

**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, 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 there of;**

**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. Within 30 days following recordation of the Notice referenced below in paragraph 21, 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 plan shall not be considered satisfactory unless and until DEQ states as much in writing.**

**a. The plan shall require:**  
**i. designation of four (4) surface water locations to be sampled pursuant to the plan;**

**ii. sampling of the designated surface water locations for volatile organic compounds and metals at least once each year during the same thirty-day period;**

**iii. 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;**

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

**b. 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 shall be available from DEQ and 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 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**

**c. Should the analytical results of the surface water sampling indicate a DEQ calculated risk above  $1 \times 10^{-5}$ , the then owner of the property shall submit a plan to DEQ for written approval to:**

- i. Notify the public via signs or other approved methods indicating a risk associated with the surface water body, with language approved by DEQ; and
  - ii. Implement means to restrict access to the impacted surface water body.

5. 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.

6. 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.

7. 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.

8. 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.

9. Only areas designated "Ball Fields" on the plat component of this Notice may be used

for designed ball fields, and this use may not 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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., 6., and 9.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.

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.



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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: Michael E. Scott  
Michael E. Scott  
Acting Director, Division of Waste Management

3/24/16 Date



**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: \_\_\_\_\_ Date \_\_\_\_\_

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

Deputy/Assistant Register of Deeds