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(Signature)



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Fee Amt: \$140.00 Page 1 of 43
Workflow# 2356787
Buncombe County, NC
Otto W. DeBruhl Register of Deeds

BK 4380 PG 1508-1550

Property Owner: Town of Woodfin
Recorded in Book 110, Page 102
Associated plat recorded in Plat Book _____, Page _____

*At to Town of Woodfin
90 Elk Mountain Rd
Asheville, NC 28804*

NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 28 day of March, 2007 by the Town of Woodfin (hereinafter "Prospective Developer").

The Notice concerns contaminated property.

A copy of this Notice certified by the North Carolina Department of Environment and Natural Resources (hereinafter "DENR") 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 (hereinafter "NCGS"), Section (hereinafter "§") 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 (hereinafter the "Brownfields Property") being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 (hereinafter the "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 DENR'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 DENR 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 Prospective Developer's name.

The Brownfields Property consists of approximately 156 acres of land and improvements located west of U.S. Highway 19 and approximately one mile north-northeast of downtown Woodfin, Buncombe County, North Carolina. Portions of the Brownfields Property were first developed in approximately 1970 as a municipal landfill. The landfill was operated by the City of Asheville, North Carolina, under a lease from the Rhodes estate, the property owner at the time. The landfill was closed in the early 1980s. Prospective Developer purchased the

Brownfields Property in 1985 from the Rhodes estate, and, in the late 1990s, redeveloped the former landfill portion of the Brownfields Property into a 9-hole municipal golf course. The golf course was closed in 2002. Prospective Developer intends to sell the Brownfields Property for redevelopment into a mixed-use residential and commercial community and, on the portion of the Brownfields Property formerly used as a municipal landfill, recreational open space, parking areas, roadways, utility corridors, ball fields, lights, walking paths and a possible golf course with associated amenities such as tennis courts and a clubhouse, or other features or structures which meet all performance standards of the Brownfields Agreement between Prospective Developer and DENR, attached hereto as **Exhibit A**, and receive prior written approval from DENR.

Exhibit A hereto 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.

Attached hereto as **Exhibit B** is a reduction, to 8 1/2" x 11", of the survey plat required by NCGS § 130A-310.35(a). It is a plat of areas designated by DENR that has been prepared and certified by a professional land surveyor and that meets the requirements of NCGS § 47-30. That plat contains the following information required by NCGS § 130A-310.35(a):

(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. The following table also sets forth the type and quantity of such substances:

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Maximum Concentration above Standard	Standard
Trichloroethene	MW-2	12/22/03	31	2.8
Vinyl Chloride	MW-2	12/22/03	6.9	0.015
Lead	MW-1	12/22/03	75	15

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 DENR or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e).** Those restrictions are hereby imposed on

the Brownfields Property, and are as follows (references to "DENR" include any successor in function and references to the "Plan" are to the document referenced in Exhibit 2 of Exhibit A hereto):

1. No residential or retail structure may be constructed at the Brownfields Property until the Plan has been approved in writing by DENR and recorded at the Buncombe County Register of Deeds' office in accordance with paragraph 15 of Exhibit A hereto, and until DENR has approved in writing the Implementation Report pertaining to the affected portion of the Brownfields Property in accordance with paragraph 16 of Exhibit A hereto.

2. Only the following uses may be made of the Brownfields Property, and then only if they comply with the Plan: (i) on non-landfill portions of the Brownfields Property, a mixed-use residential and commercial community; and (ii) on the portion of the Brownfields Property formerly used as a municipal landfill, recreational open space, parking areas, roadways, utility corridors, ball fields, lights, walking paths and a possible golf course with associated amenities such as tennis courts and a clubhouse, or other features or structures which meet all performance standards of Exhibit A hereto and receive prior written approval from DENR. No residential use is permitted on any portion of the Brownfields Property whose boundary lies within 50 feet of the area denominated "Waste-Containing Portion" on the plat component of this Notice unless such use is incorporated into the Plan, is engineer-certified, and is approved by DENR. All residences constructed on the Brownfields Property are subject to the Plan's engineering controls and monitoring requirements, and require the engineering certifications set forth in the Plan.

3. Except as provided in Land Use Restriction 9 below, surface water and groundwater at the Brownfields Property may not be used for any purpose without the prior written approval of DENR.

4. No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

5. No disturbance, displacement, relocation or removal of waste material in areas of the Brownfields Property denominated "Waste-Containing Portion" on the plat component of this Notice is permitted without (i) prior notification to and written approval by DENR, (ii) sampling of such waste material as required by DENR, (iii) submittal to DENR of analyses of such sampling along with plans and procedures to protect human health and the environment during the proposed activities, and (iv) preparation, by a land surveyor licensed in North Carolina, and recordation of a revised and DENR-approved plat component of this Notice depicting any changes to the "Waste-Containing Portion" of the Brownfields Property.

6. Disturbance, displacement, relocation or removal of waste material on the Brownfields Property shall require DENR's advance written approval and shall be conducted in accordance with the following:

a. No such activities may occur unless and until DENR has approved a plan

for their conduct in writing. Said plan must include information pertaining to any work in the area of the plat component of this Notice denominated "Waste-Containing Portion," such as construction of roads and utilities that is anticipated to occur in phases. The plan must address the contingency of encountering waste material not suitable for disposal in a municipal or construction/demolition landfill, such as hazardous materials. The activities in question shall be conducted in strict accordance with all applicable local, state and federal legal provisions concerning sampling, characterization, handling and transportation of waste material for off-site disposal. Relocation of waste material on the Brownfields Property may not occur unless such activities are approved in the plan and conducted in accordance with the plan as approved.

b. Any relocation of waste material from the outermost portions of any on-site landfill area or consolidation/relocation of waste material from one portion of a landfill area to another portion within that same landfill area, or from one on-site landfill area to another on-site landfill area, all as denominated on the plat component of this Notice, may only occur prior to completion of initial redevelopment activities (defined as having occurred upon issuance of the certificate of occupancy for the phase of construction that DENR determines is applicable).

c. The plan referenced in Land Use Restriction 6.a. above may propose the uncovering of waste material, with associated deadlines for relocation, other than in connection with development activities involving engineering controls (e.g., the landfill gas cut-off trench) described in the Plan.

d. Anyone conducting activities involving the disturbance, displacement, relocation or removal of waste material at the Brownfields Property shall provide to DENR a written report regarding the procedures and results of such activities within 30 days after the completion of the activities, using reporting criteria designated in the plan referenced in Land Use Restriction 6.a. above. Neither the activities nor the report shall be deemed satisfactory until DENR states in writing that they are.

