

Box 156
(Kilpatrick Townsend)

WAKE COUNTY, NC 500
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/09/2012 AT 15:55:04

BOOK:014964 PAGE:01262 - 01294

Property Owner: Hamilton Merritt, Inc. and Edison Land, LLC
Recorded in Book 014964 Page 01262
Associated plat recorded in Plat Book 2012, Page 01072

NOTICE OF BROWNFIELDS PROPERTY

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 9 day of October, 2012 by Hamilton Merritt, Inc. and Edison Land, 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 consists of approximately 2.827 acres and is located at 109 East Davie Street, and at 301, 305, 307, 313 and 343 South Wilmington Street, Raleigh, Wake County, North Carolina. Numerous buildings have occupied the Brownfields Property since at least 1884, the date of the earliest known use map of the site area. The Brownfields Property originally contained a livery, a boarding house and other dwellings. The Property was fully developed by 1958; uses of it and adjacent lots on the same block have included financial institutions, cabinet shop, dry cleaner, chemical company, print shop, laboratory, auto sales and repair, welding shop, gasoline station, tire retreading, furniture repair and sales, agricultural implements sales and clothing manufacturing. Minor contamination exists at the Brownfields Property in soil and groundwater from

historic uses. Prospective Developer intends to redevelop the Brownfields Property for mixed residential, hotel, restaurant, retail and/or office use.

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 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.

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.

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 for residential, hotel, restaurant, retail and/or office purposes. Within the meaning of this restriction, the following definitions apply:**
 - a. "Residential" refers to use for a permanent dwelling of any single- or multi-unit building, whether owned or rented.**
 - b. "Hotel" refers to the provision of overnight lodging to paying customers, and to associated reservation, cleaning, utilities and on-site management and reception services, and meeting and conference room facilities.**
 - c. "Restaurant" refers to entertainment venues and/or to a building or portion thereof where food and/or beverages, whether prepared on- or off-site, are served for consumption by paying customers.**

d. “Retail” refers to the sale of products, and/or services not covered by land use restriction 1.e. below, to consumers and/or businesses.

e. “Office” refers to the rendering of business or professional services, the conduct of business, the organization and management of private or public sector employees and/or, in conformance with zoning, development of products and services.

2. The demolition of buildings on the Property shall be conducted 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.

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

4. 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 without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If DENR determines that such results reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Brownfields Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

5. Soil on the Brownfields Property may not be disturbed unless and until DENR states in writing, in advance of the proposed disturbance, that soil contamination on the Brownfields Property is such that the Brownfields Property is, or assuming successful implementation of DENR-approved measures will be, suitable for the uses specified in Land Use Restriction 1 above and poses no risk that renders public health and the environment less than fully protected. Any measures DENR determines in writing are necessary for that statement to be made shall be taken pursuant to a plan approved in writing by DENR in advance, and approved in writing as implemented. Such measures may include without limitation environmental sampling and soil removal, treatment and/or capping.

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

7. No basements may be constructed on the Brownfields Property unless they are, as determined in writing by DENR, vented in conformance with applicable building codes.

8. None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Exhibit 2 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 for cleaning and other routine housekeeping activities.

9. Other than for non-sports outdoor use of a designated portion of the Brownfields Property by

the Brownfields Property's residents, the Brownfields Property may not be used as a park or for sports of any kind, including but not limited to golf, football, soccer and baseball, without the prior written approval of DENR, except in areas where two (2) feet of clean fill, or another cover approved in writing in advance by DENR, are installed to DENR's written satisfaction, delineated to DENR's written satisfaction as "Recreation Approved" areas on the plat component of this Notice, maintained, and left undisturbed other than through normal park or sports use.

10. The Brownfields Property may not be used as a playground, or for child care centers or schools.

11. 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.

12. 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.

13. 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 1st 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 1st, this Notice remains recorded at the Wake County Register of Deeds office and that the land use restrictions are being complied with, and stating:

a. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the 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.

5th IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this day of October, 2012.

Hamilton Merritt, Inc.
By: [Signature]
Gregg Sandreuter
President

Edison Land, LLC
By Beacon Edison Land LLC, its Manager
By: [Signature]
Gregg Sandreuter
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: Gregg Sandreuter.

