

WAKE COUNTY, NC 203  
 LAURA M RIDDICK  
 REGISTER OF DEEDS  
 PRESENTED & RECORDED ON  
 10/27/2014 15:09:33

BOOK:015820 PAGE:01083 - 01113

Hold: Box 182

Property Owner: Storage Max V, LLC

Recorded in Book 15733, Page 2721

Associated plat recorded in Plat Book 2014, Page 1458

### NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 23 day of October, 2014 by Minta of Holly Springs, LLC (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 comprises approximately 3.18 acres and is located at 180 Newspaper Way, Holly Springs, Wake County. The Brownfields Property is located within the Holly Springs Industrial Park. The Brownfields Property was used as gravel supply yard and a landfill from 1953 until 1973 under a lease with the Town of Holly Springs. Groundwater contamination is present at the Brownfields Property in the form of low concentrations of Chromium, Lead and

Arsenic. Prospective Developer intends to sell the Brownfields Property for redevelopment in industrial/commercial uses, including but not limited to a self-storage facility, or other industrial/commercial uses pre-approved in writing by DENR.

**The Brownfields Agreement between Prospective Developer and DENR 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 plat component of this Notice is recorded at the plat book and page number shown at the top of this documentary component of the Notice. **Exhibit B** to this Notice is a reduction, to 8 1/2" x 11", of said plat. The plat shows areas designated by DENR, has been prepared and certified by a professional land surveyor, 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. The following table also sets forth the type and quantity of such substances, which have only been found in groundwater:

The listed concentrations are in micrograms per liter, the equivalent of parts per billion; the listed legal standards are from Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (April 1, 2013 version):

#### **Groundwater Contaminants**

Groundwater Contaminant	Sample Location	Date of Sampling	Maximum Concentration Exceeding Standard (µg/L)	Standard (for reference only) <sup>1</sup> (µg/L)
<u>Chromium</u>	<u>MW-1</u>	<u>January 7, 2010</u>	<u>24.8</u>	<u>10</u>
<u>Lead</u>	<u>MW-1</u>	<u>January 7, 2010</u>	<u>24.6</u>	<u>15</u>
<u>Arsenic</u>	<u>MW-1</u>	<u>January 7, 2010</u>	<u>29.0</u>	<u>10</u>

1. The drinking water standard that would apply if the land use was not restricted.

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 its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e). All references to DENR shall be understood to include any successor in function. The restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No use may be made of the Brownfields Property other than industrial/commercial uses, including but not limited to a self-storage facility, or other industrial/commercial uses pre-approved in writing by DENR. For purposes of this restriction, the following definitions apply:
  - a. Industrial shall mean the assembly, fabrication or processing of goods or materials; and
  - b. Commercial shall mean a business enterprise carried on for profit by the owner, lessee or licensee.
  
2. No building constructed on the Brownfields Property that contains indoor air space may be used or occupied unless and until:
  - a. the analytical results of landfill gas sampling, conducted at the Brownfields Property in accordance with a work plan pre-approved in writing by DENR, demonstrates to DENR's written satisfaction that there is no unacceptable risk to public health or the environment related to the presence of landfill gas at the Brownfields Property, or;
  - b. landfill gas mitigation measures are installed or implemented at the Brownfields Property to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. All landfill gas mitigation measures shall be installed or implemented in accordance with a plan that is pre-approved in writing by DENR, and that includes methodology(ies) for demonstrating performance of said measures.
  
3. Physical redevelopment of the Brownfields Property may not occur other than in accordance, as determined by DENR, with an Environmental Management Plan (EMP) pre-approved in writing by DENR (and revised to DENR's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions in this Agreement, that describes redevelopment activities at the Brownfields Property, the timing of redevelopment phases and that addresses health, safety and environmental issues that may arise from use of the Brownfields 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 7 of Exhibit A hereto;
  - c. contingency plans for addressing any newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields); and
  - d. plans for any necessary excavation and proper off-site disposal of waste material encountered or discovered during redevelopment activities.
  
4. Surface water at the Brownfields Property may not be used for any purpose without

the prior written approval of DENR.

5. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Brownfields Property unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Brownfields Property will be suitable for the uses specified in land use restriction 1 above while fully protecting public health and the environment.

6. None of the contaminants known to be present in the environmental media at the Brownfields Property, including those appearing above in the table of Groundwater Contaminants and on the plat component of the Notice of Brownfields Property referenced in paragraph 18 of Exhibit A hereto, may be used or stored at the Brownfields Property without the prior written approval of DENR, except in *de minimis* amounts.