7. If any existing waste material at the Brownfields Property is disturbed other than pursuant to Land Use Restrictions 6 or 7 above, the owner of any affected portion of the Brownfields Property shall effect sampling, characterization, handling, transportation and disposal of such waste material in strict accordance with applicable local, State, and federal legal provisions. Such waste material may not be relocated on the Brownfields Property other than in areas denominated "Waste-Containing Portion" on the plat component of this Notice. The owner of any affected portion of the Brownfields Property shall also, no later than seven (7) days following discovery of the disturbance, report the disturbance to DENR in writing. Thereafter, the owner of any affected portion of the Brownfields Property shall report when and as required by DENR regarding the disturbance, which reporting shall include, at a minimum, a written report that describes the nature and extent of the disturbance, the sampling, characterization and handling of the waste material, and its transportation and disposal.

8. Activities that are deemed necessary by DENR to comply with the Plan, but that

would otherwise conflict with the provisions of Land Use Restrictions 5, 6, 7, 9 or 10, shall be allowed at the Brownfields Property, subject to DENR's prior written approval.

9. No activities which result in direct exposure to or removal of groundwater (for example, construction or excavation activities which encounter or expose groundwater) may be conducted on the Brownfields Property without prior sampling and analysis of groundwater in the area where such activities are to be conducted, submittal of the analytical results to DENR along with plans and procedures to protect human health and the environment during those activities, and approval of those activities by DENR.

10. No basements may be constructed on the Brownfields Property without DENR's prior written approval and inclusion of the design in the Plan or elsewhere. Additionally, no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater under the Brownfields Property may be constructed on the Brownfields Property. Reservoirs and ponds used exclusively for irrigation purposes and supplied by groundwater originating other than on the Brownfields Property (e.g., from adjoining properties) or by municipally supplied water may be constructed in areas of the Brownfields Property that are not within areas denominated "Waste-Containing Portion" on the plat component of this Notice if the base of any such reservoir or pond is at least two (2) feet above the shallowest groundwater at the location of such reservoir or pond, as determined by sampling satisfactory to DENR by the reservoir or pond's proponent. Regardless of whether any reservoir or pond constructed pursuant to this Land Use Restriction is used as a source of irrigation water for the Brownfields Property, the monitoring and use requirements set forth in paragraph 25 of Exhibit A hereto apply to such reservoir or pond.

11. No groundwater derived from adjoining properties may be used at the Brownfields Property unless, prior to its initial use and no less frequently than once every six months thereafter, the owner of any portion of the Brownfields Property where such groundwater is proposed to be used provides analytical data to DENR that demonstrates, and obtains written concurrence from DENR, that such groundwater complies with the groundwater standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2L, Rule .0202.

12. A sign, satisfactory to DENR and indicating that portions of the Brownfields Property have previously been used as a landfill, shall be maintained at the Brownfields Property in a manner satisfactory to DENR.

13. No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation at reasonable times, following reasonable efforts to provide notice to the owner(s) of the affected portion(s) of the Brownfields Property, and given reasonable efforts to minimize interference with operations on the affected portion(s) of the Brownfields Property.

14. During January of each year after Exhibit A hereto becomes effective, the then current owner of any portion of the Brownfields Property shall submit a notarized Land Use Restrictions Update ("LURU") to DENR or its successor in function certifying that (i) this Notice remains recorded at the Buncombe County Register of Deeds office; (ii) the Land Use Restrictions contained in this Notice are being complied with; (iii) soil gas monitoring is being conducted in accordance with the Plan, and the groundwater, and pond water monitoring activities required by paragraphs 23 and 25 of Exhibit A hereto are being conducted; and (iv) all caps installed at the Brownfields Property pursuant to paragraphs 19 and 20 of Exhibit A hereto are in place and in good repair. Each LURU shall also include a complete record of any erosion, erosion repairs or other activities affecting the Land Use Restrictions or the integrity and function of the cap, and, in required years, reports prepared in conjunction with the groundwater and pond water monitoring activities required by paragraphs 23 and 25 of Exhibit A hereto. Alternatively, the obligations of this Land Use Restriction may be discharged on behalf of any owner(s) by a party that satisfies DENR it is validly acting as agent for said owners, and that accepts responsibility for compliance with this Land Use Restriction pursuant to a notarized instrument satisfactory to DENR.

For purposes of the land use restrictions set forth above, "DENR" includes any successor in function and, for purposes of a point of contact, refers to the DENR official and address referenced in paragraph 45.a. of Exhibit A hereto.

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 DENR 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 Declaration without the approval of the Secretary of DENR (or its successor in function), or his/her delegate, shall be subject to enforcement by DENR 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 23 day of March, 2007.

The Town of Woodfin

By: [Signature]
Jason Young, Town Administrator

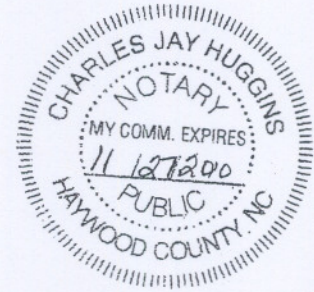
NORTH CAROLINA
BUNCOMBE COUNTY

I, Charles Jay Huggins, a Notary Public of the County and State aforesaid, do hereby certify that Jason Young personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 23 day of March, 2007.

[Signature]
Name:
Notary Public

My Commission expires: Nov 27, 2010



APPROVAL AND CERTIFICATION OF NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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

North Carolina Department of Environment and Natural Resources

By: [Signature]
Linda M. Culpepper
Deputy Director, Division of Waste Management

March 21, 2007
Date

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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 Buncombe County

By: _____
Name typed or printed: _____ Date _____
Deputy/Assistant Register of Deeds

Exhibit A to the Notice of Brownfields Property

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Town of Woodfin

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Former Elk Mountain Landfill Site
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	U.S. Highway 19
NCBP Project Number: 07007-03-11)	Woodfin, Buncombe County

I. INTRODUCTION

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

The Town of Woodfin, a North Carolina incorporated Town whose offices are located at 90 Elk Mountain Road, Woodfin, NC 28804, owns approximately 156 acres of land and improvements on U.S. Highway 19 in Woodfin, Buncombe County, North Carolina. The town intends to sell the property for redevelopment into a mixed-use residential and commercial community and, on the portion of the property formerly used as a municipal landfill, recreational open space, parking areas, roadways, utility corridors, ball fields, lights, walking paths and a possible golf course with associated amenities such as tennis courts and a clubhouse, or other features or structures which meet all performance standards of this Agreement and receive prior written approval from DENR. A map showing the location of the property which is the subject of this Agreement is attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR’s Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer’s Covenant Not to Sue), the

potential liability of the Town of Woodfin for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit the Town of Woodfin shall provide to DENR, is in the public interest.