Date: 10/5/12

[Signature]
Official Signature of Notary

Susan Y. Barden
Notary's printed or typed name, Notary Public
My commission expires: 9/15/2014



ACKNOWLEDGMENTS OF PROPERTY OWNERS

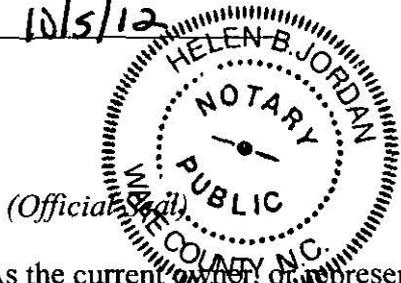
As the current owner, or representative of said owner, of at least part of the Brownfields Property, I hereby acknowledge recordation of this Notice of Brownfields Property and the Land Use Restrictions contained herein.

By: Phillip S. Horwitz *[Signature]* Date 10/5/12

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: Phillip S. Horwitz.

Date: 10/5/12 *[Signature]*
Official Signature of Notary



Helen B. Jordan
Notary's printed or typed name, Notary Public
My commission expires: 1/23/14

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.

Davie Street, LLC

By: Anthony Moore, Member/Manager *[Signature]* Date Oct 9 12

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: Anthony Moore.

Date: 10/9/12 *[Signature]*
Official Signature of Notary

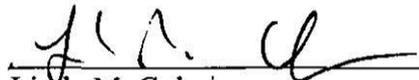


Susan Y. Barden
Notary's printed or typed name, Notary Public
My commission expires: 9/15/2014

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: 
Linda M. Culpepper
Deputy Director, Division of Waste Management

September 28, 2012
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 Wake County

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

Date

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Hamilton Merritt, Inc. and Edison Land, LLC

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Edison Redevelopment Project
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	109 E. Davie St; 301, 305, 307, 313
Brownfields Project # 11038-07-92)	& 343 S. Wilmington St.
)	Raleigh, Wake County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environment and Natural Resources (“DENR”) on one hand and by Hamilton Merritt, Inc. and Edison Land, LLC on the other, pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the “Act”). All three (3) entities are hereinafter referenced collectively as the “Parties.”

Hamilton Merritt, Inc. is a North Carolina corporation; its registered office address is 104 Lake Cliff Court, Cary, NC 27513. Edison Land, LLC is a manager-managed North Carolina limited liability company; its registered office address is 9335 Harris Corners Parkway, Suite 250, Charlotte, NC 28269. This Agreement concerns approximately 2.827 acres located at 109 East Davie Street, and at 301, 305, 307, 313 and 343 South Wilmington Street, Raleigh, Wake County, North Carolina that Edison Land, LLC has acquired and will acquire. Soil and groundwater contamination are present on the property due, on information and belief, to past activities conducted on or in the vicinity of the site. Hamilton Merritt, Inc. and Edison Land, LLC intend to redevelop the property for mixed residential, hotel, restaurant, retail and/or office use. A map showing the location of the property which is the subject of this Agreement is attached hereto as Exhibit 1. **Hamilton Merritt, Inc. and Edison Land, LLC hereby acknowledge that they will be jointly and severally responsible for any liability incurred by**

the Prospective Developer, as defined in paragraph 2 below, pursuant to this Agreement.

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 Hamilton Merritt, Inc. and Edison Land, LLC for contaminants at the property which is the subject of this Agreement.

The Parties agree that Hamilton Merritt, Inc. and Edison Land, LLC's entry into this Agreement, and the actions undertaken by Hamilton Merritt, Inc. and Edison Land, LLC in accordance with the Agreement, do not constitute an admission of any liability by Hamilton Merritt, Inc. and Edison Land, LLC.

The resolution of this potential liability, in exchange for the benefit Hamilton Merritt, Inc. and Edison Land, LLC 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 Hamilton Merritt, Inc. and Edison Land, LLC.

III. STATEMENT OF FACTS

3. The Property comprises approximately 2.827 acres. Prospective Developer has

committed itself to redevelopment of it for no uses other than residential, hotel, restaurant, retail and/or office purposes.

