Quality

By: \_\_\_\_\_ Date \_\_\_\_\_  
Michael E. Scott  
Deputy Director, Division of Waste Management



**CERTIFICATION OF REGISTER OF DEEDS**

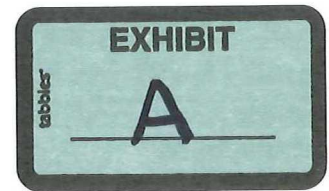
The foregoing documentary component of the Notice of Brownfields Property, and the associated plat, are certified to be duly recorded at the date and time, and in the Books and Pages, shown on the first page hereof.

Register of Deeds for \_\_\_\_\_ County

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

Name typed or printed: \_\_\_\_\_ Date \_\_\_\_\_

Deputy/Assistant Register of Deeds



NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF: Enka Partners of Asheville, LLC

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT	)	Former BASF Landfill Site
OF 1997, N.C.G.S. § 130A-310.30, et seq.	)	Sand Hill Road
Brownfields Project # 15011-11-11	)	Asheville, Buncombe County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environmental Quality (“DEQ”) and Enka Partners of Asheville, LLC (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the “Act”).

Enka Partners of Asheville, LLC is a North Carolina member-managed limited liability company whose business address is 1091 Hendersonville Road, Asheville, North Carolina 28803. This Agreement pertains to 41.08 acres of the former BASF Corporation landfill property at Sand Hill Road, Asheville, Buncombe County, North Carolina, which in total comprised approximately 228.4 acres. The subject 41.08 acres lies on the east side of the former plant property. A map showing the location of the acreage is attached hereto as Exhibit 1. Enka Partners of Asheville, LLC intends to reuse the property for recreational purposes, concessions, public restroom facilities, open space, greenways, parking, and associated driveways.

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 (DEQ’s Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer’s Covenant Not to Sue), the

potential liability of Enka Partners of Asheville, LLC for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit Enka Partners of Asheville, LLC shall provide to DEQ, 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 depicted in Exhibit 1 to the Agreement.

2. "Prospective Developer" shall mean Enka Partners of Asheville, LLC.

## III. STATEMENT OF FACTS

3. The Property comprises 41.08 acres. Prospective Developer has committed itself to redevelopment for no uses other than those set forth in paragraph 16.a. below.

4. The Property is bordered to the north by property of another parcel owned by the Prospective Developer, beyond is Hominy Creek and beyond is the Buncombe County Soccer Complex; to the south by property owned by Prospective Developer being developed into the distribution center for New Belgium Brewing and other commercial uses; to the east by vacant wooded property; and to the west by a portion of the former BASF plant owned by Prospective

Developer also under a Brownfields Agreement with project number 12012-08-11.

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
Final Preliminary Assessment Report	NC Department of Human Resources Division of Health Services	August 15, 1985
Preliminary Reassessment	NUS Corporation	March 8, 1989
BASF Enka Landfill Post-Closure Monitoring Program	ENSR Consulting & Engineering (NC), Inc.	April 9, 2008
Brownfield Site Assessment Report – Former BASF Corporation	Altamont Environmental, Inc.	April 27, 2011
BASF Enka Site – Closed Industrial Landfill Facility Permit No. 11-02 Semi-Annual Sampling Report (October 2012 Sampling Event)	CDM Smith	January 2013
BASF Enka Site – Semi-Annual Groundwater Monitoring Report	ELM Site Solutions, Inc.	May 2014

6. For purposes of this Agreement, DEQ relies on the following representations by Prospective Developer as to use and ownership of the Property:

- a. Prior to 1928 the Property was undeveloped; in 1929 American Enka Corp. opened a facility there that produced rayon yarn.
- b. The American Enka Corporation began operating the sanitary landfill in 1929.
- c. In 1980, American Enka received a North Carolina Solid Waste Management permit No. 11-02 as an industrial waste landfill to dispose of manufacturing, construction, and general wastes.

d. Throughout its history, the facility primarily manufactured continuous filament yarn, nylon textile yarn and carpet yarn. The types of waste being disposed of in the landfill were documented as; construction waste, fly ash and bottom ash, water/wastewater treatment sludge, and depolymerized nylon waste.