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

8. Neither DENR, 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 DENR, 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.

9. Any deed or other instrument conveying an interest in the Brownfields Property executed by an owner of any interest in the Brownfields 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 Wake County land records, Book \_\_\_\_, Page \_\_\_\_." A copy of any such instrument shall be sent to the persons listed in Section XVI of Exhibit A hereto (Notices and Submissions), though financial figures related to the conveyance may be redacted.

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

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 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.

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 33.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 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 Notice 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 22 day of Oct., 2014

Minta of Holly Springs, LLC

By: Shirley Miner  
Shirley F. Miner  
Manager

NORTH CAROLINA  
WAKE 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: Shirley F. Menee

Date: 10-22-14

[Signature]  
Official Signature of Notary

Ann L. Harper  
Notary's printed or typed name, Notary Public  
My commission expires: 8-8-16



\*\*\*\*\*

**ACKNOWLEDGMENT OF PROPERTY OWNER**

As the current owner, or representative of said owner, of at least part of the Brownfields Property, I hereby acknowledge recordation of this Notice of Brownfields Property and the Land Use Restrictions contained herein.

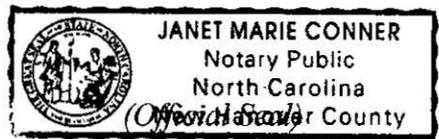
Storage Max V, LLC  
By: [Signature] 10-6-14  
E. Allen Massey Date

NORTH CAROLINA  
NEW HANOVER 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: E. ALLEN MASSEY

Date: 10-6-14

[Signature]  
Official Signature of Notary



JANET MARIE CONNER  
Notary's printed or typed name, Notary Public  
My commission expires: 4/29/17

\*\*\*\*\*

**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: Michael E. Scott  
Michael E. Scott  
Deputy Director, Division of Waste Management

10/1/14  
Date

\*\*\*\*\*

**CERTIFICATION OF REGISTER OF DEEDS**

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

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

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

**EXHIBIT A**

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Minta of Holly Springs, LLC

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT	)	Baker Property
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>	)	180 Newspaper Way
NCBP Project No. 11018-07-92	)	Holly Springs, Wake County

**I. INTRODUCTION**

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

Minta of Holly Springs, LLC, a Manager-managed North Carolina limited liability corporation whose business address is 111 Commonwealth Court, Cary, NC 27511, owns approximately 3.18 acres of undeveloped land located at 180 Newspaper Way in Holly Springs, Wake County, North Carolina. The Property is located within the Holly Springs Industrial Park. From 1953 until 1973, the Property was used for a landfill. Minta of Holly Springs acquired the Property in 2009 and desires to sell the Property for industrial/commercial uses, including but not limited to a self-storage facility, or other industrial/commercial uses approved in advance in writing by 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 Minta of Holly Springs, LLC for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit [name of Prospective Developer] 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 depicted in Exhibit 1 to the Agreement.

2. "Prospective Developer" shall mean Minta of Holly Springs, LLC.

## III. STATEMENT OF FACTS

3. The Property comprises approximately 3.18 acres and is located at 180 Newspaper Way in Holly Springs, Wake County, within the Holly Springs Industrial Park. The Property is identified as the Elwood Pines Dump (ID No. NONCD0000729) on the NC Division of Waste Management's Inactive Hazardous Sites Branch (IHSB) list of pre-regulatory (pre-1983) landfills being evaluated by IHSB's Pre-Regulatory Landfill Unit. Prospective Developer has committed itself to the redevelopment of the Property for no uses other than commercial or

industrial, including but not limited to use as a self-storage facility, or other commercial/industrial uses approved in advance in writing by DENR. A map showing the location of the property which is the subject of this Agreement is attached hereto as Exhibit 1.

4. The Property is bordered to the north by vacant, undeveloped land, on the east by U.S Highway 55, to the south by Newspaper Way with textile manufacturing further south, and to the west by commercial uses and vacant, undeveloped land.

