

Revised 12/21/11
BF 15029-11-092
E

Preliminary Proposed Brownfields Agreement

I. Property Facts

- a. Property Address(es): 925 W. Morgan St., Raleigh, NC,
- b. Property Seller: FMW at Hillsborough & Morgan LLC
- c. Property Buyer: Corning Road, L.L.C.
- d. Brief Property Usage History: Used for commercial/industrial purposes including heating oil distribution and metal fabrication; currently unused

e. The planned reuse will potentially involve the following use classification(s) (check all that apply):

- School/childcare/senior care
- Residential
- Commercial, retail (specify) Less than 3% of the redeveloped space will be used for commercial purposes (possibly retail, office, other commercial purposes, or a mix of uses). The precise nature of such commercial use has not yet been identified.
- Other commercial (specify)
- Office
- Light industrial
- Heavy industrial
- Recreational
- Open space
- Other (specify)

II. Contaminant Information

a. The contaminant situation at the property is best described by the following (check all that apply):

- Contaminants are from an on-property source(s)
- Contaminants are from an off-property source(s)
- Contaminants are from an unknown source(s)
- Contaminants have not yet been documented on the property

b. Contaminated Media Table. (If known, check appropriate boxes below)

Contaminant Types	Soil		Groundwater and/or Surface Water		Private Wells		Vapor Intrusion		
	known	Suspected	known	Suspected	known	suspected	known	suspected	
o r g a n i c s	Chlorinated Solvents (list):		PCE, DCA						
	Petroleum: ASTs <input type="checkbox"/> USTs <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Oil and Grease							
	Other (list):								
i n o r g a n i c s	Metals (list):								
	Other (list):								

III. Protective Measures

I am prepared to take steps necessary to make the property suitable for its planned uses while fully protecting public health and the environment. I propose that NCBP consider a brownfields agreement that will make the property suitable for the planned use(s) through the following mechanism(s) (check all that apply):

- Contaminant remediation to risk-based levels.
- Engineered Controls (e.g., low permeability caps, vapor mitigation systems, etc)
- Land use restrictions that run with the land that will restrict or prohibit uses that are unacceptable from a risk assessment/management perspective. (*Important Note: In any*

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6. Prior to execution of the agreement NCBP requires the applicant PD submit the second fee, presently \$3,500.
7. In the absence of public comment which affects the agreement it is then signed and the agreement becomes effective (i.e., executed). If the NCBP receives public comment or a request for a public meeting, the NCBP will consider input from the public and determine any necessary changes to the brownfields agreement. It will then decide whether those changes warrant an additional public comment period or if the brownfields agreement can be executed after the appropriate changes are made.
8. The PD records the Notice of Brownfields Property at the county register of deed's office.
9. Once executed, brownfields agreements require that the owner of any part of the brownfields property provide an annual certification to the NCBP (known as a Land Use Restriction Update or LURU) that the Notice of Brownfields Property containing the land use restrictions remains recorded at the register of deeds and that the land use restrictions are being complied with.

Please contact NCBP if you have questions or require additional guidance regarding this application form or the process. Contact information is available on our website: www.ncbrownfields.org or by calling 919-508-8411.

Brownfields Property Application
North Carolina Brownfields Program
www.ncbrownfields.org

I. PROSPECTIVE DEVELOPER (PD) INFORMATION {USE TAB KEY TO GET TO NEXT DATA ENTRY LINE – DO NOT USE THE RETURN KEY}

A. PD information:

Entity name	Corning Road, L.L.C.
Principal Officer	Phillip Norwood
Representative	Ed Cherry
Mailing Address	121 West Trade St., 27 th Floor Charlotte, NC 28202
E-mail address	Ed.Cherry@Faison.com
Phone No.	(704) 972-2612
Fax No.	(704) 972-2699
Web site	www.faison.com

B. PD contact person information (i.e., individual who will serve as the NCBP's point of contact if different than above):

Name
Company
Mailing Address

E-Mail Address
Phone No.
Fax No.

