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Recorded: 09/18/2017 at 04:29:46 PM  
Fee Amt: \$130.00 Page 1 of 41  
Revenue Tax: \$0.00  
Lenoir County, NC  
Pam Rich Register of Deeds

BK 1811 PG 583-623

Property Owner: The City of Kinston  
Recorded in Book 811, Page 583-623  
Associated plat recorded in Plat Book 15, Page 54-55

### **NOTICE OF BROWNFIELDS PROPERTY**

Site Name: Glen Raven Mills  
Brownfields Project Number: 20021-16-054

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 15<sup>th</sup> day of September, 2017 by  
City of Kinston ("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. 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 800 Manning Street in Kinston, Lenoir County, North Carolina. It consists of one parcel totaling 11.7 acres. The Brownfields Property will be used for a mix of high density residential, retail, offices, restaurant, and with DEQ approval other commercial uses.

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 uses may be made of the Brownfields Property other than as a mix of high density residential, retail, offices, restaurant, recreation, post-secondary education, commercial, amenity space and with DEQ approval other commercial uses. For purposes of this restriction, the following definitions apply:

a. "High Density Residential" is defined as permanent dwellings where residential units are attached to each other with common walls, such as condominiums, apartments, group homes, dormitories or boarding houses, and any property outside the dwelling structures is usable by all residents and not privately owned as part of a particular unit, and shall include related amenities, such as pools, clubhouses, courtyards, common areas, recreation areas and parking garages;

b. "Retail" is defined as the sale of goods or services, products, or merchandise directly to the consumer or businesses and includes showrooms, personal service, and the sales of food and beverage products;

c. "Office" is defined as the provision of business or professional services;

d. "Restaurant" is defined as a commercial business establishment that prepares and serves food and beverages to patrons;

e. "Recreation" is defined as indoor and outdoor exercise-related, physically focused, or leisure-related activities, whether active or passive, and the facilities for same, including, but not

limited to, studios, swimming pools, sports-related courts and fields, open space, greenways, parks, playgrounds, walking paths, and picnic and public gathering areas;

f. "Post-Secondary Education" is defined as a privately-owned or publicly-owned university, college, junior college, or community college that provides education beyond the high school level;

g. "Commercial" is defined as an enterprise carried on for profit or nonprofit by the owner, lessee or licensee; and

h. "Amenity Space" is defined as a hardscaped and landscaped courtyard, swimming pool, pool deck, courtyard, dog run, community gardens, fire pit, grilling station, seating areas, and a common use interior clubhouse.

2. Physical redevelopment of the Brownfields Property may not occur other than in accord, as determined by DEQ, with an Environmental Management Plan ("EMP") approved in writing by DEQ in advance (and revised to DEQ's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment in any other form, including without limitation:

a. soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;

b. issues related to potential sources of contamination referenced in paragraph 8 of the Brownfields Agreement attached hereto as Exhibit A;

c. contingency plans for addressing, including without limitation the testing of soil and groundwater, newly discovered potential sources of environmental contamination (e.g., USTs, tanks, drums, septic drain fields, oil-water separators, soil contamination); and

d. plans for the proper characterization of, and, as necessary, disposal of contaminated soils excavated during redevelopment.

3. By January 31<sup>st</sup> after each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Property continues (except that the final deadline shall fall 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 since the last report, with a summary and drawings, that describes:

a. actions taken in accordance with the plan required by subparagraph 15.b. of the Brownfields Agreement attached hereto as Exhibit A;

b. soil grading and cut and fill actions;

c. methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;

d. stockpiling, containerizing, decontaminating, treating, handling, laboratory analysis and ultimate disposition of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and

e. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Property (copies of all legally required manifests shall be included).

4. Unless compliance with this Land Use Restriction is waived in writing in advance by DEQ in relation to particular buildings, demolition and/or renovation of any or all buildings on the Brownfields Property depicted on the plat component of the Notice referenced in paragraph 20 of the

**Brownfields Agreement attached hereto as Exhibit A shall be in accordance with applicable legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.**

5. No activity that disturbs soil on the Brownfields Property, may occur unless and until DEQ states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DEQ deems necessary to ensure the Brownfields Property will be suitable for the uses specified in subparagraph 15.a. of the Brownfields Agreement attached hereto as Exhibit A while fully protecting public health and the environment, except:

- a. in connection with landscape planting to depths not exceeding 24";
- b. mowing and pruning of above-ground vegetation;
- c. for repair of underground infrastructure, provided that DEQ shall be given written

notice at least seven days in advance of a scheduled repair (if only by email) of any such repair, or in emergency circumstances no later than the next business day, and that any related assessment and remedial measures required by DEQ shall be taken and;

d. in connection to work conducted in accordance with a DEQ-approved Environmental Management Plan (EMP) as outlined in subparagraph 15.b. of the Brownfields Agreement attached hereto as Exhibit A.

6. None of the contaminants known to be present in the environmental media at the Brownfields Property, as described in Paragraph 8 of this Brownfields Agreement attached hereto as Exhibit A and as modified by DEQ in writing if additional contaminants in excess of applicable standards are discovered at the Brownfields Property, may be used or stored at the Brownfields Property without the prior written approval of DEQ, except:

- a. in de minimis amounts for cleaning and other routine housekeeping and maintenance activities;
- b. as constituents of fuels, lubricants and oils in emergency generators, machinery, equipment and vehicles in on-board tanks integral to said items or in flammable liquid storage containers totaling more than 25 gallons; or
- c. as constituents of products and materials customarily used or stored in high density residential, office, retail, or restaurant environments, provided such products and materials are used, stored, and disposed of in accordance with applicable laws and regulations.