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

Title	Prepared by	Date of Report
Report of Phase I Environmental Site Assessment, Jump Zone, Holly Springs, North Carolina	TerraTech Engineers, Inc.	September 22, 2006
Report of Soil Testing, Jump Zone, Holly Springs, North Carolina	TerraTech Engineers, Inc.	November 3, 2006
Report of Limited Site Investigation, TOHS Self Storage Facility, Holly Springs, North Carolina	TerraTech Engineers, Inc.	January 27, 2010
Site Summary Report, ELWOOD PINES DUMP, ID NUMBER: NONCD0000729 Wake County, North Carolina Prepared for NCDENR DWM Superfund Section, Inactive Hazardous Sites Branch	Marshall Miller & Associates, Inc.	October 8, 2010

6. For purposes of this Agreement, DENR relies on information in the Environmental Reports and on representations by Prospective Developer as to use and ownership of the Property. Based on a review of historical aerial photographs dating back to the late 1940s, the Property has never contained any structure or building. Prior to 1973, the Property was owned by the Baker family. Between May 1953 and October 1973, the Property was leased to the Town of Holly Springs for use as a gravel supply yard and for a landfill. The Property has

remained vacant and unused since 1973. The Property was acquired by the Holleman family in 1973, and was subsequently acquired by the Almint Partnership on January 6, 1989. The Property was conveyed to Prospective Developer by General Warranty Deed on July 20, 2009.

7. The most recent environmental sampling at the Property reported in the Environmental Reports occurred on January 7, 2010.

a. Soil sampling was conducted at the Property in October 2006 in the portion of the property used as a landfill. A total of six soil samples were collected in test pits excavated through the landfill waste cells. The samples were analyzed for the eight RCRA metals, for volatile and semi-volatile organic compounds, and for pesticides and herbicides. Analytical results indicated only arsenic, detected in three of the samples, in concentrations below the Preliminary Industrial Health-Based Soil Remediation Goal included in the Inactive Hazardous Sites Branch Preliminary Soil Remediation Goals (PSRG) Table (January 2014 version).

b. Groundwater sampling was conducted at the Property on January 7, 2010. Three temporary monitoring wells were installed at the Property, one well upgradient of the landfill area and two wells immediately downgradient of the landfill area. Groundwater samples were analyzed for RCRA metals, for volatile and semi-volatile organic compounds, and for pesticides and herbicides. Analytical results indicated only low concentrations of chromium, lead and arsenic in excess of the groundwater standards. The following table sets forth the groundwater contaminants, in micrograms per liter (the equivalent of parts per billion), detected in excess of N.C. drinking water standards which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202(2L), (April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Sampling	Maximum Concentration Exceeding Standard ( $\mu\text{g/L}$ )	Standard (for reference only) <sup>1</sup> ( $\mu\text{g/L}$ )
<u>Chromium</u>	<u>MW-1</u>	<u>January 7, 2010</u>	<u>24.8</u>	<u>10</u>
<u>Lead</u>	<u>MW-1</u>	<u>January 7, 2010</u>	<u>24.6</u>	<u>15</u>
<u>Arsenic</u>	<u>MW-1</u>	<u>January 7, 2010</u>	<u>29.0</u>	<u>10</u>

1. The drinking water standard that would apply if the land use was not restricted.

8. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to acquiring the Property on July 20, 2009, commissioning the groundwater assessment at the Property and submitting an amended Letter of Intent on November 14, 2013. The original Letter of Intent regarding the Property was dated April 30, 2007 by Alminta Partnership, the owner prior to Prospective Developer's acquisition of the Property. Alminta Partnership also commissioned the Phase I Environmental Site Assessment and the soil assessment for the Property.

9. 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.

10. Prospective Developer has paid to DENR the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of \$3,500 at the time Prospective Developer and DENR 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 N.C.G.S. § 130A-310.39(a)(1), and, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DENR and the North Carolina Department of Justice of all activities related to this Agreement, unless a change is sought to a Brownfield document after it is in effect, in which case there shall be an additional fee of at least \$1,000.

IV. BENEFIT TO COMMUNITY

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

a. a spur to additional community redevelopment, through improved neighborhood appearance and otherwise;

b. an increase in tax revenue for affected jurisdictions;

- c. additional self-storage space for the area; and
- d. “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

12. 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 (DENR’s Covenant Not to Sue and Reservation of Rights), DENR is not requiring Prospective Developer to perform any active remediation at the Property other than remediation that may be required pursuant to a DENR-approved Environmental Management Plan (EMP) or required by this Section.

13. By way of the Notice of Brownfields Property referenced below in paragraph 18, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. All references to DENR shall be understood to include any successor in function.