C. Information regarding all parent companies, subsidiaries or other affiliates of PD (attach separate sheet(s) if necessary):

(Use for LLCs)

Member-managed or manager-managed? **Answer:** Manager-Managed

If manager-managed, provide name of manager and percent of ownership:

Name Faison & Associates, L.L.C.
Ownership (%) 0%
Mailing Address 127 W. Trade St., Suite 2700

Charlotte, NC 28202
E-Mail Address Ed.Cherry@Faison.com
Phone No. (704) 972-2616
Fax No. (704) 972-2699

For all LLCs, list all members of the LLC and provide their percent of ownership:

Name PERS Holding Company Limited, L.L.C.
Ownership (%) 100%
Mailing Address 121 W. Trade St., Suite 2700
Charlotte, NC 28202
E-Mail Address Ed.Cherry@Fasion.com
Phone No. (704) 972-2616
Fax No. (704) 972-2699

Name
Ownership (%)
Mailing Address

E-Mail Address
Phone No.
Fax No.

Name
Ownership (%)
Mailing Address

E-Mail Address
Phone No.
Fax No.

Managers of manager-managed LLCs are required to execute all brownfield documents for the LLC; as to member-managed LLCs, state name of member who will sign these documents.

Faison & Associates, L.L.C.

List all parent companies, subsidiaries and other affiliates:

(Use for Partnerships)

Check one: General Partnership Limited Partnership

List all partners and percent of ownership:

Name

Ownership (%)

Mailing Address

E-Mail Address

Phone No.

Fax No.

Is this person a general or limited partner?

Name

Ownership (%)

Mailing Address

E-Mail Address

Phone No.

Fax No.

Is this person a general or limited partner?

List all parent companies, subsidiaries and other affiliates:

(Use for corporations other than LLCs)

(If information is the same as shown in 1.A., please indicate "same as 1.A." below.)

Name

Mailing Address

E-Mail Address

Phone No.

Fax No.

List all parent companies, subsidiaries and other affiliates:

(Use for individuals)

(If individual is the same as shown in 1.A., -please indicate "same as 1.A." above.)

Name

Mailing Address

E-Mail Address

Phone No.

Fax No.

- D. Does PD have or can it obtain the financial means to fully implement a brownfields agreement and assure the safe reuse of the property? *(Attach supporting documentation such as letters of credit, financial statements, etc.)*

Answer Yes

Explanation Please see attached ledger and bank statements. PD received an equity investment from a third party investor prior to acquiring the property.

- E. Does PD have or can it obtain the managerial means to fully implement a brownfields agreement and assure the safe use of the property?

Answer Yes

Explanation PD will have access to the expertise of a real estate development and management investment company with properties valued at approximately \$1 billion, headquartered in Charlotte, with activity throughout the Southeast, Northeast and Mid-Atlantic regions. The experience and expertise of that company will be available to assist the PD to implement the brownfields agreement and assure the safe use of the property.

F. Does PD have or can it obtain the technical means to fully implement a brownfields agreement and assure the safe use of the property?

Answer Yes

Explanation The PD has retained Hart & Hickman, PC and Moore & Van Allen, PLLC to provide technical assistnace with respect to implementing the brownfields agreement. PD believes Hart & Hickman and Moore & Van Allen have significant expertise and experience regarding brownfields agreements.

G. Does PD commit that it will comply (and has complied, if PD has had a prior project in the NCBP) with all applicable procedural requirements of the NCBP, including prompt payment of all statutorily required fees?

Answer Yes

(List all NCBP project name(s) and NCBP project ID numbers where PD or any parent company, subsidiary and other affiliate of PD has been a party to.)

N/A

H. Does PD currently own the property?

Answer Yes

If yes, when did PD purchase the property and from whom? (Provide name, address, telephone number and email address of the contact person for the current property owner.)

PD acquired the property on October 18, 2011 from FMW at Hillsborough & Morgan, LLC, 132 Brevard Court, Charlotte, NC 28202, Attn: James M. Zinoni

If no, provide the name, address, telephone number and e-mail address of the contact person for the current property owner

I. If PD does not currently own the property, does PD have the property under contract to purchase?

Answer

If yes, provide date of contract.

If no, when does the PD intend to purchase the property (e.g., after the project is determined to be eligible for participation in the NCBP, after PD receives a draft BFA, after the conclusion of the brownfields process)? Note: the Act requires the PD to demonstrate that it intends to either buy or sell the property.