7. Within 60 days after the effective date of this Agreement or prior to land disturbance activities, Prospective Developer shall abandon monitoring wells, injection wells, recovery wells, piezometers and other man made points of groundwater access at the Brownfields Property in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code, unless an alternate schedule is approved by DEQ. Within 30 days after doing so, the Prospective Developer shall provide DEQ a report, setting forth the procedures and results.

8. The owner of any portion of the Brownfields Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged by the owner, its contractors, or its tenants shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ, unless compliance with this Land Use Restriction is waived in writing by DEQ in advance.

9. Neither DEQ, nor any party conducting environmental assessment or remediation at the Brownfields 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 Brownfields 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 Brownfields Property.

10. Any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: "This property is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Lenoir 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 to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. An owner conveying an interest may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, the owner conveying an interest may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notice and Submissions); or (ii) The owner conveying an interest may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV of the Brownfields Agreement attached hereto as Exhibit A.

11. During January of each year after the year in which the Notice referenced below in paragraph 20 of the Brownfields Agreement attached hereto as Exhibit A is recorded, the owner of any part of the Brownfields Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DEQ, and to the chief public health and environmental officials of Lenoir County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Lenoir County Register of Deeds office and that the land use restrictions are being complied with. The submitted LURU shall state the following:

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 Brownfields Property in fee 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 Brownfields Property during the previous calendar year.

12. A joint LURU may be submitted for multiple owners by a duly constituted board or association and shall include the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the entity submitting the joint LURU as well as for each of the owners on whose behalf the joint LURU is submitted.

13. A LURU submitted for rental units shall include the rent roll and enough of each lease entered into during the previous calendar year to demonstrate compliance with lessee notification requirements in paragraphs 21 and 22 of this Brownfields Agreement attached hereto as Exhibit A provided that if standard form leases are used in every instance, a copy of such standard form lease may be sent in lieu of copies of actual leases.

For purposes of the land use restrictions set forth above, the DEQ point of contact shall be the DEQ official referenced in paragraph 35.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 15<sup>th</sup> day of September, 2017.

The City of Kinston  
By: Tony Sears  
Tony Sears,  
City Manager

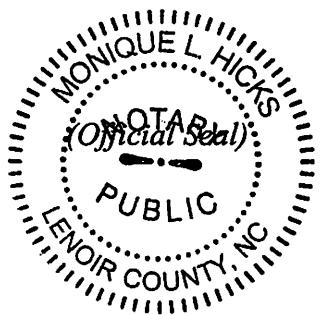
NORTH CAROLINA  
LENOIR COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: City Manager Tony Sears.

Date: Sept 15, 2017

Monique L. Hicks  
Official Signature of Notary

Monique L. Hicks  
Notary's printed or typed name, Notary Public  
My commission expires: July 4, 2021



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

Michael E. Scott  
*Michael E. Scott*

Director, Division of Waste Management

By: *Michael E. Scott*

Date: 9/13/17

## EXHIBIT A

### NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

#### IN THE MATTER OF: The City of Kinston

UNDER THE AUTHORITY OF THE BROWNFIELDS PROPERTY REUSE ACT OF 1997, NCGS § 130A-310.30, <u>et seq.</u> Brownfields Project # 20021-16-54	)	BROWNFIELDS AGREEMENT re: Glen Raven Mills 800 Manning Street Kinston, Lenoir County
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#### I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environmental Quality (“DEQ”) and The City of Kinston (collectively the “Parties”) pursuant to the Brownfields Property Reuse Act of 1997, NCGS § 130A-310.30, et seq. (the “Act”) for the property located at 800 Manning Street, Kinston, North Carolina, 28501 (the “Brownfields Property”). A map showing the location of the Brownfields Property that is the subject of this Agreement is attached hereto as Exhibit 1.

The City of Kinston intends to redevelop the site for no uses other than as a mix of high density residential, retail, offices, restaurant, recreation, post-secondary education, commercial, amenity space and with DEQ approval other commercial uses. The Brownfields Property is comprised of one parcel totaling 11.7 acres.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DEQ’s Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer’s Covenant Not to Sue), the potential liability of The City of Kinston for contaminants at the Brownfields Property.

The Parties agree that The City of Kinston's entry into this Agreement, and the actions undertaken by The City of Kinston in accordance with the Agreement, do not constitute an admission of any liability by The City of Kinston for contaminants at the Brownfields Property. The resolution of this potential liability, in exchange for the benefit The City of Kinston shall provide to DEQ, is in the public interest.

## II. DEFINITIONS

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

1. "Brownfields Property" shall mean the property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean The City of Kinston.

## III. STATEMENT OF FACTS

3. The Brownfields Property is comprised of one parcel totaling 11.7 acres and is identified as Parcel ID Number 452513047216 by the Lenoir County Tax Office. Prospective Developer has committed itself to redevelopment for no uses other than as a mix of high density residential, retail, offices, restaurant, recreation, post-secondary education, commercial, amenity space and with DEQ approval other commercial uses.