4. The Property is located in downtown Raleigh and is surrounded by land in private and government office, commercial, residential and retail use. A recently completed eight-story parking deck (the subject of N.C. Brownfields Project No. 11030-07-92) occupies 1.2 acres of land between the northern and southern portions of the Property. With the exception of the parking deck area, the Property occupies the city block bordered to the north by East Martin Street, to the south by East Davie Street, to the east by South Blount Street, and to the west by South Wilmington Street.

5. Prospective Developer obtained or commissioned the following reports, referred to hereinafter as the "Environmental Reports," regarding the Property: *Phase I Environmental Assessment Report, RBC Tower Parking Deck, 300 Block, South Wilmington Street, Raleigh, North Carolina*, dated June 27, 2007; and *Assessment Activities Report, Progress Energy Downtown Development Project, First Citizens Properties, Raleigh, North Carolina*, dated May 22, 2002. Both reports were prepared by Mid-Atlantic Associates, P.A.

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

a. Numerous buildings have occupied the Property since at least 1884, the date of the earliest known use map of the site area. The Property originally contained a livery, a boarding house and other dwellings. The Property was fully developed by 1958; documented uses of it and adjacent lots on the same block have included financial institutions, cabinet shop, dry cleaner, chemical company, print shop, laboratory, auto sales and repair, welding shop,

gasoline station, tire retreading, furniture repair and sales, agricultural implements sales and clothing manufacturing.

b. On October 16, 2008, Prospective Developer purchased all but two (2) parcels of the Property. On May 28, 2008 and May 30, 2008, respectively, Prospective Developer contracted to purchase the remaining two (2), which are depicted as “ Par ‘D’” and “ Par ‘F’” on Exhibit B to the Notice referenced in paragraph 19 below. Prospective Developer plans to purchase those two (2) when it commences development of the Property.

7. Pertinent environmental information regarding the Property includes the following:

a. Groundwater sampling in two (2) monitoring wells detected the contaminant benzene in concentrations exceeding the levels set forth in the Residential Vapor Intrusion Screening Tables (February 2011 version) of the Inactive Hazardous Sites Branch of DENR’s Superfund Section.

b. August 2011 deep soil gas sampling in four (4) locations near where the benzene detections referenced in subparagraph 7.a. above occurred indicated no exceedances of the residential vapor intrusion screening levels.

c. Soil sampling in one (1) location detected the contaminant benzo(a)pyrene in excess of its goal in the Soil Remediation Goals Table (February 2011 version) of the same Branch.

d. Data tables with specific information regarding levels of such regulated substances and contaminants discussed above are included in Exhibit 2 to this Agreement.

8. The plat component of the Notice referenced in paragraph 19 below shows the location and dimensions of the areas of potential environmental concern with respect to

permanently surveyed benchmarks, and the type, location and quantity of regulated substances and contaminants known to exist on the Property.

9. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Property Application ("BPA") for Hamilton Merritt, Inc. dated August 7, 2007, a revised BPA for Hamilton Merritt, Inc. on August 8, 2008, and a BPA for Edison Land, LLC on September 22, 2011, and, as noted in subparagraph 6.b. above, purchasing all but two (2) lots of the Property on October 16, 2008 and contracting to purchase the others on May 28, 2008 and May 30, 2008, respectively.

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

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

b. as a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

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

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

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

11. Prospective Developer has paid 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 the second payment shall constitute, 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.

IV. BENEFIT TO COMMUNITY

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

- a. a return to productive use of those portions of the Property that have been idle;
- b. an increase in the Property's productivity;
- c. an estimated 800 jobs during construction and an estimated 800 permanent jobs post-construction;
- d. increased tax revenue for affected jurisdictions;
- e. additional urban residential, office, restaurant and retail space for the area; and
- f. "smart growth" through use of land in an already developed area, which avoids development of land beyond the urban fringe ("greenfields").

V. WORK TO BE PERFORMED

13. 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.