- J. Describe all activities that have taken place on the property since PD or PD's parents, subsidiaries and/or other affiliates, and/or lessees or sublessees of PD, took ownership of or operated at the property (e.g., industrial, manufacturing or commercial activities, etc.). (Include a list of all regulated substances as defined at NCGS § 130A-310.31(b)(11) that have been used, stored on, or otherwise present at the property while those activities were conducted, and explain how they were used.)

Demolition and underground storage tank removal.

II. SITE INFORMATION

A. Information regarding the proposed brownfields property:

Proposed project name 925 West Morgan

acreage approximately 3.47 acres County Wake

street address(es) Cuurrently the street addresses for the property are 919 and 925 W. Morgan St., and 906 Tryon Hills Drive

city Raleigh zip 27603

tax ID(s) or PIN(s) The property is undergoing a subdivision and recombination, and consists of portions of the following parcels: ID0044458, 0006896 and 0058966. The specific location of the property is shown on the attached plat.

past use(s) heating oil distribution, metals fabrication

current use(s) unused

cause(s)/source(s) of contamination:

known

suspected solvent disposal, spillage or leakage

- B. Regulatory Agency Involvement: List the site names and all identifying numbers (ID No.) previously or currently assigned by any federal, state or local environmental regulatory agencies for the property. The ID No's may include CERCLIS numbers, RCRA generator numbers for past and present operations, UST database, Division of Water Quality's incident management database, and/or Inactive Hazardous Sites Branch inventory numbers. (In many instances, the PD will need to actively seek out this information by reading environmental site assessment reports, reviewing government files, contacting government officials, and through the use of government databases, many of which may be available over the internet.)

Agency Name/ID No:

C. In what way(s) is the property is abandoned, idled, or underused?

The property has historically been used for industrial purposes, but has fallen into disuse. The property is ideally located, though, for redevelopment for residential purposes.

D. In what way(s) is the actual or possible contamination at the property a hindrance to development or redevelopment of the property (attach any supporting documentation such as letters from lending institutions)?

The contamination at the property makes financing and marketing for residential use substantially more difficult.

E. In what way(s) is the redevelopment of the property difficult or impossible without a brownfields agreement (attach any supporting documentation such as letters from lending institutions)?

Without a brownfields agreement, uncertainty about cleanup extent and responsibility make financing and marketing residential development substantially more difficult

F. What are the planned use(s) of the redeveloped brownfields property to which the PD will commit? Be as specific as possible.

The PD intends to demolish the existing structures on the property, conduct site clearing and grading, and construct multi-family residential buildings. A small portion of the redeveloped property (less than 3%) will be used for commercial purposes (possibly office, retail, restaurant or other commercial use, or a mix of such commercial uses.) A copy of the PD's site redevelopment plans are attached. As indicated on the plans, the PD intend there to be no sub-grade structures on the property after redevelopment. The ebuidings will not have basements. All swimming pools will be aboveground.

G. Current tax value of brownfields property: \$The aggregate tax value of all of the parcels from which the property will be assembled is \$3,613,188. As indicated above, though, the PD acquired only portions of such parcels. There has been no tax assessment of the specific property PD intends to acquire.

H. Estimated capital investment in redevelopment project: \$ It is impossible to estimate or predict accurately the amount expected or proposed capital expenditures necessary for redevelopment, because such an estimate or prediction would require detailed site plans, and it would not be prudent for the PD to develop such plans until the PD

it did not cause or contribute to contamination at the property and that it meets all other statutory eligibility requirements. *(Note: The form to use for this affidavit is attached to this application. It must be filled out signed notarized, and submitted with this application.)*

Is the required affidavit, as described above, included with this application?

Answer Yes

B. Proposed Brownfields Agreement Form: PD must provide the completed form Proposed Brownfields Agreement. *(Note: The form to use for this document is attached to this application. It must be filled out, initialed, and attached on your submittal.)*

Is the required Proposed Brownfields Agreement, as described above, included with this application?