4. The Brownfields Property is bordered to the north by Atlantic Avenue and the North Carolina Railroad Corridor Line, the former Church at Kinston and residential dwellings; to the east by Manning Street, with residential dwellings and the former Raven's Nest Community

Outreach Center beyond; to the south by wooded land and the Neuse River; and to the west by a storage yard (former power plant) owned by the City of Kinston.

5. Prospective Developer obtained or commissioned the following reports, referred to hereinafter as the “Environmental Reports,” regarding the Brownfields Property:

<i>Title</i>	<i>Prepared by</i>	<i>Date of Report</i>
Phase I ESA, Former Glen Raven Mill	Mid Atlantic Associates, Inc.	December 30, 2015
Limited Environmental Site Assessment Report, Former Glen Raven Mill (Phase II ESA)	Mid Atlantic Associates, Inc.	October 21, 2016

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

a. The Brownfields Property was occupied by Caswell Cotton Mills from 1914 through 1936. Three building structures were identified in historical Sanborn Maps dated 1914 illustrating a similar building orientation as that currently observed. Sanborn Maps dated 1958, 1948, 1930, and 1925 were reviewed and the labels and descriptors identified on the maps were used to determine the use of the property and associated structures. The western most building (Building 1) is labeled cotton warehouse. The small square building (Building 2) is labeled as an office. The large southernmost building (Building 3) is the main mill building and is labeled on Sanborn Maps as winding and spinning on the first floor and drawing, carding, slubbers, and speeders on the second floor. The southwest portion of Building 3 is labeled as the location for the engine room, boiler room, and machine shop. Adjacent to the boiler room, outside of Building 3 is an area labeled coal pile and west of the coal pile (across the railroad trestle) is a

small structure labeled waste house. Additionally, an oil house is visible south of Building 3. Information from the afore mentioned Sanborn Maps indicate the site was steam powered and fueled with coal.

b. The Brownfield Property was used as a cotton/spinning mill since at least 1914 until approximately 2003 by various operators: from 1914 through at least 1936, by Caswell Cotton Mills; by an unknown entity from 1936 to 1948; from at least 1948 through approximately 2003, by Glen Raven Cotton Mills, Plant Number 2, and from approximately 2003 to present by the National Spinning Company.

c. In 2015, the western building (Building 1) was still utilized for blending and bailing raw yarn by the National Spinning Company. The other two buildings were unoccupied.

d. The Prospective Developer acquired the Brownfields Property as a gift on October 6, 2016 and the deed recorded on October 19, 2016.

7. Pertinent environmental information regarding the Brownfields Property and surrounding area includes the following:

a. Potential sources of contamination at the Brownfields Property are the use of the southwest portion of main mill building (Building 3) as a boiler room, engine room and machine shop; the oil house formally located south of Building 3; the former coal pile located at the southwest corner of Building 3; and the former waste house south of Building 1.

b. Ten drums were removed from the site on August 18, 2016 by A&D Environmental, including two drums that were leaking onto the concrete basement floor in a room located east of the boiler room in Building 3. One of the chemicals in the leaking drums

contained flocculent and the other contained a “gelled yellow Resin-like material. The drums were placed inside over-pack containers and absorbent was placed on the floors to soak up the leaked chemicals. On August 18, 2016, all ten drums were removed from the site and disposed by A&D Environmental Services, Inc.

c. The adjacent property to the northeast was a City Water Work Pumping Station and Electric Light Plant until it was decommissioned in 1975. The site was shown to have been utilized as a wood and coal and other fuel yard with the presence of coal piles, bins and silo, boilers, generators, and five large above ground storage tanks for standby diesel fuel. The site is currently used by the City of Kinston as a storage yard with a portion of the former plant used as a vodka distillery since March 2017.

d. The City of Kinston Manning Street Power Plant (900 Manning Street), located on the west adjacent property, was identified in the Incident Management Database (IMD), Underground Storage Tank (UST), Leaking Underground Storage Tank (LUST), and the LUST Trust Fund (LUST TRUST) databases. A petroleum hydrocarbon release was discovered in groundwater at the western adjacent property during removal of a 4,000 gallon underground storage tank (UST) in December 31, 1989. Cleanup activities started January 20, 1990. The site achieved Residential Soil Cleanup level and was listed as closed out by the UST Section on July 27, 2000.

8. The most recent environmental sampling at the Brownfields Property reported in the Environmental Reports occurred on August 6, 2016. The following table sets forth, for contaminants present at the Brownfields Property above applicable standards or screening levels,

the concentration found at each sample location and the applicable standard or screening level.

Screening levels and standards are shown for reference only and are not set forth as cleanup levels for the purposes of this Agreement.

a. Groundwater collected at the subject site did not exhibit constituents above their respective North Carolina 2L Groundwater Quality Standards. Based on groundwater table elevations calculated for the site, groundwater flow below the site is generally to the south, towards the Neuse River.

b. Soil contaminants in milligrams per kilogram (the equivalent of parts per million), the screening levels for which are derived from the Preliminary Residential Health-Based Remediation Goals of the Inactive Hazardous Sites Branch of DEQ's Superfund Section (October 2016 version):

Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Residential Screening Level <sup>1</sup> (mg/kg)
Benzo(a)pyrene	SB-4	2	4/25/2016	1.2J	0.016
Benzo(a)anthracene	SB-5	2	4/25/2016	2.0J	0.16
Benzo(b)fluoranthene	SB-5	2	4/25/2016	2.2J	0.16
Naphthalene	SB-5	2	4/25/2016	6.1	3.8
Arsenic	SB-5	2	4/25/2016	24	0.68

<sup>1</sup>Screening levels displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for a 1.0E-6 lifetime incremental cancer risk.