II. DEFINITIONS

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

- 1. "Property" shall mean the Brownfields Property which is the subject of this Agreement, and which is described and depicted in Exhibit 1 of this Agreement.
- 2. "Prospective Developer" shall mean the Town of Woodfin.
- 3. "Waste-Containing portion of the Property" shall mean any portion of the Property that contains waste material deposited at the Property prior to the effective date of this Agreement established below in paragraph 48.

III. STATEMENT OF FACTS

4. The Property comprises approximately 156 acres and is located on U.S. Highway 19 in Woodfin, Buncombe County, North Carolina. Prospective Developer has committed itself to selling the Property for redevelopment into a mixed-use residential and commercial community and, on the portion of the property formerly used as a municipal landfill, recreational open space, parking areas, roadways, utility corridors, ball fields, lights, walking paths and a possible golf

course with associated amenities such as tennis courts and a clubhouse, or other features or structures which meet all performance standards of this Agreement and receive prior written approval from DENR.

5. The Property is bordered to the north by land in residential and commercial use, to the south by land in residential and light industry use, to the east by land in commercial use, and to the west by land in heavy industrial and residential use.

6. Prospective Developer commissioned the following reports regarding the Property:

Title	Prepared by	Date of Report
Brownfields Assessment Report for Elk Mountain Landfill, Woodfin, North Carolina	Fletcher Group	January 21, 2004
Elk Mountain Landfill Receptor Survey	Fletcher Group	March 23, 2004
Surface Sweep Methane Emissions Monitoring for Elk Mountain Landfill	Buncombe County Solid Waste	June 26, 2003

These and other reports, data, correspondence and information regarding the Property on file with DENR's Inactive Hazardous Sites Branch are referred to hereinafter as the "Environmental Reports."

7. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to prior use of the Property:

a. Portions of the Property were first developed in approximately 1970 as a municipal landfill that was operated by the City of Asheville, North Carolina, under a lease with the Rhodes estate, the Property owner at the time. The landfill was closed in the early 1980s and was subsequently listed on DENR's Inactive Hazardous Waste Sites inventory.

b. Prospective Developer purchased the Property in 1985 from the Rhodes estate, and in the late 1990s Prospective Developer began work to redevelop the former landfill into a municipal 9-hole golf course. The golf course was closed in 2002, and Prospective Developer has no plans to reopen it.

8. The most recent environmental sampling at the Property reported in the Environmental Reports occurred in December 2003. The following table sets forth groundwater contaminants (in micrograms per liter, the equivalent of parts per billion) present at the Property above unrestricted use standards, which are codified in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202:

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Maximum Concentration	Standard
Trichloroethene	MW-2	12/22/03	31	2.8
Vinyl Chloride	MW-2	12/22/03	6.9	0.015
Lead	MW-1	12/22/03	75	15

9. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to purchasing the Property in 1985, constructing and operating a 9-hole municipal golf course that was closed in 2002, obtaining or commissioning the Environmental Reports, and preparing and submitting to DENR a Brownfields Letter of Intent dated April 7, 2003.

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

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

b. as a result of the implementation of this Agreement, the Property will be

suitable for the uses specified in the Agreement while fully protecting public health and the environment;

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

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

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

11. Prospective Developer has delineated and surveyed the boundary of the Waste-Containing portion of the Property and has included the surveyed boundary on the plat component of the Notice of Brownfields Property referenced below in paragraph 33. Further, more refined delineation of the boundary of the Waste-Containing portion of the Property may occur. This additional delineation could result in changes to that portion of the Property considered by DENR to be suitable for the intended redevelopment. Prospective Developer may update the plat to reflect this additional delineation and any revision to the portion of the Property being redeveloped.

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). Pursuant to N.C.G.S. § 130A-310.39(a)(2), the procedure upon which Prospective Developer and DENR have agreed for payment of the full cost to DENR and the North Carolina Department of Justice ("DOJ") of all activities related to this Agreement is that Prospective Developer shall pay any amount by which DOJ's hours, multiplied by \$36.24, exceed the \$2,000 fee referenced above in this paragraph. (DENR has incurred no costs.)

IV. BENEFIT TO COMMUNITY

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

- a. a return to productive use of the Property;
- b. additional tax revenue for affected jurisdictions;
- c. additional residential space in the middle price range for the area;
- d. approximately 100 jobs during construction and approximately 30 at commercial establishments thereafter;
- e. an improved and maintained protective cap above the waste cells at those portions of the Property formerly used as a landfill; and
- f. "smart growth" through use of land in an already developed area, which avoids development of land beyond the urban fringe ("greenfields").

V. WORK TO BE PERFORMED

14. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions (the "Land Use Restrictions") cited below in paragraph 18, and except as may be required pursuant to Section IX of this Agreement (DENR's Covenant Not to Sue and Reservation of Rights), active groundwater remediation at the Property shall be unnecessary.

15. Prospective Developer shall engage a qualified third party engineering firm, with extensive experience in landfill gas mitigation and protection in regard to development projects similar to the subject one, to develop the Landfill Gas Control Plan ("Plan") referenced in Exhibit 2 hereto. Exhibit 2 states, *inter alia*, the purpose of the Plan and mandates inclusion of landfill gas monitoring requirements. The selection of the subject firm shall be subject to

DENR's prior review and written approval. Said engineering firm shall certify the Plan in accordance with Exhibit 2 hereto. Prospective Developer shall submit the certified Plan to DENR within 60 days following the effective date of this Agreement or on a different schedule approved by DENR, and the Plan shall be subject to DENR's written approval prior to implementation. Prospective Developer shall correct any Plan deficiencies identified in writing by DENR within a reasonable time period determined by DENR. Within thirty (30) days after its receipt of DENR's approval of the Plan, Prospective Developer shall effect recordation of the Plan at the Buncombe County Register of Deeds' office and, within seven (7) days following recordation, shall provide DENR a copy of the Plan reflecting its recordation. Prospective Developer shall implement the approved Plan at the Property, and may implement the Plan in phases coinciding with individual phases of the Property's redevelopment.

16. Prospective Developer shall submit a Landfill Gas Control Systems Implementation Report ("Implementation Report") within thirty (30) days after the installation and completion of any portion of the landfill gas cut-off trench required to be described in the Plan. Each Implementation Report, and the work described therein, shall be subject to DENR's written approval. Each Implementation Report shall demonstrate that the subject portion of the landfill gas cut-off trench has been installed in accordance with the Plan, and that all measures deemed necessary by DENR to eliminate landfill gas-related risks to public health at the site structure(s) referenced in the Implementation Report have been implemented. A particular Implementation Report may address more than one structure. Each Implementation Report shall contain a full description of all landfill gas control systems installed at the portion of the Property addressed in that Implementation Report (as identified in said Report on an accompanying map or attached list of street addresses or tax parcel identification numbers), a description of each system's

intended purpose and any necessary operations and maintenance schedule for said systems; and shall include the results of any landfill gas monitoring that has been conducted in the subject portion of the Property and a schedule for any on-going landfill gas monitoring and for the submittal of reports of the results of such monitoring. Each Implementation Report shall also contain the signed and sealed Engineer's Certification referenced in Exhibit 3 to this Agreement.