e. American Enka sampled the fly ash that was landfilled in January 1984 the concentrations of chromium were 10 mg/kg and arsenic was 15 mg/kg.

f. BASF Corporation purchased American Enka Corp. in 1985 and continued to operate the facility until 2001.

g. In 2001 the Property was acquired by Colbond, Inc. (formerly known as Colbond Acquisition I, Inc.).

h. On March 13, 2006 DEQ issued a Letter of Closure to Colbond, Inc.(current landowner) and BASF Corporation (Landfill owner/operator) for the BASF Industrial landfill facility permit No. 11-02.

i. On July 8, 2008, Prospective Developer acquired the Property.

7. On January 14, 2010 DEQ issued a Notice of Violation (ID# IS111001) to Enka Partners of Asheville, LLC. The Notice identified a non-conforming solid waste disposal site, the property is also known as the BASF Closed Landfill (permit #11-02).

8. On August 24, 2010 DEQ issued a Closure Notice for (ID# IS111001), stating the requirements of the Notice of Violation have been satisfied and the violation has been corrected.

9. Groundwater and surface water at the Property is contaminated with metals above applicable limits. Data tables reflecting the concentrations of and other information regarding the Property's regulated substances and contaminants appear in Exhibit 2 to this Agreement.

10. For purposes of this Agreement DEQ 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 DEQ a Brownfields Property Application dated May 22, 2008, and acquiring the Property on July 8, 2008.

11. Prospective Developer has provided DEQ with information, or sworn certifications regarding that information on which DEQ 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.

12. Prospective Developer has paid the \$2,000 fee to seek a brownfields agreement

required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DEQ of \$3,500 at the time Prospective Developer and DEQ enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. Additionally the Prospective Developer shall pay an initial \$2,000 fee for review of the site Redevelopment Plan which shall include an environmental management component of all media. A \$1,000 fee each time that DEQ reviews a material revision to the Redevelopment Plan pursuant to subparagraph 16.c., below, that does not involve changes to the Notice of Brownfields Property or this Agreement; and at least a \$2,000 fee each time that DEQ reviews a material revision to the Redevelopment Plan pursuant to subparagraph 16.c., below that involves changes to the Notice of Brownfields Property or this Agreement. If actual costs incurred by DEQ for reviewing revisions to the Redevelopment Plan that involve changes to the Notice of Brownfields Property or this Agreement exceed the minimum \$2,000 fee described in this paragraph, Prospective Developer shall pay the minimum fee plus actual costs to DEQ only to the extent that such costs exceed the minimum \$2,000 fee. Other than changes to the Redevelopment Plan as described above, for any change sought to a Brownfield document after it is in effect there shall be an additional fee of \$1,000 plus actual costs to DEQ only to the extent that such costs exceed the minimum \$1,000 fee. The Parties agree that such fees described above will suffice as the \$5,500 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DEQ and the North Carolina Department of Justice of all activities related to this Agreement.

#### IV. BENEFIT TO COMMUNITY

13. The redevelopment of the Property proposed herein would provide the following

public benefits:

- a. a productive use of the Property;
- b. recreational space for the area;
- c. a total of approximately 100 jobs constructing and operating the project;
- d. “smart growth” through use of land in an already developed area, which avoids development of land beyond the urban fringe (“greenfields”).
- e. economic development for the area in that visitors to the proposed sports

complex are projected to utilize approximately 4,000 hotel rooms annually with that number increasing to approximately 10,000 annually when the complex is fully utilized. Visitors to the complex are expected to purchase related goods and services. The projected annual economic impact to the community is \$5M.

#### V. WORK TO BE PERFORMED

14. In redeveloping the Property, Prospective Developer shall consider the application of sustainability principles at the Property, using the six (6) areas incorporated into the U.S. Green Building Council Leadership in Energy and Environmental Design certification program (Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality and Innovation in Design), or a similar program.

15. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DEQ’s Covenant Not to Sue and Reservation of Rights), DEQ is not requiring Prospective Developer to perform any active remediation at the Property.