J = Detected above the method detection limit, but below the reporting limit; therefore, the result is an estimated concentration.

c. Sub-slab soil gas samples collected from Building 1 and 3 of the Brownfields Property did not exhibit constituents above the DWM Residential or Non-Residential Vapor

Intrusion Screening Levels.

9. For purposes of this Agreement DEQ relies on Prospective Developer's representations that Prospective Developer's involvement with the Brownfields Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DEQ a Brownfields Property Application (BPA) dated March 11, 2016, and the Brownfields Property consists of 14 Parcels, and on June 6, 2017 the last Parcel of the Brownfields Property was gifted to the Prospective Developer.

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

- a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at NCGS § 130A-310.32(a)(1);
- b. As a result of the implementation of this Agreement, the Brownfields 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 Brownfields 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 Brownfields Property; and

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

11. Prospective Developer has paid to DEQ the \$2,000 fee to seek a brownfields agreement required by NCGS § 130A-310.39(a)(1), and shall make a payment to DEQ of \$6,000 at the time Prospective Developer and DEQ enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that such fees will suffice as the \$2,000 fee to seek a brownfields agreement required by NCGS § 130A-310.39(a)(1), and, within the meaning of NCGS § 130A-310.39(a)(2), the full cost to DEQ and the North Carolina Department of Justice of all activities related to this Agreement, unless a change is sought to a Brownfields document after it is in effect, in which case there shall be an additional fee of at least \$1,000.

#### IV. BENEFIT TO COMMUNITY

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

- a. a return to productive use of the Brownfields Property;
- b. a spur to additional community investment and redevelopment, through improved neighborhood appearance;
- c. an increase in tax revenue for affected jurisdictions;
- d. an increase in residential, office, and retail space for the area; and

e. “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**

13. In redeveloping the Brownfields Property, Prospective Developer shall make reasonable efforts to evaluate applying sustainability principles at the Brownfields Property, using the nine (9) areas incorporated into the U.S. Green Building Council Leadership in Energy and Environmental Design certification program (Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, Locations & Linkages, Awareness & Education, Innovation in Design and Regional Priority), or a similar program.

14. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DEQ’s Covenant Not to Sue and Reservation of Rights), DEQ is not requiring Prospective Developer to perform any active remediation at the Brownfields Property other than remediation that may be required pursuant to a DEQ-approved Environmental Management Plan (EMP).

15. By way of the Notice of Brownfields Property referenced below in paragraph 20, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Brownfields Property suitable for the uses specified in this Agreement while fully protecting public health and the environment instead of remediation to unrestricted use standards. All references to DEQ shall be understood to include any successor in function.

a. No uses may be made of the Brownfields Property other than as a mix of high density residential, retail, offices, restaurant, recreation, post-secondary education, commercial, amenity space and with DEQ approval other commercial uses. For purposes of this restriction, the following definitions apply:

i. "High Density Residential" is defined as permanent dwellings where residential units are attached to each other with common walls, such as condominiums, apartments, group homes, dormitories or boarding houses, and any property outside the dwelling structures is usable by all residents and not privately owned as part of a particular unit, and shall include related amenities, such as pools, clubhouses, courtyards, common areas, recreation areas and parking garages;

ii. "Retail" is defined as the sale of goods or services, products, or merchandise directly to the consumer or businesses and includes showrooms, personal service, and the sales of food and beverage products;

iii. "Office" is defined as the provision of business or professional services;

iv. "Restaurant" is defined as a commercial business establishment that prepares and serves food and beverages to patrons;

v. "Recreation" is defined as indoor and outdoor exercise-related, physically focused, or leisure-related activities, whether active or passive, and the facilities for same, including, but not limited to, studios, swimming pools, sports-related courts and fields, open space, greenways, parks, playgrounds, walking paths, and picnic and public gathering

areas;

vi. "Post-Secondary Education" is defined as a privately-owned or publicly-owned university, college, junior college, or community college that provides education beyond the high school level;

vii. "Commercial" is defined as an enterprise carried on for profit or nonprofit by the owner, lessee or licensee; and

viii. "Amenity Space" is defined as a hardscaped and landscaped courtyard, swimming pool, pool deck, courtyard, dog run, community gardens, fire pit, grilling station, seating areas, and a common use interior clubhouse.

b. Physical redevelopment of the Brownfields Property may not occur other than in accord, as determined by DEQ, with an Environmental Management Plan ("EMP") approved in writing by DEQ in advance (and revised to DEQ's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment in any other form, including without limitation:

i. soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;

ii. issues related to potential sources of contamination referenced in paragraph 8 above;

iii. contingency plans for addressing, including without limitation the

testing of soil and groundwater, newly discovered potential sources of environmental contamination (e.g., USTs, tanks, drums, septic drain fields, oil-water separators, soil contamination); and

iv. plans for the proper characterization of, and, as necessary, disposal of contaminated soils excavated during redevelopment.

c. By January 31<sup>st</sup> after each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Property continues (except that the final deadline shall fall 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 since the last report, with a summary and drawings, that describes:

i. actions taken in accordance with the plan required by subparagraph 15.b. above;

ii. soil grading and cut and fill actions;

iii. methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;

iv. stockpiling, containerizing, decontaminating, treating, handling, laboratory analysis and ultimate disposition of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and

v. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Property (copies of all legally required manifests shall be included).