17. When Prospective Developer submits what it deems the final Implementation Report it will generate during the redevelopment of the Property, it shall so inform DENR in said report. Within thirty (30) days of its receipt of DENR's written approval of that report, Prospective Developer shall submit to DENR a Completion Report which shall consist of the certified Plan and all Implementation Reports. The Completion Report shall be subject to DENR's written approval and, upon DENR's written approval, shall be deemed incorporated in this Agreement. Within thirty (30) days of Prospective Developer's receipt of DENR's written approval of the Completion Report, Prospective Developer shall effect recordation of the Completion Report at the Buncombe County Register of Deeds' office and, within seven (7) days following recordation, shall provide DENR a copy of said report reflecting its recordation.

18. Based on the information revealed in the environmental reports, and by way of the Notice of Brownfields Property referenced below in paragraph 33, DENR has determined that it is necessary for the Prospective Developer to impose the following Land Use Restrictions, which will run with the land (unless one or more are canceled based upon a determination by DENR that the hazards requiring it or them have been eliminated), to make the Property safe for the uses specified in this Agreement while fully protecting public health and the environment. All references to DENR shall be understood to include any successor in function.

- a. No residential or retail structure may be constructed at the Property until the

Plan has been approved in writing by DENR and recorded at the Buncombe County Register of Deeds' office in accordance with paragraph 15 of this Agreement, and until DENR has approved in writing the Implementation Report pertaining to the affected portion of the Property in accordance with paragraph 16 of this Agreement.

b. Only the following uses may be made of the Property, and then only if they comply with the Plan: (i) on non-landfill portions of the Property, a mixed-use residential and commercial community; and (ii) on the portion of the property formerly used as a municipal landfill, recreational open space, parking areas, roadways, utility corridors, ball fields, lights, walking paths and a possible golf course with associated amenities such as tennis courts and a clubhouse, or other features or structures which meet all performance standards of this Agreement and receive prior written approval from DENR. No residential use is permitted on any portion of the Property whose boundary lies within 50 feet of the area denominated "Waste-Containing Portion" on the plat component of the Notice of Brownfields Property referenced below in paragraph 33, unless such use is incorporated into the Plan, is engineer-certified, and is approved by DENR. All residences constructed on the Property are subject to the Plan's engineering controls and monitoring requirements, and require the engineering certifications set forth in the Plan.

c. Except as provided in subparagraph i. below, surface water and groundwater at the Property may not be used for any purpose without the prior written approval of DENR.

d. No mining may be conducted on or under the Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

e. No disturbance, displacement, relocation or removal of waste material in areas of the Property denominated "Waste-Containing Portion" on the plat component of the Notice of

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Brownfields Property filed in connection with this Agreement is permitted without (i) prior notification to and written approval by DENR, (ii) sampling of such waste material as required by DENR, (iii) submittal to DENR of analyses of such sampling along with plans and procedures to protect human health and the environment during the proposed activities, and (iv) preparation, by a land surveyor licensed in North Carolina, and recordation of a revised and DENR-approved plat component of the Notice of Brownfields Property filed in connection with this Agreement depicting any changes to the "Waste-Containing Portion" of the Property.

f. Disturbance, displacement, relocation or removal of waste material on the Property shall require DENR's advance written approval and shall be conducted in accordance with the following:

i. No such activities may occur unless and until DENR has approved a plan for their conduct in writing. Said plan must include information pertaining to any work in the area of the plat component of the Notice of Brownfields Property filed in connection with this Agreement denominated "Waste-Containing Portion," such as construction of roads and utilities that is anticipated to occur in phases. The plan must address the contingency of encountering waste material not suitable for disposal in a municipal or construction/demolition landfill, such as hazardous materials. The activities in question shall be conducted in strict accordance with all applicable local, state and federal legal provisions concerning sampling, characterization, handling and transportation of waste material for off-site disposal. Relocation of waste material on the Property may not occur unless such activities are approved in the plan and conducted in accordance with the plan as approved.

ii. Any relocation of waste material from the outermost portions of any on-site landfill area or consolidation/relocation of waste material from one portion of a landfill

area to another portion within that same landfill area, or from one on-site landfill area to another on-site landfill area, all as denominated on the plat component of the Notice of Brownfields Property filed in connection with this Agreement, may only occur prior to completion of initial redevelopment activities (defined as having occurred upon issuance of the certificate of occupancy for the phase of construction that DENR determines is applicable).

iii. The plan referenced in subparagraph 18.f.i. above may propose the uncovering of waste material, with associated deadlines for relocation, other than in connection with development activities involving engineering controls (e.g., the landfill gas cut-off trench) described in the Plan.

iv. Anyone conducting activities involving the disturbance, displacement, relocation or removal of waste material at the Property shall provide to DENR a written report regarding the procedures and results of such activities within 30 days after the completion of the activities, using reporting criteria designated in the plan referenced in subparagraph 18.f.i. above. Neither the activities nor the report shall be deemed satisfactory until DENR states in writing that they are.

g. If any existing waste material at the Property is disturbed other than pursuant to subparagraph 18.e. or 18.f, the owner of any affected portion of the Property shall effect sampling, characterization, handling, transportation and disposal of such waste material in strict accordance with applicable local, State, and federal legal provisions. Such waste material may not be relocated on the Property other than in areas denominated "Waste-Containing Portion" on the plat component of the Notice of Brownfields Property filed in connection with this Agreement. The owner of any affected portion of the Property shall also, no later than seven (7) days following discovery of the disturbance, report the disturbance to DENR in writing.

