NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF: Enka Partners of Asheville, LLC

UNDER THE AUTHORITY OF THE BROWNFIELDS PROPERTY REUSE ACT OF 1997, N.C.G.S. § 130A-310.30, et seq. Brownfields Project # 15011-11-11	))))	BROWNFIELDS AGREEMENT re: Former BASF Landfill Site Sand Hill Road 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. On October 23, 2015, during the public comment period for this Agreement, DEQ was made aware of a deed to the subject property which contains restrictive conditions and is recorded at the Buncombe County Register of Deeds (Book 2644 Pages 427-430). The land use restrictions contained in this Agreement meet the requirements of the Act. The restrictive conditions contained in the deed exist independently of this Agreement and are matters between private parties. This Agreement does not adjudicate or comment on the meaning of the deed's restrictive conditions. The land use restrictions and conditions herein are necessary for the prospective developer to obtain the liability protections provided under the Act. All applicable requirements of the Act must be met for a prospective developer to obtain these liability protections.

12. 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.

13. 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 17.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 17.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

14. 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

15. 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.

16. 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.

17. By way of the Notice of Brownfields Property referenced below in paragraph 22, 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, 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. Within 30 days following recordation of the Notice referenced below in paragraph 22, the then owner of the Property shall submit to DEQ a written plan for monitoring surface water at the Property through sampling and analysis. The owner shall be responsible for making any modifications to the plan necessary for DEQ approval. Upon DEQ approval of the plan, in writing, the plan shall be implemented by the owner of the Property on the schedule in the approved plan.

i. The plan shall include, at a minimum:

A. designation of at least four (4) surface water locations to be sampled pursuant to the plan;

B. a schedule for sampling of the designated surface water locations for volatile organic compounds and metals at least once each year during the same thirty-day period, and a plan for increasing the sampling frequency should results show above DEQ established acceptable risk levels;

C. analysis of the samples by the most current version of U.S. Environmental Protection Agency Method 8260, 200.7, 200.8, 245.1, and 300.0;

D. provision of the sampling analyses to DEQ in writing within 30 days after sampling;

E. provision for a calculation of resultant risk in accordance with DEQ guidelines and procedures.

ii. When the plan requires sampling, analysis, and reporting, the then owner of the affected portion(s) of the Property shall be responsible for compliance. The plan may be amended with DEQ's prior written approval. The required monitoring shall continue until sampling pursuant to the plan shows the concentrations of any and all metals and volatile organic compounds present in excess of the standards set forth in the most current version of Title 15A of the North Carolina Administrative Code, Subchapter 02B, (January 1, 2015 version), are stable, declining or undetected for a minimum of three (3) consecutive years; and

iii. Should the analytical results of the surface water sampling indicate unacceptable risk levels when calculated in accordance with DEQ guidelines and procedure, the then owner of the property shall submit a plan to DEQ for written approval to mitigate said risk to

acceptable levels, including institutional controls for public notice and access restriction. Once approved by DEQ, said measures shall be implemented by the then owner on a schedule acceptable to DEQ.

e. 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.

f. 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.

g. 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.

h. 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 17.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.

i. Subject to modification by any measures implemented in paragraph 17.d.iii above, only areas designated "Ball Fields" on the plat component of the Notice referenced in paragraph 22 may be used for designed ball fields, and this use may not 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.

j. 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 17.a. above and that public health and the environment are fully protected.

k. 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.

l. 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.

m. 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.

n. During January of each year after the year in which the Notice referenced below in paragraph 22 is recorded, the owner of any part of the Property as of January 1st 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 1st, 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 17.c.iv.,f., and i.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.

18. 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.

19. 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.

20. 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

21. In addition to providing access to the Property pursuant to subparagraph 17.m. 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.

22. 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.

23. 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.

24. 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

25. 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

26. 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 17.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

27. 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.

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

29. 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.

30. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 27 through 29 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

31. 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

32. 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

33. 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.

34. 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

35. 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

36. 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

37. 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

38. 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

39. 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

40. 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.

41. 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.

42. 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

43. 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 3/24/16

Michael E. Scott — Date
Acting Director, Division of Waste Management

IT IS SO AGREED:
ENKA PARTNERS OF ASHEVILLE, LLC
By:

Martin Lewis — Date
Managing Member