d. Unless compliance with this Land Use Restriction is waived in writing in advance by DEQ in relation to particular buildings, demolition and/or renovation of any or all buildings on the Brownfields Property depicted on the plat component of the Notice referenced in paragraph 20 below shall be in accordance with applicable legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.

e. No activity that disturbs soil on the Brownfields Property, may occur unless and until DEQ states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DEQ deems necessary to ensure the Brownfields Property will be suitable for the uses specified in subparagraph 15.a. above while fully protecting public health and the environment, except:

- i. in connection with landscape planting to depths not exceeding 24";
- ii. mowing and pruning of above-ground vegetation;
- iii. for repair of underground infrastructure, provided that DEQ shall be given written notice at least seven days in advance of a scheduled repair (if only by email) of any such repair, or in emergency circumstances no later than the next business day, and that any related assessment and remedial measures required by DEQ shall be taken and;
- iv. in connection to work conducted in accordance with a DEQ-approved Environmental Management Plan (EMP) as outlined in subparagraph 15.b.

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

at the Brownfields Property, as described in Paragraph 8 of this Agreement and as modified by DEQ in writing if additional contaminants in excess of applicable standards are discovered at the Brownfields Property, may be used or stored at the Brownfields Property without the prior written approval of DEQ, except:

- i. in de minimis amounts for cleaning and other routine housekeeping and maintenance activities;
- ii. as constituents of fuels, lubricants and oils in emergency generators, machinery, equipment and vehicles in on-board tanks integral to said items or in flammable liquid storage containers totaling more than 25 gallons; or
- iii. as constituents of products and materials customarily used or stored in high density residential, office, retail, or restaurant environments, provided such products and materials are used, stored, and disposed of in accordance with applicable laws and regulations.

g. Within 60 days after the effective date of this Agreement or prior to land disturbance activities, Prospective Developer shall abandon monitoring wells, injection wells, recovery wells, piezometers and other man made points of groundwater access at the Brownfields Property in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code, unless an alternate schedule is approved by DEQ. Within 30 days after doing so, the Prospective Developer shall provide DEQ a report, setting forth the procedures and results.

h. The owner of any portion of the Brownfields Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged by the owner, its

contractors, or its tenants shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ, unless compliance with this Land Use Restriction is waived in writing by DEQ in advance.

i. Neither DEQ, nor any party conducting environmental assessment or remediation at the Brownfields 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 Brownfields 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 Brownfields Property.

j. Any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: "This property is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Lenoir County land records, Book 1811, Page 583." 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 to the extent said redactions comply with the confidentiality and trade secret provisions of the North Carolina Public Records Law. An owner conveying an interest may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, the owner conveying an interest may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notice and Submissions); or (ii) The owner conveying an interest may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

k. During January of each year after the year in which the Notice referenced below in paragraph 20 is recorded, the owner of any part of the Brownfields Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DEQ, and to the chief public health and environmental officials of Lenoir County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Lenoir County Register of Deeds office and that the land use restrictions are being complied with. The submitted LURU shall state the following:

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

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

l. A joint LURU may be submitted for multiple owners by a duly constituted board or association and shall include the name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address of the entity submitting the joint LURU as well as for each of the owners on whose behalf the joint LURU is submitted.

m. A LURU submitted for rental units shall include the rent roll and enough of each lease entered into during the previous calendar year to demonstrate compliance with lessee notification requirements in paragraphs 21 and 22 of this agreement provided that if standard form leases are used in every instance, a copy of such standard form lease may be sent

in lieu of copies of actual leases.

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

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

18. The consequence of achieving the desired results will be that the Brownfields Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment. The consequence of not achieving the desired results will be that modifications to land use restrictions and/or remediation in some form may be necessary to fully protect public health and/or the environment.

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

19. In addition to providing access to the Brownfields Property pursuant to subparagraph 15.i. above, Prospective Developer shall provide DEQ, its authorized officers, employees, representatives, and all other persons performing response actions under DEQ oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Brownfields Property under applicable law. Such access is to occur after prior notice and using reasonable efforts to

minimize interference with authorized uses of such other property except in response to emergencies and/or imminent threats to public health and the environment. While Prospective Developer owns the Brownfields Property, DEQ shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DEQ at the Brownfields Property. Except as may be set forth in the Agreement, DEQ retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

20. DEQ has approved, pursuant to NCGS § 130A-310.35, a Notice of Brownfields Property for the Brownfields 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 Brownfields Property. Pursuant to NCGS § 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 Lenoir County, North Carolina, Register of Deeds' Office. Within three (3) days thereafter, Prospective Developer shall furnish DEQ a copy of the documentary component of the Notice containing a certification by the register of deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

21. 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 Brownfields Property shall contain the following notice: "This property is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property

recorded in the Lenoir County land records, Book 1811, Page 583.” A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures and other confidential information related to the conveyance may be redacted. Prospective Developer may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, Prospective Developer may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notices and Submissions); or (ii) Prospective Developer may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

22. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Brownfields Property within seven days of the effective date of this Agreement.

#### VII. DUE CARE/COOPERATION

23. The Prospective Developer shall exercise due care at the Brownfields Property with respect to the manner in which regulated substances are handled at the Brownfields Property and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any assessment or remediation of the Brownfields Property by DEQ and further agrees not to interfere with any such assessment or 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 Brownfields Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such

release or threat of release, shall comply with any applicable notification requirements under NCGS § 130A-310.1 and 143-215.85, Section 103 of CERCLA, 42 USC § 9603, and/or any other law, and shall immediately notify the DEQ Official referenced in paragraph 35.a. below of any such required notification.