Thereafter, the owner of any affected portion of the Property shall report when and as required by DENR regarding the disturbance, which reporting shall include, at a minimum, a written report that describes the nature and extent of the disturbance, the sampling, characterization and handling of the waste material, and its transportation and disposal.

h. Activities that are deemed necessary by DENR to comply with the Plan referenced in Exhibit 2 hereto, but that would otherwise conflict with the provisions of subparagraphs 18.e., 18.f., 18.g., 18.i or 18.j., shall be allowed at the Property, subject to DENR's prior written approval.

i. No activities which result in direct exposure to or removal of groundwater (for example, construction or excavation activities which encounter or expose groundwater) may be conducted on the Property without prior sampling and analysis of groundwater in the area where such activities are to be conducted, submittal of the analytical results to DENR along with plans and procedures to protect human health and the environment during those activities, and approval of those activities by DENR.

j. No basements may be constructed on the Property without DENR's prior written approval and inclusion of the design in the Plan or elsewhere. Additionally, no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater under the Property may be constructed on the Property. Reservoirs and ponds used exclusively for irrigation purposes and supplied by groundwater originating other than on the Property (e.g., from adjoining properties) or by municipally supplied water may be constructed in areas of the Property that are not within areas denominated "Waste-Containing Portion" on the plat component of the Notice of Brownfields Property filed in connection with this Agreement if the base of any such reservoir or pond is at least two (2) feet above the shallowest groundwater at

the location of such reservoir or pond, as determined by sampling satisfactory to DENR by the reservoir or pond's proponent. Regardless of whether any reservoir or pond constructed pursuant to this subparagraph is used as a source of irrigation water for the Property, the monitoring and use requirements set forth in paragraph 25 below apply to such reservoir or pond.

k. No groundwater derived from adjoining properties may be used at the Property unless, prior to its initial use and no less frequently than once every six months thereafter, the owner of any portion of the Property where such groundwater is proposed to be used provides analytical data to DENR that demonstrates, and obtains written concurrence from DENR, that such groundwater complies with the groundwater standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2L, Rule .0202.

l. A sign, satisfactory to DENR and indicating that portions of the Property have previously been used as a landfill, shall be maintained at the Property in a manner satisfactory to DENR.

m. No party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Property for purposes of conducting such assessment or remediation at reasonable times, following reasonable efforts to provide notice to the owner(s) of the affected portion(s) of the Property, and given reasonable efforts to minimize interference with operations on the affected portion(s) of the Property.

n. During January of each year after this Agreement becomes effective, the then current owner of any portion of the Property shall submit a notarized Land Use Restrictions Update ("LURU") to DENR or its successor in function certifying that (i) the Notice of Brownfields Property containing these land use restrictions remains recorded at the Buncombe

County Register of Deeds office; (ii) the Land Use Restrictions are being complied with; (iii) soil gas monitoring is being conducted in accordance with the Plan, and the groundwater, and pond water monitoring activities required by paragraphs 23 and 25 below are being conducted; and (iv) all caps installed at the Property pursuant to paragraphs 19 and 20 below are in place and in good repair. Each LURU shall also include a complete record of any erosion, erosion repairs or other activities affecting the Land Use Restrictions or the integrity and function of the cap, and, in required years, reports prepared in conjunction with the groundwater and pond water monitoring activities required by paragraphs 23 and 25 below. Alternatively, the obligations of this subparagraph may be discharged on behalf of any owner(s) by a party that satisfies DENR it is validly acting as agent for said owners, and that accepts responsibility for compliance with this subparagraph pursuant to a notarized instrument satisfactory to DENR.

19. In addition to the prerequisites set forth above in paragraph 15, no use may be made of any area of the Property denominated "Waste-Containing Portion" on the plat component of the Notice of Brownfields Property referenced below in paragraph 33, unless and until Prospective Developer submits to DENR sufficient data and other information to enable DENR to determine in writing that the cap above waste cells at the Property meets the following criteria:

a. It extends at least two feet above the top of any waste material at the Property, as demonstrated by an assessment and report of cap thickness and permeability submitted to DENR.

b. If the installment of additional fill dirt is necessary to achieve the thickness requirement stipulated above in subparagraph 19.a., any such fill shall be low permeable, fine-grained soils similar in nature to, and no more permeable than, the average permeability of the local native soils and the existing cap, properly compacted to minimize infiltration, and

vegetated. The resulting new cap shall be designed and constructed in accordance with standard landfill engineering principles to achieve a low permeable cap that minimizes infiltration.

c. It directs surface water runoff, through grading, vegetation and maintenance, to stormwater basins or similar erosion control measures located outside the boundary of any waste cells.

20. The conditions set forth in this paragraph pertain to the following areas denominated on the plat component of Notice referenced in paragraph 33 below: the capped area of the closed landfills and a buffer zone demarcated by the outside edge of the landfill cap (or if present, the landfill gas cutoff trench). The conditions also pertain to any other capping that occurs at the Property. Compliance with the conditions shall be determined by DENR.

a. Design options, possible engineering controls (e.g., lysimeters) and maintenance of any irrigation system shall be addressed in the Plan, and all elements of any such system shall be installed, operated and maintained in a manner that ensures the integrity and functionality of the cap;

b. Mechanisms to allow methane venting under driveways, parking surfaces, tennis courts, building slabs and any other impervious surface shall be evaluated during the development of the Plan. Design drawings for any methane venting system must be sealed by a North Carolina professional engineer whom DENR deems experienced in landfill gas engineering practices, and shall be subject to pre-construction approval by DENR. Following construction of any methane venting system, Prospective Developer shall ensure that the responsible engineer completes and submits to DENR the certification attached hereto as Exhibit

3.

c. On any portion of the Property denominated "Waste-Containing Portion" on

the plat component of the Notice of Brownfields Property referenced below in paragraph 33, Prospective Developer shall manage and maintain all vegetative matter in a manner that minimizes erosion, and shall promptly repair any erosion that occurs. Should erosion result in the exposure of waste material, Prospective Developer shall (i) immediately upon becoming aware of such occurrence prevent public access to the exposed waste material until the cap is re-installed, (ii) within three (3) business days of becoming aware of such occurrence notify DENR of the occurrence and re-install a cap that extends at least two feet above the top of the waste material at the Property, and (iii) notify DENR in writing of the re-installation of the cap within three (3) days of re-installation.

21. In a manner and on a schedule satisfactory to DENR, Prospective Developer shall sample subsurface gas in the perimeter landfill gas monitoring probes for methane in order to evaluate the risk to public health posed by methane at the Property, and shall submit a report satisfactory to DENR on the procedures and results of said sampling. The sampling protocols and schedule shall be identified in the Plan.

22. Prior to Prospective Developer's installation of the Plan's engineering controls, Prospective Developer shall ensure that said controls, including those necessary to protect structures from landfill gas infiltration, are designed by a North Carolina professional engineer whom DENR deems experienced in landfill gas engineering practices. The controls shall be subject to pre-construction approval by DENR. Controls that address subsurface methane gas may include passive and/or active remedial measures. Following construction of the controls that address subsurface methane gas, Prospective Developer shall ensure that the responsible engineer completes and submits to DENR the certification attached hereto as Exhibit 3.