16. By way of the Notice of Brownfields Property referenced below in paragraph 21,



Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. All references to DEQ shall be understood to include any successor in function.

a. No use may be made of the Property other than for outdoor recreation, concessions, public restroom facilities, open space, greenways, parking, and associated driveways. For purposes of this restriction, the following definitions apply:

i. "Outdoor Recreation" refers to tennis courts, ball fields, ball courts, play areas and similar uses which are not enclosed in buildings and are operated on a commercial or membership basis.

ii. "Concessions" refers to the sale of food prepared on site and vending type materials, already prepared and ready for sale to the consumer.

iii. "Public restroom facilities" refers to the provision of an enclosed public restroom with hand washing services.

iv. "Open space" refers to land used for recreation, natural resource protection, amenities, and /or buffers. An area of land or water which is open and unobstructed, including areas maintained in a natural or undisturbed character or areas improved for active or passive recreation.

v. "Greenways" refers to a linear open space along a natural or constructed corridor, which may be used for pedestrian or bicycle passage. Greenways often link areas of activity, such as parks, cultural features, or historic sites with each other and with populated areas.

vi. "Parking and associated driveways" refers to an area designed and designated for temporary accommodation for motor vehicles whether for a fee or as a service. And areas that are predominantly used for vehicular transportation, these areas may also contain pedestrian walkway, utility easements, railroad crossings, and/or on-street parking areas.

b. No physical redevelopment of the Property may occur unless and until DEQ's Solid Waste Section and Brownfields Program conclude in writing that the proposed redevelopment will not negatively affect the cover, structural integrity and monitoring systems at the closed landfill facility.

c. No physical redevelopment of the Property may occur unless and until DEQ's Solid Waste Section and Brownfields Program review a plan for redevelopment (Redevelopment Plan) that will address:

- i. public safety for all aspects of the redevelopment;
- ii. maintenance of the landfill cover, structural integrity and monitoring systems;
- iii. the plan shall include a minimum of 2 feet of clean fill for any waste containing area of the landfill and the maintenance there of;
- iv. assessment and management of methane and landfill gases;
- v. soil and groundwater management during the redevelopment phase;
- vi. the plan shall be certified by a licensed Professional Engineer in North Carolina; and
- vii. within 90 days after the conclusion of physical redevelopment, the then owner of the Property shall provide DEQ a report, subject to written DEQ approval, on

environment-related activities conducted pursuant to the Redevelopment Plan, which report shall include a summary and drawings and describe how the physical redevelopment was accomplished in accordance with the Redevelopment Plan. DEQ agrees to review the Redevelopment Plan and to provide comments or questions to the Project Developer within 45 days of receipt of the Redevelopment Plan.

d. The owner of the Property shall, at its own expense, correct any impacts to the landfill, as determined by DEQ, that increase the cost of compliance or ability to comply with rules and regulations for environmental protection, or adversely affect environmental permits regarding the landfill that are caused by development on the landfill. Said corrections must be made with prior DEQ approval to the written satisfaction of DEQ's Brownfields Program and Solid Waste Section.

e. No building(s), lighting, or other development that poses risks of exposure or ignition of methane or landfill gases may be constructed on the Property until methane/landfill gas mitigation measures and/or a methane monitoring system are designed for such building(s), lighting, or other development by a professional engineer licensed in North Carolina. Should such methane/landfill gas mitigation or monitoring measures be necessary, the measures shall be implemented in accordance with a plan approved in writing by DEQ in advance. The methane/landfill gas measures shall include methodology(ies) for demonstrating performance of said measures. Prior to building occupancy, such mitigation measures and/or monitoring systems shall have been installed or implemented in accordance with such DEQ-approved plan and to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's seal on a report that includes photographs and a description of the installation and

performance of said measures.

f. Unless approved by DEQ, driveway and parking surfaces shall not be paved with asphalt, concrete or other impervious materials. To the extent DEQ determines, in order to protect the public health, that driveways and parking surfaces require venting for methane/landfill gas, such venting will be implemented and installed. To the extent DEQ determines, in order to protect the public health, that any other impervious surfaces, including but not limited to building slabs, require venting for methane/landfill gas, such venting shall be implemented. The design plans for driving and parking surfaces and for any impervious surface covering shall require prior written DEQ approval. The Property may not be used as a recreational complex until DEQ has approved a report submitted by Prospective Developer on post-construction methane/landfill gas sampling at the sites of driveway and parking surfaces, and in the vicinity of any impervious surface covering installed at the Property.