#### **VIII. CERTIFICATION**

24. By entering into this Agreement, the Prospective Developer certifies that, without DEQ approval, it will make no use of the Brownfields Property other than those uses are high density residential, retail, offices, restaurant, recreation, post-secondary education, commercial, amenity space and with DEQ approval other commercial uses. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DEQ all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any past use of regulated substances or known contaminants at the Brownfields Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Brownfields Property.

#### **IX. DEQ'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

25. Unless any of the following apply, Prospective Developer shall not be liable to DEQ, and DEQ covenants not to sue Prospective Developer, for remediation of the Brownfields Property except as specified in this Agreement:

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Brownfields 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 Brownfields 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 NCGS § 130A-310.35 is violated while the Prospective Developer owns the Brownfields Property, in which case the Prospective Developer shall be responsible for remediation of the Brownfields Property to unrestricted use standards.

d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Brownfields Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Brownfields Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Brownfields 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 Brownfields Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Brownfields Property fully protective of public health and the environment as planned in this Agreement.

g. DEQ obtains new information about a contaminant associated with the Brownfields Property or exposures at or around the Brownfields Property that raises the risk to public health or the environment associated with the Brownfields 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 NCGS § 130A-310.35.

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

27. 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, NCGS § 113A-1, et seq.

28. Consistent with NCGS § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 25 through 27 above, apply to all of the persons listed in NCGS § 130A-310.33, including future owners of the Brownfields Property, to the same extent as Prospective Developer, so long as these persons are not otherwise potentially responsible

parties or parents, subsidiaries, or affiliates of potentially responsible parties.

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

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

**XI. PARTIES BOUND**

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

**XII. DISCLAIMER**

31. Prospective Developer and DEQ agree that this Agreement meets the requirements of the Act, including but not limited to the requirements set forth in N.C.G.S. 130A-310.32(a)(2). However, this Agreement in no way constitutes a finding by DEQ as to the risks to public health and the environment which may be posed by regulated substances at the Brownfields Property, a representation by DEQ that the Brownfields Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of NCGS

§ 130A-310.37.

32. Except for the land use restrictions set forth in paragraph 15 above and NCGS § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

### XIII. DOCUMENT RETENTION

33. The Prospective Developer agrees to retain and make available to DEQ all business and operating records, contracts, site studies and investigations, remediation reports, and documents generated by and/or in the control of the Prospective Developer, its affiliates or subsidiaries relating to storage, generation, use, disposal and management of regulated substances at the Brownfields Property, including without limitation all Material Safety Data Sheets or Safety Data Sheets, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. Said records may be retained electronically such that they can be retrieved and submitted to DEQ upon request. At the end of six (6) years, the Prospective Developer shall notify DEQ of the location of such documents and shall provide DEQ with an opportunity to copy any documents at the expense of DEQ. By entering into this Agreement, Prospective Developer waives no rights of confidentiality or privilege provided by the North Carolina Public Records Act or otherwise and, at the time DEQ requests to copy or inspect said documents, Prospective Developer shall provide DEQ with a log of documents withheld from DEQ, including a specific description of the document(s) and the alleged legal basis upon which they are being withheld. To the extent DEQ retains any copies of such

documents, Prospective Developer retains all rights it then may have to seek protection from disclosure of such documents as confidential business information.

#### **XIV. PAYMENT OF ENFORCEMENT COSTS**

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

## XV. NOTICES AND SUBMISSIONS

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

a. for DEQ:

Lebed Kady (or successor in function)  
N.C. Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

b. for Prospective Developer:

Tony Sears, City Manager (or successor in function)  
The City of Kinston  
207 East King Street  
Kinston, NC 28502

Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

## XVI. EFFECTIVE DATE

36. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving the signed, conditionally approved Agreement from DEQ. DEQ's approval of this Agreement is conditioned upon the complete and timely execution and filing of this Agreement in the manner set forth herein. Prospective Developer shall expeditiously sign the Agreement in order to effect the recordation of the full Notice of Brownfields Property within

the statutory deadline set forth in N.C.G.S. § 130A-310.35(b). If the Agreement is not signed by Prospective Developer within 45 days after such receipt, DEQ has the right to revoke its approval and certification of this Agreement, and invalidate its signature on this Agreement.

#### **XVII. TERMINATION OF CERTAIN PROVISIONS**

37. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

#### **XVIII. CONTRIBUTION PROTECTION**

38. 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 NCGS § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DEQ or any other person in relation to the Brownfields Property.

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

40. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify

DEQ in writing within 10 days of receiving said suit or claim.