23. Within the thirty (30) days prior to each of the first fifteen (15) anniversaries of the

effective date of this Agreement, and in conformance with groundwater sampling procedures described in the most recent edition of the Guidelines for Assessment and Cleanup of the Inactive Hazardous Sites Branch of DENR's Superfund Section, Prospective Developer shall sample monitoring wells MW-1, MW-2, MW-3, and MW-4. Groundwater in each monitoring well shall be tested for pH, specific conductance, turbidity and temperature, and the groundwater sample collected from each well shall be submitted to a laboratory certified by DENR's Division of Water Quality and analyzed by approved EPA methods for volatile organic compounds (VOCs), priority pollutant metals, nitrate-nitrite, ammonia, chloride, chemical oxygen demand (COD), and total organic compounds (TOC).

a. During January of each of the first five (5) years after this agreement becomes effective, and for any years thereafter in which groundwater continues to be sampled pursuant to subparagraph 23.c. below, up to a maximum of fifteen (15) years after the effective date of this Agreement, Prospective Developer shall submit to DENR, as part of the LURU required above in paragraph 18.j., a report of groundwater sampling procedures and results.

b. In the event DENR determines that any groundwater sampling indicates a statistically significant increase in contaminants attributable to landfill leachate that would make the Property unsuitable for the uses specified above in subparagraph 18.a., Prospective Developer shall amend its schedules and/or methods of irrigation and nutrient application, re-sample any monitoring well that showed such an increase in contaminants within sixty (60) days of the observed increase, submit to DENR the analyses of such re-sampling within thirty (30) days of such re-sampling, and take any other reasonable action DENR requires to minimize the likelihood of infiltration of moisture into the affected landfill waste cells.

c. DENR shall terminate in writing the requirements of this paragraph if, at

any time after five (5) years of compliance with said requirements, as determined by DENR, Prospective Developer submits to DENR modeling data that satisfies DENR that groundwater contamination at the Property is sufficiently asymptotic that it does not threaten the suitability of the Property for the uses specified in subparagraph 18.a.

24. Prospective Developer shall not improve the Property in a manner or otherwise take actions which DENR determines would cause an increase in infiltration of precipitation and/or irrigation water on the Waste-Containing portion of the Property resulting in additional leachate generation, which could cause a possible endangerment to human health or the environment.

25. Within the thirty (30) days prior to each anniversary of the effective date of this Agreement, unless an alternate schedule is approved in advance in writing by DENR in accordance with the provisions of paragraph 26, and in conformance with sampling procedures described in the guidelines published in the most recent edition of the *Guidelines for Assessment and Cleanup* of the Inactive Hazardous Sites Branch of DENR's Superfund Section, Prospective Developer shall sample the water from any pond used as a source of irrigation water for the Property, have the samples analyzed by approved EPA methods for VOCs, priority pollutant metals and nitrate-nitrite at a laboratory certified by DENR's Division of Water Quality, and submit the sampling analyses to DENR. Prior to the use of any pond for irrigation purposes at the Property, Prospective Developer shall, in addition to complying with the requirements of the preceding sentence, submit to DENR a report providing the procedures used for and the results of the pond water sampling. In the event pond sampling indicates any exceedances of the surface water standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2B, Section .0211 that are applicable to the Class C surface water classification for the Property, the use of the subject pond(s) for irrigation purposes shall be discontinued until

additional pond sampling indicates to DENR that the pond water complies with said Subchapter 2B or with a cleanup plan approved in writing in advance by DENR that maintains the suitability of the Property for the uses specified in this Agreement while fully protecting public health and the environment. During January of each year after this Agreement becomes effective, Prospective Developer shall submit to DENR a report providing the procedures used for and the results of pond water sampling that has occurred during the previous calendar year.

26. DENR may extend the intervals between the soil gas, groundwater and pond sampling events referenced above in paragraphs 21, 23, 25 and subparagraph 18.k. upon the written request of Prospective Developer. In evaluating such a request, DENR shall consider factors related to protection of public health and the environment such as data from past sampling events and the approved and actual uses of the Property.

27. Not later than ninety (90) days after the effective date of this Agreement, and in conformance with sampling procedures described in the guidelines published in the then current edition of the *Guidelines for Assessment and Cleanup* of the Inactive Hazardous Sites Branch of DENR's Superfund Section, Prospective Developer shall conduct surface water and sediment sampling activities at five (5) points in Beaver Creek. One (1) sampling point each shall be located at the most upstream and downstream locations on the Property; the remaining three (3) sampling points shall be located along the creek at approximately equal intervals between the above-referenced upstream and downstream sampling points. Surface water and sediment samples collected shall be submitted to a laboratory certified by DENR's Division of Water Quality and analyzed by approved EPA methods for VOCs, and priority pollutant metals. Prospective Developer shall submit to DENR, prior to the initiation of construction activities at the Property, a report providing the procedures and results of these surface water and sediment

sampling activities.

28. If water supply wells or other points of groundwater access, other than the groundwater monitoring wells referenced above in subparagraph 23, are discovered on the Property during redevelopment, Prospective Developer shall effect their abandonment in accordance with Title 15A of the North Carolina Administrative Code, Subchapter 2C, and shall submit to DENR a report of the abandonment activities and results within thirty (30) days after conducting such activities.

29. The desired result of the above-referenced referenced Land Use Restrictions, requirements for soil gas, groundwater, infiltration, and pond water monitoring and reporting, cap installation and maintenance, surface water and sediment sampling activities, abandonment of certain groundwater access points, and landfill waste disposal are to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment.

30. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are the Guidelines for Assessment and Cleanup of the Inactive Hazardous Sites Branch of DENR's Superfund Section, as embodied in their most current version.

31. 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

32. Commencing upon the effective date of this Agreement, Prospective Developer agrees to provide to DENR, its authorized officers, employees, representatives, and all other

persons performing response actions under DENR oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by the Prospective Developer, for the purposes of performing or overseeing response actions at the Property under applicable law. DENR agrees to provide reasonable notice to the Prospective Developer of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

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

34. 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.

35. The Prospective Developer shall make its best reasonable efforts to ensure that assignees, successors in interest, lessees and sublessees of the Property shall provide the same access and cooperation required of Prospective Developer by this Agreement. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section V (Work to be Performed) and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

VII. DUE CARE/COOPERATION

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

other law, immediately notify DENR of such release or threatened release.

VIII. CERTIFICATION

37. By entering into this agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Letter of Intent dated April 7, 2003 by which it applied for this Agreement. That use is for a mixed-use residential and commercial community and, on the portion of the property formerly used as a municipal landfill, recreational open space, parking areas, walking paths and possibly a golf course with associated amenities such as tennis courts and a clubhouse. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any regulated substances at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

IX. PROPERTY TAX ASSESSMENT

38. The Parties acknowledge that:

a. Prospective Developer may seek approval of the Local Government Commission to issue project development financing debt instruments for the redevelopment of the Property pursuant to the North Carolina Project Development Financing Act (N.C.G.S. 159-101 et seq.); and

b. Prospective Developer may elect to enter into an agreement for minimum assessment of the property in accordance with N.C.G.S. 159-108(c). To the extent that the terms of the minimum assessment agreement conflict with the partial tax exclusion for brownfields

properties in N.C.G.S. 105-277.13, the Parties agree that the terms of the minimum assessment agreement shall take precedence. Prospective Developer hereby waives, for itself and its successors in interest, assignees, lessees and sublessees, any right to such brownfields tax exclusion to the extent it is in conflict with the minimum assessment agreement.