g. DEQ and Prospective Developer acknowledge and agree that BASF is currently sampling groundwater on the Property on a periodic basis. If DEQ determines that BASF and Colbond, Inc., have discontinued the groundwater monitoring program for the Property, and, after the exercise of all reasonable efforts, DEQ is unable to compel BASF or Colbond, Inc., to perform such monitoring, DEQ may require the then current owner of the Property to conduct groundwater monitoring at the Property. DEQ may require the then current owner of all or any portion of the Property to conduct such monitoring activities as DEQ's Brownfields Program determines are reasonably necessary to make the Property suitable for the uses specified in subparagraph 16.a. above while fully protecting public health and the environment. Such activities, if required by DEQ of the then-current owner, shall be conducted

pursuant to a plan submitted to, and approved by, DEQ in advance. The plan shall include, but is not limited to, sampling methodology, analytes, analytical methods, a schedule for sampling, and criteria for cessation of monitoring.

h. Only areas designated “Play Areas” or “Ball Fields” on the plat component of the Notice referenced in paragraph 21 may be used for playground facilities or designed ball fields, and neither of those uses may occur in any such area unless and until:

i. a minimum of 2 feet of clean fill is installed per a plan DEQ’s Solid Waste Section and Brownfields Program approves in writing in advance, including sampling and analysis of the fill to DEQ’s satisfaction;

ii. methane and landfill gases are evaluated, managed, and/or mitigated to DEQ’s satisfaction; and

iii. DEQ approves in writing a report regarding the plan that is submitted within 30 days thereafter. Any deficiencies noted by DEQ shall be corrected to DEQ’s satisfaction within 30 days of DEQ’s notification of said deficiency.

i. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) or surface water may occur on the Property without any prior sampling (and sampling analysis) DEQ deems desirable, and any remediation DEQ deems desirable based on the analysis, to ensure the Property is suitable for the uses specified in subparagraph 16.a. above and that public health and the environment are fully protected.

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

the Property, including those listed in Exhibit 2 hereto, may be used or stored at the Property without the prior written approval of DEQ, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

k. The owner of any portion of the Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ.

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

m. During January of each year after the year in which the Notice referenced below in paragraph 21 is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DEQ, and to the chief public health and environmental officials of Buncombe County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Buncombe County Register of Deeds office and that the land use restrictions are being complied with, and stating:

i. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

ii. the transferee's name, mailing address, telephone and facsimile

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

iii. whether any methane monitoring and/or mitigation systems installed pursuant to subparagraphs 16.c.iv., e., and h.ii., above are performing as designed, and whether the uses of the ground floors of any buildings containing such monitoring and/or mitigation systems have changed, and, if so, how.

17. The desired result of the above-referenced land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

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

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

#### VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

20. In addition to providing access to the Property pursuant to subparagraph 16.l. above, Prospective Developer shall provide DEQ, its authorized officers, employees, representatives, and all other persons performing response actions under DEQ oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective

Developer owns the Property, DEQ shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DEQ at the Property. Notwithstanding any provision of this Agreement, DEQ 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.

21. DEQ 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 Buncombe County, North Carolina register of deeds' office. Within three (3) days thereafter, Prospective Developer shall furnish DEQ 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.

22. 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 Buncombe 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.



23. 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 (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound & Transfer/Assignment Notice) of this Agreement.

#### VII. DUE CARE/COOPERATION

24. 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 DEQ and further agrees not to interfere with 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 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DEQ of such release or threatened release.

#### VIII. CERTIFICATION

25. By entering into this agreement, the Prospective Developer certifies that, without DEQ approval, it will make no use of the Property other than that committed to in the Brownfields Property Application dated May 22, 2008 by which it applied for this Agreement (except as may be modified herein). That use is as set forth in subparagraph 16.a. above.

Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DEQ 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. DEQ'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

26. Unless any of the following apply, Prospective Developer shall not be liable to DEQ, and DEQ 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.

27. Except as may be provided herein, DEQ reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act.

28. 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.

29. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 26 through 28 above, apply to all of the persons listed in N.C.G.S. § 130A-310.33, including future owners of the property, to the same extent as prospective developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties.

#### X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

30. In consideration of DEQ'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 DEQ, 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

31. This Agreement shall apply to and be binding upon DEQ, 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.

## XII. DISCLAIMER

32. This Agreement in no way constitutes a finding by DEQ as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DEQ 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-310.37.

33. Except for the Land Use Restrictions set forth in paragraph 16.a., above and N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

## XIII. DOCUMENT RETENTION

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

## XIV. PAYMENT OF ENFORCEMENT COSTS

35. 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 DEQ to enforce this Agreement or otherwise obtain compliance.

#### XV. NOTICES AND SUBMISSIONS

36. Unless otherwise required by DEQ 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 DEQ:

Tracy Wahl  
N.C. Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

b. for Prospective Developer:

Martin Lewis  
Enka Partners of Asheville, LLC  
1091 Hendersonville Road  
Asheville, NC 28806

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

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

#### XVII. TERMINATION OF CERTAIN PROVISIONS

38. 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

39. 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 DEQ or any other person in relation to the Property.

40. 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 DEQ in writing no later than 60 days prior to the initiation of such suit or claim.

41. 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 DEQ in writing within 10 days of service of the complaint on it.

#### XIX. PUBLIC COMMENT

42. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in a newspaper of general circulation serving the area in which the Property is located,

conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property. After expiration of that period, or following a public meeting if DEQ holds one pursuant to N.C.G.S. § 130A-310.34(c), DEQ 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 ENVIRONMENTAL QUALITY

By:

---

Michael E. Scott  
Deputy Director, Division of Waste Management

Date

IT IS SO AGREED:

ENKA PARTNERS OF ASHEVILLE, LLC

By:

---

Martin Lewis  
Managing Member

Date

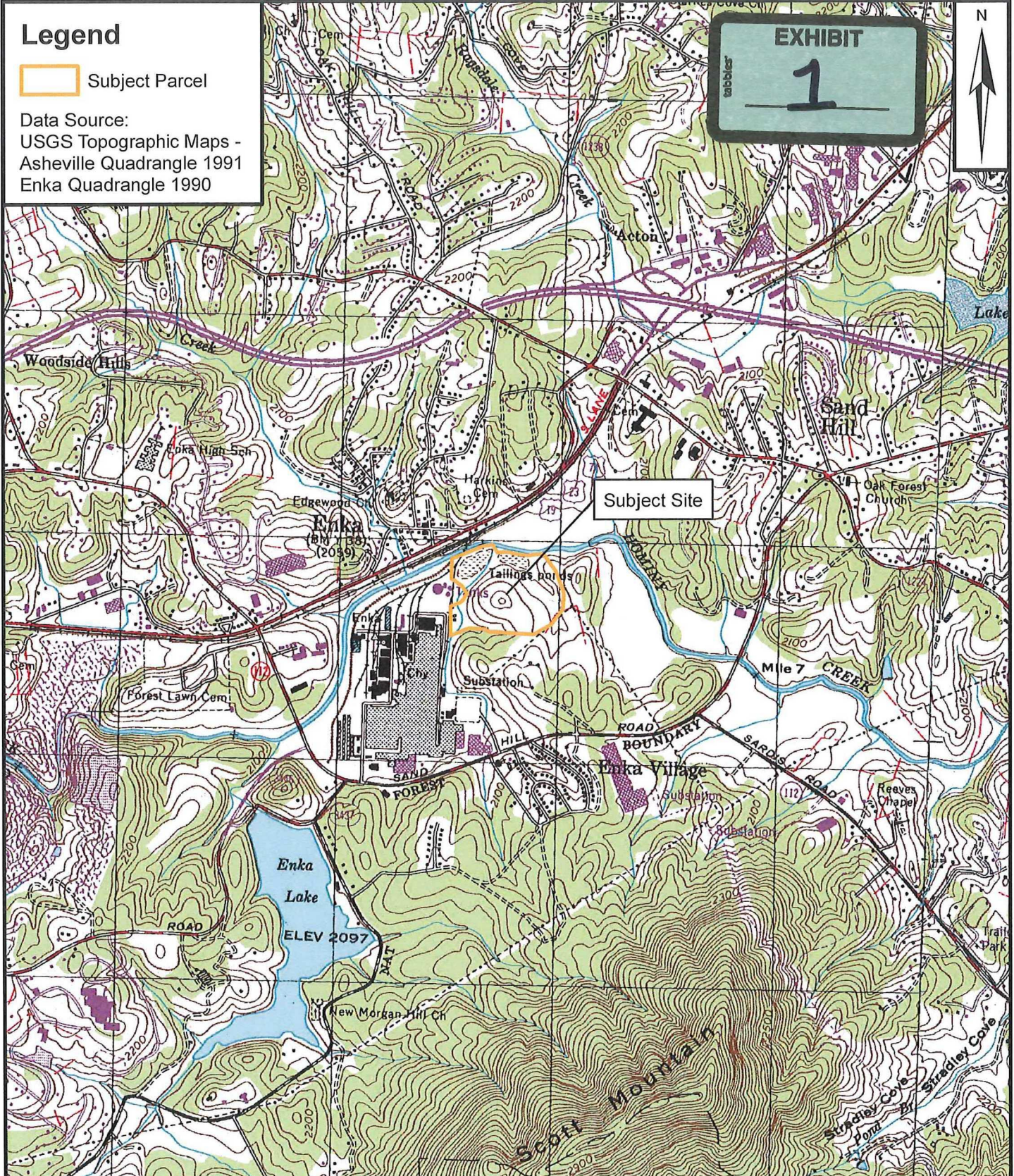


# Legend

 Subject Parcel

Data Source:  
USGS Topographic Maps -  
Asheville Quadrangle 1991  
Enka Quadrangle 1990

EXHIBIT  
**1**



**ALTAMONT ENVIRONMENTAL, INC.**  
ENGINEERING & HYDROGEOLOGY

231 HAYWOOD STREET, ASHEVILLE, NC 28801  
TEL. 828.281.3350 FAC. 828.281.3351  
WWW.ALTAMONTENVIRONMENTAL.COM

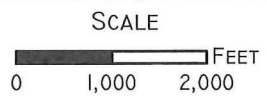
SITE LOCATION MAP

FIGURE

FORMER BASF LANDFILL  
ENKA, NORTH CAROLINA

**1**

DRAWN BY: CONNER SMITH  
PROJECT MANAGER: MICHAEL FALKNOR  
CLIENT: ENKA PARTNERS  
DATE: 9/24/2015



## Exhibit 2

The most recent environmental sampling at the Property reported in the Environmental Reports occurred in May of 2014. 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:

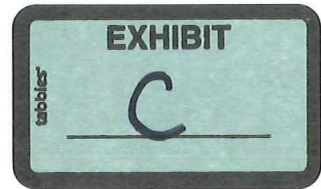
Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Most Recent Sampling	Maximum Concentration at Most Recent Sampling (µg/L)	Standard (µg/L)
Chromium	MW-4R	5/1/2014	12.9	10
Cobalt	MW-3	5/1/2014	1.71J	1
	MW-4R	5/1/2014	9.48J	
	MW-5	5/1/2014	26.2	
	MW-6	5/1/2014	1.47J	
Sulfate	MW-5	5/1/2014	280,000D	250,000
Vanadium	MW-3	5/1/2014	2.95J	0.3
	MW-4R	5/1/2014	21.5	
	MW-6	5/1/2014	2.25J	

Surface water contaminants in micrograms per liter (the equivalent of parts per billion), the unrestricted use standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2B, Rule .0208 (May , 2007 version):

Surface Water Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (ug/L)	Standard (ug/L)
Silver	SW-1	5/1/2014	1.9	0.06
	DW-1	5/1/2014	1.9	





## PROPERTY DESCRIPTION

BEING all that certain parcel of land lying in Lower Hominy Township, Buncombe County, North Carolina, and being more particularly described as follows:

BEGINNING at a #5 rebar found (RBF) with an "HB" cap at the northwestern corner of the Fletcher Partners, Inc. parcel shown as Parcel "E" in PB 118, Page 147 and in the eastern line of the Enka Partners of Asheville, LLC parcel shown as Parcel "B" in PB 118, Page 147, said rebar lying North  $01^{\circ}34'52''$  East 717.60 feet from a #5 RBF with an "HB" cap; thence from said BEGINNING point North  $01^{\circ}34'52''$  East (passing a #5 rebar set (RBS) with an "EHA" cap at 214.56 feet) a total distance of 432.28 feet to a #5 RBF with an "HB" cap; thence North  $68^{\circ}12'19''$  East 150.67 feet to a #5 RBF with an "HB" cap; thence North  $56^{\circ}27'14''$  East 31.89 feet to a #5 RBS with an "EHA" cap; thence North  $40^{\circ}01'34''$  East 32.83 feet to a #5 RBF with an "HB" cap; thence North  $28^{\circ}01'10''$  East 59.48 feet to a #5 RBF with an "HB" cap; thence North  $49^{\circ}03'50''$  East 42.17 feet to a #5 RBF with an "HB" cap; thence North  $34^{\circ}48'18''$  West 68.04 feet to a #5 RBF with an "HB" cap; thence North  $33^{\circ}23'51''$  West 73.00 feet to a #5 RBF with an "HB" cap; thence North  $53^{\circ}32'54''$  West 94.86 feet to a #5 RBF with an "HB" cap; thence North  $56^{\circ}09'34''$  West 97.34 feet to a #5 RBS with an "EHA" cap; thence North  $01^{\circ}34'52''$  East 291.86 feet to a #5 RBS with an "EHA" cap near the southern bank of Hominy Creek; thence more or less with the northern bank of Hominy Creek the following 7 (seven) calls:

- 1) North  $67^{\circ}45'33''$  East 503.15 feet to a #5 RBS with an "EHA" cap;
- 2) North  $83^{\circ}18'04''$  East 140.22 feet to a #5 RBS with an "EHA" cap;  
(passing a #5 RBS with an "EHA" cap at 15.29 feet)
- 3) South  $34^{\circ}38'22''$  East 133.89 feet to a #5 RBS with an "EHA" cap;
- 4) North  $88^{\circ}25'16''$  East 157.93 feet to a #5 RBS with an "EHA" cap;
- 5) South  $73^{\circ}10'13''$  East 78.82 feet to a #5 RBS with an "EHA" cap;
- 6) South  $82^{\circ}13'17''$  East 218.65 feet to a #5 RBS with an "EHA" cap;
- 7) North  $83^{\circ}00'40''$  East 237.02 feet to a #5 RBF with an "HB" cap;

thence leaving the southern bank of Hominy Creek a course of South  $35^{\circ}04'33''$  East 331.87 feet to a #5 RBF with an "HB" cap; thence South  $20^{\circ}58'10''$  East 323.58 feet to a #5 RBF with an "HB" cap; thence South  $04^{\circ}05'10''$  West 249.89 feet to a #5 RBF with an "HB" cap; thence South  $36^{\circ}25'49''$  West 284.71 feet to a #5 RBF with an "HB" cap; thence South  $61^{\circ}47'15''$  West 303.14 feet to a #5 RBF with an "HB" cap; thence North  $86^{\circ}43'00''$  West 666.38 feet to a #5 RBF with an "HB" cap; thence North  $54^{\circ}57'51''$  West 74.06 feet to a #5 RBF with an "HB" cap; thence North  $86^{\circ}20'48''$  West 242.29 feet to a #5 RBS with an "EHA" cap; thence South  $69^{\circ}01'01''$  West 302.32 feet to the point and place of BEGINNING. Containing 41.08 acres more or less, as shown on that certain survey entitled "EXHIBIT B to the Notice of Brownfields Property - SURVEY PLAT - Boundary Survey for Fletcher Partners, Inc" by Ed Holmes & Associates Land Surveyors, PA, dated August 24, 2015.