**XIX. PUBLIC COMMENT**

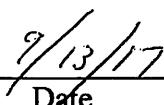
41. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last of the following public notice tasks occurs: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by NCGS § 130A-310.34 in a newspaper of general circulation serving the area in which the Brownfields Property is located; conspicuous posting of a copy of said summary at the Brownfields Property; and mailing or delivery of a copy of the summary to each owner of property contiguous to the Brownfields Property. After expiration of that period, or following a public meeting if DEQ holds one pursuant to NCGS § 130A-310.34(c), DEQ may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

By:

  
Michael E. Scott

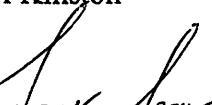
  
9/13/17  
Date

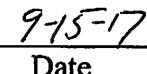
Director, Division of Waste Management

IT IS SO AGREED:

City of Kinston

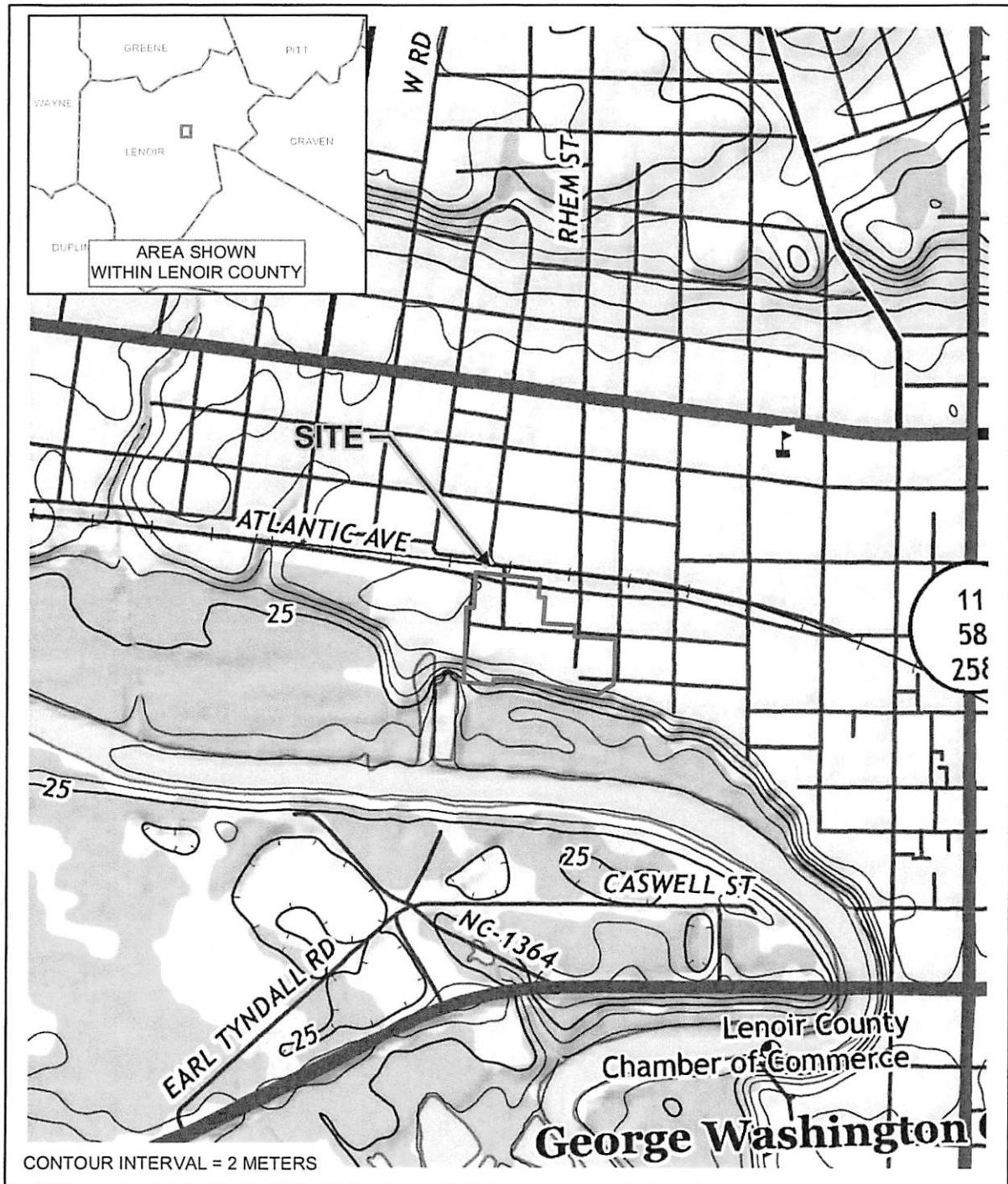
By:

  
Tony Searg, City Manager

  
9-15-17  
Date

The City of Kinston

# EXHIBIT 1



REFERENCES:

1. KINSTON, NC DIGITAL RASTER GRAPHIC, USGS, SCANNED FROM 1:12,000-SCALE KINSTON, NC TOPOGRAPHIC MAP, PUBLISHED 2013, USGS.
2. INSET MAP DIGITAL DATA FROM 2002 NATIONAL TRANSPORTATION ATLAS, BUREAU OF TRANSPORTATION STATISTICS, WASHINGTON, D.C.

SCALE: 1:12,000

0 1,000 2,000 Feet



**Mid Atlantic**  
Engineering & Environmental Solutions

TOPOGRAPHIC SITE MAP  
FORMER GLEN RAVEN MILL  
800 MANNING STREET  
KINSTON, NORTH CAROLINA

DRAWN BY:	77	DATE:
DRAFT CHECK:		DECEMBER 2015
ENG. CHECK:		JOB NO: 000R2611.00 T4050
APPROVAL:		GIS NO: 04G-R2611.00-4050-1
		DWG NO: 15.1





**Exhibit C**  
**Legal Description for City of Kinston Brownfields Property**  
**NCBP Project No.: 20021-16-54**

Lying in Kinston Township, Lenoir County, North Carolina, and being more particularly described as follows:

Beginning at an existing iron pipe located on the southern Right-of Way of Atlantic Avenue; said existing iron pipe having N.C. Grid (NAD 83/2011) coordinates of N = 554,850.038 feet and E = 2,420,302.381 feet; said existing iron pipe being further located S 85°33'06" W – 391.29 feet from N.C. Geodetic Survey Monument "Hood 1967"; said N. C. Geodetic Survey Monument "Hood 1967" being further located N 79°25'27" W – 1702.04 feet from N.C. Geodetic Survey Monument "Atlantic 1967".