- a. No use may be made of the Property other than industrial/commercial uses, including but not limited to a self-storage facility, or other industrial/commercial uses pre-approved in writing by DENR. For purposes of this restriction, the following definitions apply:
  - i. Industrial shall mean the assembly, fabrication or processing of goods or materials; and
  - ii. Commercial shall mean a business enterprise carried on for profit by the owner, lessee or licensee.

b. No building constructed on the Property that contains indoor air space may be used or occupied unless and until:

i. the analytical results of landfill gas sampling, conducted at the Property in accordance with a work plan approved in advance and in writing by DENR, demonstrates to DENR's written satisfaction that there is no unacceptable risk to public health or the environment related to the presence of landfill gas at the Property, or;

ii. landfill gas mitigation measures are installed or implemented at the Property to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. All landfill gas mitigation measures shall be installed or implemented in accordance with a plan that is approved in writing by DENR in advance, and that includes methodology(ies) for demonstrating performance of said measures.

c. Physical redevelopment of the Property may not occur other than in accordance, as determined by DENR, with an Environmental Management Plan (EMP) approved in writing and in advance by DENR (and revised to DENR's written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions in this Agreement, that describes redevelopment activities at the Property, the timing of redevelopment phases and that 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 7;

iii. contingency plans for addressing any newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields); and

iv. plans for any necessary excavation and proper off-site disposal of waste material encountered or discovered during redevelopment activities.

d. Surface water at the Property may not be used for any purpose without the prior written approval of DENR.

e. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Property unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in subparagraph 13.a above while fully protecting public health and the environment.

f. None of the contaminants known to be present in the environmental media at the Property, including those appearing above in paragraph 7.b. and on the plat component of the Notice of Brownfields Property referenced below in paragraph 18, may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts.

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

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

i. Any deed or other instrument conveying an interest in the Property executed by an owner of any 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 Wake County land records, Book 15820, Page 1083." A copy of any such instrument shall be sent to the persons listed in Section XVI (Notices and Submissions), though financial figures related to the conveyance may be redacted.

j. During January of each year after the year in which the Notice referenced below in paragraph 18 is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of Wake County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Wake County Register of Deeds office and that the land use restrictions are being complied with. The LURU shall also state:

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

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

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

14. The desired result of the above-referenced landfill gas monitoring, and possible landfill gas mitigation, and land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

15. 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 DENR's Superfund Section, as embodied in their most current version.

16. The consequence of achieving the desired results will be that the 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

17. In addition to providing access to the Property pursuant to subparagraph 13.h. above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective Developer owns the Property, DENR shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of

DENR at the Property. Except as may be set forth in the 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.

18. 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 Wake County, North Carolina, Register of Deeds' office. Within three (3) 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.

19. 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 Wake County land records, Book 15820, Page 1083. 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.

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

Agreement and shall ensure that, to the extent it can legally do so, any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound) of this Agreement.

#### VII. DUE CARE/COOPERATION

21. The Prospective Developer shall exercise due care at the Property with respect to the manner in which regulated substances are handled at the Property 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. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S. 130A-310.1 and 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

#### VIII. CERTIFICATION

22. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than those committed to in the original Brownfields Letter of intent dated April 30, 2007, and in the amended Letter of Intent dated November 14, 2013 by which it applied for this Agreement. Those uses are industrial/commercial and self-storage facility other industrial/commercial uses approved in

advance in writing by DENR, respectively. 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 past use of regulated substances or known contaminants 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. DENR’S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

23. Unless any of the following apply, 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 unrestricted use standards.

d. The Prospective Developer knowingly or recklessly provided false information

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

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

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Property fully protective of public health and the environment as planned in this Agreement.

g. The Department obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

24. 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.

25. 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.

26. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 23 through 25 above, apply to all of the persons listed in N.C.G.S. § 130A-310.33, including future owners of the property, to the same extent as Prospective Developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties.

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

27. 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.

#### XI. PARTIES BOUND

28. 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.

#### XII. DISCLAIMER

29. 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 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.

30. Except for the Land Use Restrictions set forth in paragraph 13 above and N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

#### XIII. DOCUMENT RETENTION

31. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of six (6) 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. To the extent DENR 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

32. 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.

XV. NOTICES AND SUBMISSIONS

33. 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:

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

b. for Prospective Developer:

Name **[please provide the information needed for this 33.b.]**  
Company  
Address  
City, State, ZIP

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

34. 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.

#### XVII. TERMINATION OF CERTAIN PROVISIONS

35. 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

36. 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.

37. 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.