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

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

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

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contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to current 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.

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

Statutes.

40. 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.

XI. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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

XII. PARTIES BOUND & TRANSFER/ASSIGNMENT NOTICE

42. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

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

XIII. DISCLAIMER

44. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a

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representation by DENR that the Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

XIV. DOCUMENT RETENTION

45. The Prospective Developer agrees to retain and make available to DENR, for six years following the effective date of this Agreement unless otherwise agreed to in writing by the Parties, all documents and records related to this Agreement and/or to any land-disturbing activity at the Property. At the end of six years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR.

XV. PAYMENT OF ENFORCEMENT COSTS

46. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XVI. NOTICES AND SUBMISSIONS

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

a. for DENR:

Bruce Nicholson
N.C. Division of Waste Management
Brownfields Program
401 Oberlin Road, Suite 150
Raleigh, NC 27605

b. for Prospective Developer:

Jason Young
Town Administrator
Town of Woodfin
90 Elk Mountain Road
Woodfin, 28804

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.

XVII. EFFECTIVE DATE

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

XVIII. TERMINATION OF CERTAIN PROVISIONS

49. 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).

XIX. CONTRIBUTION PROTECTION

50. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this

Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DENR or any other person in relation to the Property.

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

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

XIX. PUBLIC COMMENT

53. This Agreement shall be subject to a public comment period of at least sixty days starting the day after publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in the North Carolina Register, or the day after publication of the same in a newspaper of general circulation serving the area in which the Property is located, whichever occurs later. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By:

Linda M. Culpepper

March 21, 2007

Linda M. Culpepper
Deputy Director, Division of Waste Management

Date

IT IS SO AGREED:

TOWN OF WOODFIN

By:

Jason Young

March 23, 2007

Jason Young
Town Administrator, Town of Woodfin

Date

EXHIBIT 2

LANDFILL GAS CONTROL PLAN REQUIREMENTS

A Landfill Gas Control Plan ("Plan") shall be developed by a qualified, DENR-approved, third party engineering firm with extensive experience in landfill gas mitigation and protection in regard to development projects similar to that planned at the Town of Woodfin's former Elk Mountain Landfill Site. The Plan shall be signed and sealed in accordance with the language prescribed below by a North Carolina-registered professional engineer experienced, to DENR's satisfaction, in the landfill gas engineering field and in residential development adjacent to closed landfills.

The purpose of the Plan is to protect public health and the environment in connection with residential and commercial development on property adjacent to the Elk Mountain Landfill, and with the possible development of the landfill itself as a golf course and/or in other DENR-approved recreational uses.

In order to accomplish its purpose, the Plan shall include a schedule and shall set forth the following:

- details of a site investigation (e.g., installation of permanent perimeter gas monitoring probes) to determine existing conditions at the site as they relate to the control of landfill gas ("LFG");
- the design rationale used for the final remedial designs. The basis of design for the monitoring systems and LFG controls will be presented in a Design Report along with supporting calculations and data.
- remedial designs that will be protective of public health and the environment. The Plan will include Design Drawings consisting of a Site Plan showing the layout of the LFG control systems and design details consisting of specifications for appropriate equipment. One remedial measure required to be described is a comprehensive landfill gas cut-off trench.
- operations, maintenance, and monitoring requirements.

The Plan shall evaluate both active and passive controls for the site to prevent the migration of LFG from the waste areas towards the proposed development areas and identify the efforts believed to be necessary to protect public health and the environment. In addition, the Plan shall identify and describe methane gas barrier systems to be installed under building foundations.

The Plan shall be submitted to DENR for approval. If and when the Plan is approved by DENR and is recorded in accordance with paragraph 15.a. of the Brownfields Agreement, it shall be deemed incorporated into said Agreement.

The Plan shall include the following professional engineer's certification:

"I hereby certify that this Landfill Gas Control Plan for the Elk Mountain Landfill brownfields redevelopment project is designed to protect public health and the environment at the site of said project through the prevention of landfill gas migration from the waste-containing portion of the property and mitigation of the negative health and safety effects of landfill gas in and around nearby structures. I further believe that the systems incorporated into this Plan are appropriate for the land uses specified in the Brownfields Agreement for said project and that, upon implementation, this Plan shall accomplish its purpose of protecting public health and the environment at the site of said project.

[PE SEAL]

[Signature of Professional Engineer registered in North Carolina]

Name and Affiliation _____

Date _____"

EXHIBIT 3

ENGINEER'S CERTIFICATION FOR LANDFILL GAS CONTROL SYSTEMS

The following language shall be used as the engineer's certification of each Landfill Gas Control Systems Implementation Report prepared for the Elk Mountain Landfill redevelopment project, and of the efficacy of the landfill gas control systems described in each report.

"ENGINEER'S CERTIFICATION FOR LANDFILL GAS CONTROL SYSTEMS

Based upon observations made by me and/or members of my staff during construction, and based upon monitoring results following installation of the landfill gas control systems described in the attached DENR-approved Landfill Gas Control Plan ("Plan") dated [insert date of final Plan] for the Elk Mountain Landfill brownfields redevelopment project, I hereby certify that the landfill gas control systems described in the attached Landfill Gas Control Systems Implementation Report have been installed in accordance with said Plan, and are functioning as designed to prevent migration of landfill gas from the Waste-Containing Portion of the Property, in accordance with said Plan. I further believe that these systems are appropriate for the land uses specified in the Brownfields Agreement for said project and are accomplishing their purpose of protecting public health and the environment at the site of this redevelopment project.