Answer Yes

C. Location Map: PD must provide a copy of the relevant portion of the 1:24,000 scale U.S.G.S. topographic quadrangle map that shows the property clearly plotted, and that measures at least an 8 ½ by 11 inches. *(Note: these maps can be purchased through the above link, or often through retail outdoor recreation stores that can print out the relevant map. Often environmental reports have location maps that use this type of map as the base for its location map.)*

Is the required location map included with this application?

Answer Yes

D. Survey Plat: PD must provide a preliminary survey plat of the brownfields property with the property boundaries clearly identified, and a metes and bounds legal description that matches the property description on the plat. At this stage of the brownfields process; one or more existing survey plats from a previous property conveyance will suffice. *(Before the brownfields project enters the public comment phase of the brownfields process, the PD will be required to submit a final brownfields survey plat which includes the information listed in the brownfields survey plat guidance.)*

Is the required preliminary survey plat included with this application?

Answer Yes

E. Site Photographs: PD must provide at least one pre-redevelopment photograph of the property, in either hard copy or electronic format that shows existing facilities and structures. **Please note that the NCBP prefers to have electronic photos instead of or in addition to hard copies. Electronic copies of photographs should be emailed to: Shirley.Liggins@ncdenr.gov with a clear indication as to which Brownfields Application they apply to.**

Are photographs of the property included with this application?

Answer Yes

Have electronic copies of the photographs been emailed to NCBP?

Answer Yes

F. Environmental Reports/Data: If it makes an affirmative eligibility determination, the NCBP will request that PD provide any and all existing environmental reports and data for the property on **CD only**. The brownfields process may be expedited if PD submits such reports/data with this application.

Are any environmental reports/data being submitted with this application?

Answer Yes, but additional investigation is ongoing, and PD will submit the results of that investigation when available.

If environmental reports/data are being submitted with this application, please provide the title, date and author of each item being submitted:

(1) Bolton Acquisition Phase I Environmental Report prepared by Ed Aguirre & Associates, dated December 22, 2006; (2) Bolton Acquisition Phase II Environmental Report prepared by Ed Aguirre & Associates, dated December 27, 2006; (3) 902 & 906 Tryon Hill Acquisition Phase I Environmental Report prepared by Ed Aguirre & Associates, dated February 2008; (4) West Morgan Apartments Phase I Environmental Report and HUD Form 4128 and accompanying Addendums prepared by Ed Aguirre & Associates, dated May 7, 2010, (5) Asbestos Survey Report for West Morgan Properties prepared by ESC of the Carolinas, dated July 27, 2011; and (6) Summary of Soil and Groundwater Analytical Detections, Former Vacant Industrial Warehouse, Raleigh, NC, by Hart and Hickman, PC, dated August 18, 2011. The Hart & Hickman report is provided in paper format only with this application. Additional investigation by Hart & Hickman is ongoing.

IV. ADDITIONAL REQUIRED FORMS

The following forms are to be filled out and submitted with the application including the Responsibility and Compliance Affidavit and the Proposed Brownfields Agreement. Submittal of the Affidavit requires signature and notarization, and the Proposed Brownfields Application requires an initial.

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
NORTH CAROLINA BROWNFIELDS PROGRAM**

IN THE MATTER OF: Corning Road, L.L.C.

UNDER THE AUTHORITY OF)	AFFIDAVIT
NORTH CAROLINA GENERAL)	RE: RESPONSIBILITY
STATUTES ̄ 130A-310.30, et. seq.)	AND COMPLIANCE

Corning Road, L.L.C. , being duly sworn, hereby deposes and says:

1. I am <<an authorized representative of Faison & Associates, L.L.C., the Manager >> of <<Corning Road, L.L.C.>>.
2. [if signatory is not President, add this paragraph: "I am fully authorized to make the declarations contained herein and to legally bind Corning Road, L.L.C."]
3. Corning Road, L.L.C. is applying for a Brownfields Agreement with the North Carolina Department of Environment and Natural Resources, pursuant to N.C.G.S. ̄ 130A, Article 9, Part 5 (Brownfields Act), in relation to the following <<Tax Parcel ID numbers >parcel(s) in Raleigh, Wake , County, North Carolina: 0044458, 0006896 and 0058966, 906 Tryon Hills Drive, 919 W. Morgan St. and 925 W. Morgan St., respectively.
4. I hereby certify, under the pains and penalties of perjury and of the Brownfields Act, that Corning Road, L.L.C., and any parent, subsidiary or other affiliate meets the eligibility requirements of N.C.G.S. ̄ 130A-310.31(b)(10), in that it has a *bona fide*, demonstrable desire to **buy** **sell** for the purpose of developing or redeveloping, and did not cause or contribute to the contamination at, the parcel(s) cited in the preceding paragraph.
5. I hereby certify, under the pains and penalties of perjury and of the Brownfields Act, that Corning Road, L.L.C. meets the eligibility requirement of N.C.G.S. ̄ 130A-310.32(a)(1) in that it and any parent, subsidiary or other affiliate have substantially complied with:
 - a. the terms of any brownfields or similar agreement to which it or any parent, subsidiary or other affiliate has been a party;
 - b. the requirements applicable to any remediation in which it or any parent, subsidiary or other affiliate has previously engaged;
 - c. federal and state laws, regulations and rules for the protection of the environment.

Affiant further saith not.

Signature/Printed Name

Date

Sworn to and subscribed before me

this _____ day of _____, 20__.

Notary Public

Preliminary Proposed Brownfields Agreement

I. Property Facts

- a. Property Address(es): 925 W. Morgan St., Raleigh, NC,
- b. Property Seller: FMW at Hillsborough & Morgan LLC
- c. Property Buyer: Corning Road, L.L.C.
- d. Brief Property Usage History: Used for commercial/industrial purposes including heating oil distribution and metal fabrication; currently unused
- e. The planned reuse will potentially involve the following use classification(s) (check all that apply):
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 - Other commercial (specify)
 - Office
 - Light industrial
 - Heavy industrial
 - Recreational
 - Open space
 - Other (specify)

II. Contaminant Information

- a. The contaminant situation at the property is best described by the following (check all that apply):
- Contaminants are from an on-property source(s)
 - Contaminants are from an off-property source(s)
 - Contaminants are from an unknown source(s)
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b. Contaminated Media Table. (If known, check appropriate boxes below)

Contaminant Types	Soil		Groundwater and/or Surface Water		Private Wells		Vapor Intrusion		
	known	Suspected	known	Suspected	known	suspected	known	suspected	
o r g a n i c s	Chlorinated Solvents (list):			PCE, DCA					
	Petroleum: ASTs <input type="checkbox"/> USTs <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Oil and Grease							
	Other (list):								
i n o r g a n i c s	Metals (list):								
	Other (list):								

III. Protective Measures

I am prepared to take steps necessary to make the property suitable for its planned uses while fully protecting public health and the environment. I propose that NCBP consider a brownfields agreement that will make the property suitable for the planned use(s) through the following mechanism(s) (check all that apply):

- Contaminant remediation to risk-based levels.
- Engineered Controls (e.g., low permeability caps, vapor mitigation systems, etc)
- Land use restrictions that run with the land that will restrict or prohibit uses that are unacceptable from a risk assessment/management perspective. (*Important Note: In any*

final brownfields agreement generated by the NCBP, land use restrictions will ultimately come with the continuing obligation to submit an annual certification that the Land Use Restrictions are being complied with and are recorded at the applicable register of deeds office.)

IV. Fees

In connection with a brownfields agreement, the Act requires that the developer pay fees to offset the cost to the State. In satisfaction of the Act, the following fees apply to any brownfields agreement that is developed for this project:

- a. A \$2,000 initial fee will be due from the applicant PD when **both** of the following occur:
 - 1) NCBP receives this application and proposed brownfields agreement, AND
 - 2) NCBP notifies the applicant in writing that the applicant PD and the project are eligible for participation in the NCBP and continued negotiation of a brownfields agreement.
- b. A \$3,500 second fee will be due from the PD prior to execution of brownfields agreement.
- c. In the unexpected event that the environmental conditions at the property are unusually complex or NCBP's costs will clearly exceed the above amounts, NCBP and PD will negotiate additional fees.

_____ Please check this box and initial in space provided to indicate your acknowledgement of the above fee structure.

Date of Submittal: December __ 2011