38. 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

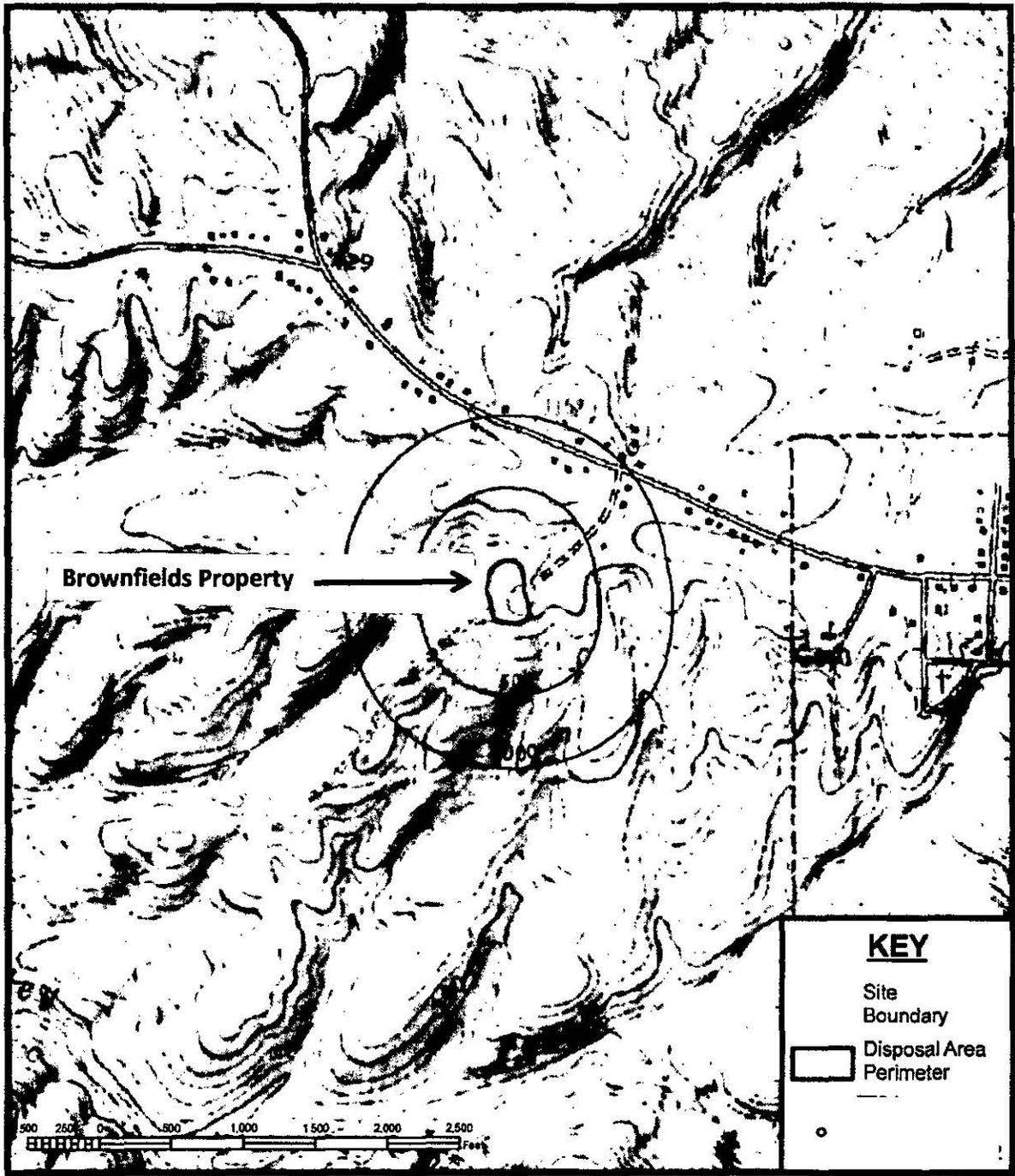
39. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in a newspaper of general circulation serving the area in which the Property is located, conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property. After expiration of that period, or following a public meeting if 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: *Michael E. Scott* 10/1/14  
Date  
*Deputy* Michael E. Scott  
Director, Division of Waste Management

IT IS SO AGREED:  
Minta of Holly Springs, LLC  
By: *Shirley F. Miner* 10-22-14  
Date  
Shirley F. Miner  
Manager