[PE SEAL]

[Signature of North Carolina Professional Engineer]
Name and Affiliation _____
Date _____"

"Exhibit C"

This property being in the town of Woodfin, Buncombe County North Carolina and more particularly described as beginning on a concrete right of way monument in the western right of way of interstate highway 26, said monument having North Carolina grid coordinates of North 707221.32 and East 936264.18 NAD 1983 and standing North $38^{\circ}02'05''$ West a distance of 279.89 feet from N.C.G.S. monument "Trash" having coordinates of North 707000.82 and East 936436.66 NAD 1983; thence from the beginning point thus established with the western right of way of Interstate 26 the following two courses North $03^{\circ}20'35''$ East a distance of 196.63 feet to a concrete monument; North $00^{\circ}05'10''$ East passing an existing rebar at 259.04 feet a total distance of 278.35 feet to a point at the southeast corner of Mills Mfg. Corp., et al. as described in deed book 1779 at page 783; thence with the Mills Mfg. Corp., et al. property the following seven courses; North $88^{\circ}37'22''$ West a distance of 139.74 feet, North $86^{\circ}20'22''$ West a distance of 214.25 feet, North $31^{\circ}43'47''$ West a distance of 66.05 feet, North $55^{\circ}09'43''$ West a distance of 98.82 feet, North $64^{\circ}53'07''$ West a distance of 148.77 feet, North $61^{\circ}23'07''$ West a distance of 120.68 feet and North $59^{\circ}39'00''$ West a distance of 198.76 feet to a monument at the southeast corner of the Coleman Development Group, LLC as described in deed book 2063 at page 216 the following five courses North $88^{\circ}08'47''$ West a distance of 82.56 feet, South $86^{\circ}58'56''$ West a distance of 198.64 feet, North $83^{\circ}07'16''$ West a distance of 194.35 feet, North $40^{\circ}57'42''$ West a distance of 719.19 feet and South $43^{\circ}47'43''$ West a distance of 603.50 feet to a rebar at the base of a 20 inch oak tree and in the eastern line of the Metropolitan Sewerage District property as shown in plat book 34 at page 56; thence with the Metropolitan Sewerage District property the following eleven courses South $58^{\circ}53'35''$ West a distance of 594.77 feet, South $29^{\circ}10'58''$ West a distance of 544.05 feet, South $67^{\circ}40'29''$ West a distance of 499.60 feet, South $43^{\circ}18'08''$ West a distance of 304.00 feet, South $60^{\circ}25'35''$ West a distance of 161.32 feet, South $77^{\circ}42'35''$ West a distance of 303.57 feet, South $83^{\circ}26'02''$ West a distance of 40.22 feet, South $06^{\circ}28'05''$ West a distance of 83.96 feet, South $38^{\circ}56'53''$ East a distance of 104.17 feet, South $81^{\circ}17'07''$ West a distance of 205.62 feet, South $82^{\circ}11'09''$ West a distance of 160.06 feet to a rebar at the Southeast corner of the Carolina Power and Light property as described in deed book 737 page 213 thence with the southern line of the Carolina Power and Light property the following six courses; South $77^{\circ}12'45''$ West a distance of 93.01 feet, North $81^{\circ}47'15''$ West a distance of 155.01 feet, North $66^{\circ}47'15''$ West a distance of 83.01 feet and South $79^{\circ}12'45''$ West a distance of 26.05 feet to a point in the centerline of Riverside Drive (NC Hwy 191) thence with the centerline of Riverside Drive, South $08^{\circ}51'47''$ East a distance of 210.67 feet to a nail at the Northern line of the Riverside Business Park property and the centerline of a Norfolk Southern Railway spur; thence with the centerline of the Norfolk Southern Railway spur the following twenty-five courses; North $68^{\circ}18'25''$ East a distance of 46.18 feet, North $77^{\circ}05'27''$ East a distance of 50.00 feet, North $80^{\circ}32'13''$ East a distance of 50.00 feet, North $81^{\circ}17'53''$ East a distance of 50.00 feet, North $81^{\circ}49'18''$ East a distance of 50.00 feet, North $81^{\circ}51'28''$ East a distance of 50.00 feet North $81^{\circ}39'07''$ East a distance of 358.94 feet, with a curve to the right having a radius of 441.89 feet a curve length of 271.16 a chord bearing of South $80^{\circ}46'07''$ East and a chord length of 266.92 feet, South $63^{\circ}11'22''$ East a distance of

265.44 feet, with a curve to the left having a radius of 1712.22 feet a curve length of 181.21 feet a chord bearing of South 66°13'17" East and a chord length of 181.12 feet, South 69°15'11" East a distance of 138.69 feet, with a curve to the right having a radius of 276.54 feet a curve length of 225.45 feet and a chord bearing of South 45°53'52" East a distance of 219.26 feet, South 22°32'37" East a distance of 190.87 feet, with a curve to the left having a radius of 382.15 feet a curve length of 244.94 feet a chord bearing of South 40°54'20" East a chord length of 240.77 feet, South 59°16'00" East a distance of 313.34 feet, with a curve to the left having a radius of 409.77 feet a curve length of 205.28 feet a chord bearing of South 73°37'06" East a chord length of 203.14 feet, South 87°58'13" East a distance of 385.47 feet, with a curve to the right having a radius of 363.91 feet a curve length of 188.09 feet a chord bearing of South 73°09'48" East a chord distance of 186.00 feet, South 58°21'22" East a distance of 437.69 feet, with a curve to the left having a radius of 358.86 feet a curve length of 266.29 feet a chord bearing of South 79°36'51" East a chord distance of 260.22 feet, North 79°07'42" East a distance of 433.95 feet, with a curve to the left having a radius of 322.35 feet a curve length of 269.21 feet a chord bearing of North 55°12'11" East a chord distance of 261.45 feet, North 31°16'45" East a distance of 304.70 feet, with a curve to the right having a radius of 277.17 feet a curve length of 301.95 feet, a chord bearing of North 62°29'18" East a chord distance of 287.24 feet, South 86°18'06" East a distance of 182.41 feet to a rebar at the Northeast corner of the County of Buncombe property as described in deed book 4223 at page 490 and at the western right of way for interstate 26 thence with the interstate 26 right of way North 09°02'41" East a distance of 190.23 feet to a right of way monument, thence with a curve to the right having a radius of 241.01 feet a curve length of 118.95 feet a chord bearing of North 52°05'46" West a chord distance of 117.74 feet to a right of way monument, thence North 37°57'26" West a distance of 187.22 feet to a point; thence with a curve to the left having a radius of 97.96 feet a curve length of 182.84 feet a chord bearing of South 88°34'23" West a chord distance of 157.43, thence South 35°06'11" West a distance of 100.01 feet to a point; thence North 54°53'49" West a distance of 50.01 feet to a point; thence North 54°53'49" West a distance of 49.99 feet to a point; thence North 35°06'11" East a distance of 100.01 feet to a right of way monument; thence with a curve to the right having a radius of 197.96 feet a curve length of 369.48 feet a chord bearing of North 88°34'23" East a chord distance of 318.14 feet to a point; thence South 37°57'26" East a distance of 187.22 feet, thence with a curve to the left having a radius of 141.01 feet a curve length of 30.55 feet a chord bearing of South 44°09'47" East a chord distance of 30.49 feet to a point; thence North 03°42'25" East a distance of 253.38 feet to the right of way monument at the point and place of beginning containing 156.09 acres and shown on a survey by D. Brian Hughes with Ed Holmes and Associates Land Surveyors P.A. Dated 03/02/07.