Thence from said point of beginning so located S 83°51'16" E – 424.53 feet along the southern Right-of-Way of Atlantic Avenue to a new mag nail; thence, leaving said Right-of-Way of Atlantic Avenue, S 05°37'29" W – 116.18 feet to an existing iron stake; thence S 86°21'55" E – 43.80 feet to an existing iron pipe; thence S 03°58'01" W – 167.44 feet to an existing iron pipe; thence S 86°30'14" E – 203.40 feet to an existing iron pipe on the western Right-of-Way of Rhem Street; thence S 01°33'30" W – 71.30 feet along the western Right-of-Way of Rhem Street to an "X" in concrete on the southern Right-of-Way of Manning Street; thence S 86°06'28" E – 265.02 feet along the southern Right-of-Way of Manning Street to a new iron stake on the western Right-of-Way of Perry Street; thence S 01°43'04" W – 247.29 feet along the western Right-of-Way of Perry Street to an existing iron pipe; thence, continuing along the Right-of-Way of Perry Street, N 84°43'43" W – 4.75 feet to an existing iron pipe; thence, continuing along the Right-of-Way of Perry Street, S 01°38'07" W – 50.02 feet to an existing concrete monument; thence, leaving said Right-of-Way of Perry Street, S 57°06'58" W - 127.20 feet to an existing iron pipe; thence N 79°01'41" W – 314.43 feet to an existing iron pipe; thence N 79°34'15" W – 207.63 feet to a new iron stake; thence N 86°45'44" W – 154.04' to an existing iron pipe; thence S 06°54'47" W – 36.64 feet to an existing iron pipe; thence N 84°49'52" W – 194.10 feet to an existing concrete monument; thence N 02°08'01" E – 485.38 feet to a new iron stake; thence S 86°57'18" E – 49.85 feet to an existing iron pipe; thence N 02°09'24" E – 228.88 feet to an existing iron pipe, the point and true place of beginning.

Containing 11.717 acres more or less.

Matrix East, PLLC  
Firm License # P-0221  
906 N. Queen St., Ste. A  
Kinston, NC 28501  
252-522-2500



Waste Management  
ENVIRONMENTAL QUALITY

ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

MICHAEL SCOTT  
*Director*

September 14, 2017

Mr. Tony Sears, City Manager  
The City of Kinston  
800 Manning Street  
Kinston, NC 28502  
[tony.Sears@ci.kinston.nc.us](mailto:tony.Sears@ci.kinston.nc.us)

Subject: Conclusion of Brownfields Agreement Process  
Glen Raven Mills II Brownfields Project  
Kinston, Lenoir  
Brownfields Project Number 20021-16-054

Dear Mr. Sears:

We are very pleased the Brownfields Agreement process regarding this project is approaching successful conclusion. To that end, please find enclosed the Notice of Brownfields Property (Notice), the Brownfields Agreement (Agreement) and the plat for this Brownfields Property certified by the North Carolina Department of Environmental Quality (DEQ) via the signature of Michael E. Scott, Director of the Division of Waste Management.

Please promptly have all necessary parties on the Prospective Developers' side of the transaction sign and notarize the Notice and sign the Agreement. Also note that the Prospective Developer's signature on the Notice requires notarization. Please file the documents for recordation with the Register of Deeds of Lenoir County. Documents to be recorded are:

- The Notice of Brownfields Property (signed and notarized),
  - Exhibit A (signed Brownfields Agreement),
    - Exhibit 1 (Site Location Map),
  - Exhibit B (8 ½ x 11 reduction of the plat),
  - Exhibit C (Legal Description),
- Full-sized survey plat (signed by DEQ).

NCGS § 130A-310.35(b) requires filing of the 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, whichever is later.

You are responsible for obtaining the Register of Deeds stamp at the top of the Notice's first page with the Book and Page numbers where both the Notice and the plat are recorded. Upon your filing of the Notice, the register of deeds is required by NCGS § 130A-310.35(c) to record and index it in the grantor index under the names of the owners of the land, and, if different, also under the name of the Prospective Developer.

Pursuant to paragraph 20 of the Agreement, within three days after the Register of Deeds has recorded the Notice of Brownfields Property, you must furnish DEQ a copy of the Notice containing a certification by the register of deeds as to the Book and Page numbers where both the Notice and the plat are recorded, and a copy of the actual, full-sized plat with notations by the register of deeds indicating its recordation. (Make sure that the exhibits to the Notice are attached to the certified copy you furnish DEQ.) Please send these items to:

Ms. Shirley Liggins  
NC Department of Environmental Quality  
Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

Thank you for your attention to these final administrative matters, and also for your help during the course of completing the Brownfields Agreement process regarding this site.

Sincerely,



Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management

Enclosures

cc: Central Files, DEQ  
Michael Scott, DEQ  
Lebeed Kady, DEQ  
Adam Short, City of Kinston