# Exhibit 1 – LOCATION MAP



**FIGURE 1**

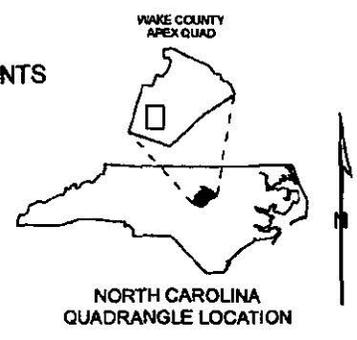
NCDENR/OLD UNLINED LANDFILL ASSESSMENTS  
 ELWOOD PINES DUMP  
 NONCD0000729  
 HOLLY SPRINGS, WAKE COUNTY,  
 NORTH CAROLINA

1 inch = 1,000 feet

## TOPOGRAPHIC MAP

Prepared by:  
**MARSHALL MILLER & ASSOCIATES**  
 NCUL161 08/2010

SOURCE:  
 - North Carolina Department of Transportation  
 LIDAR Data, 2007  
 - United States Geological Survey  
 7.5' Quadrangle  
 Apex, NC 1974 Photorevised 1987  
 Photorevised 1988





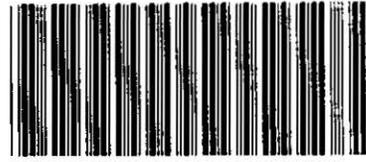
## EXHIBIT C

### Legal Description of the Property

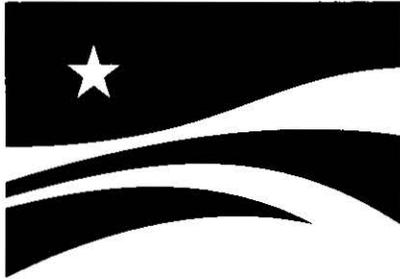
BEING all of that certain tract or parcel containing 3.66 gross acres (less 0.41 acres in apparent right-of-way, so yielding 3.25 net acres) lying and being in Holly Springs Township, Wake County, North Carolina, and being bounded on the North by the property of John Henry Hunter (Deed Book 4663, Page 886, Wake County Registry), on the East generally by the right-of-way of the N.C. Highway 55 Bypass (G.B. Alford Highway) and property of the N.C. Department of Transportation (Deed Book 8065, Page 1214 and Book 12253, Page 2479, Wake County Registry), on the South by the property of Warp Technologies Inc. (Deed Book 4578, Page 707, Wake County Registry), and on the West by the property of South Forest Investors, LLC (Deed Book 11995, Page 1873, Wake County Registry) and being more particularly described as follows:

Beginning at a nail at the base of a bent existing iron pipe which is located South 88 degrees 55 minutes 44 seconds East 69.03 feet from an existing concrete monument set in the right-of-way of the said Highway 55 Bypass and thence proceeding North 89 degrees 13 minutes 22 seconds West 60.23 feet to an existing iron pipe; thence proceeding North 89 degrees 14 minutes 01 seconds West 239.28 feet to an existing iron pipe; thence proceeding North 01 degrees 30 minutes 47 seconds East 60.02 feet to an existing iron pipe; thence proceeding North 01 degrees 32 minutes 48 seconds East 565.63 feet to an existing iron pipe; thence proceeding South 75 degrees 13 minutes 44 seconds East 231.16 feet to an iron pipe set; thence proceeding South 17 degrees 54 minutes 58 seconds West 88.84 feet to an existing concrete monument (R/W); thence proceeding South 26 degrees 45 minutes 15 seconds East 196.90 feet to an iron pipe set; thence proceeding South 00 degrees 24 minutes 19 seconds West 310.16 feet to the POINT AND PLACE OF BEGINNING, all as shown on that certain Boundary Survey for Jump Zone, prepared by Thompson & Associates, Charles W. Rushton, PLS, dated 08/04/2006, and having Job Number 06-054.

AND being substantially the same 4.25 acre property (less new right-of-way) as described in Deed recorded in Book 4416, Page 887, Wake County Registry.



BOOK:015820 PAGE:01083 - 01113



**WAKE  
COUNTY**  
NORTH CAROLINA

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**Please retain yellow trailer page**

It is part of the recorded document and must be submitted with the original for re-recording.

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**Laura M. Riddick**  
**Register of Deeds**  
Wake County Justice Center  
300 South Salisbury Street, Suite 1700  
Raleigh, NC 27601

New Time Stamp

\$25 Non-Standard Fee

Additional Document Fee

Additional Reference Fee

**This Customer Group**

\_\_\_\_ # of Time Stamps Needed

**This Document**

31 # of Pages  
F