14. By way of the Notice of Brownfields Property referenced below in paragraph 19, 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 for residential, hotel, restaurant, retail and/or office purposes. Within the meaning of this restriction, the following definitions apply:

i. "Residential" refers to use for a permanent dwelling of any single- or multi-unit building, whether owned or rented.

ii. "Hotel" refers to the provision of overnight lodging to paying customers, and to associated reservation, cleaning, utilities and on-site management and reception services.

iii. "Restaurant" refers to entertainment venues and/or to a building or portion thereof where food and/or beverages, whether prepared on- or off-site, are served for consumption by paying customers.

iv. "Retail" refers to the sale of products, and/or services not covered by

subparagraph 14.a.v. below, to consumers and/or businesses.

v. "Office" refers to the rendering of business or professional services, the conduct of business, the organization and management of private or public sector employees and/or, in conformance with zoning, development of products and services.

b. The demolition of buildings on the Property shall be conducted 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.

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

d. 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 without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If DENR determines that such results reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

e. Soil on the Property may not be disturbed unless and until DENR states in writing, in advance of the proposed disturbance, that soil contamination on the Property is such that the Property is, or assuming successful implementation of DENR-approved measures will be, suitable for the uses specified in subparagraph 14.a. above and poses no risk that renders

public health and the environment less than fully protected. Any measures DENR determines in writing are necessary for that statement to be made shall be taken pursuant to a plan approved in writing by DENR in advance, and approved in writing as implemented. Such measures may include without limitation environmental sampling and soil removal, treatment and/or capping.

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

g. No basements may be constructed on the Property unless they are, as determined in writing by DENR, vented in conformance with applicable building codes.

h. None of the contaminants known to be present in the environmental media at the Property, including those referenced in paragraph 7 and shown in Exhibit 2 of this Agreement, may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

i. Other than for non-sports outdoor use of a designated portion of the Property by the Property's residents, the Property may not be used as a park or for sports of any kind, including but not limited to golf, football, soccer and baseball, without the prior written approval of DENR, except in areas where two (2) feet of clean fill, or another cover approved in writing in advance by DENR, are installed to DENR's written satisfaction, delineated to DENR's written satisfaction as "Recreation Approved" areas on the plat component of the Notice referenced below in paragraph 19, maintained, and left undisturbed other than through normal park or sports use.

j. The Property may not be used as a playground, or for child care centers or schools.

k. 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.

l. 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.

m. During January of each year after the year in which the Notice referenced below in paragraph 19 is recorded, the owner of any part of the Property as of January 1st 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 1st, 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, and stating:

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.

15. The desired result of the above-referenced abandonment activities 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.

16. 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.

17. The consequences of achieving or not achieving the desired results will be that the uses to which the Property is put are or are not suitable for the Property while fully protecting public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

18. In addition to providing access to the Property pursuant to subparagraph 14.1. 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. Notwithstanding any provision of this Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

19. 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.

20. 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 ~~14964~~ Page ~~01268~~" 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.

21. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound & Transfer/Assignment Notice) of this Agreement.

VII. DUE CARE/COOPERATION

22. The Prospective Developer shall exercise due care at the Property with respect to regulated substances and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. 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

23. By entering into this agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the BPAs and revised BPA referenced in paragraph 9 above by which it applied for this Agreement. That use is for residential, hotel, restaurant, retail and/or office purposes. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any regulated substances at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

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

24. 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.

25. 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.

26. 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.

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 14 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.

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
1646 Mail Service Center
Raleigh, NC 27699-1646

b. for Prospective Developer:

Mr. Gregg Sandreuter
Hamilton Merritt, Inc.
104 Lake Cliff Court
Cary, NC 27513

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.

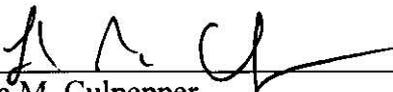
37. The Prospective Developer agrees that, with respect to any suit or claim for contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

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.

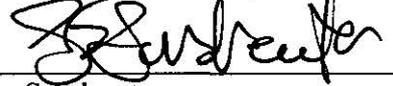
XIX. PUBLIC COMMENT

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.

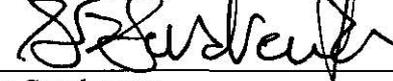
IT IS SO AGREED:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By:  _____ September 28, 2012
Linda M. Culpepper Date
Deputy Director, Division of Waste Management

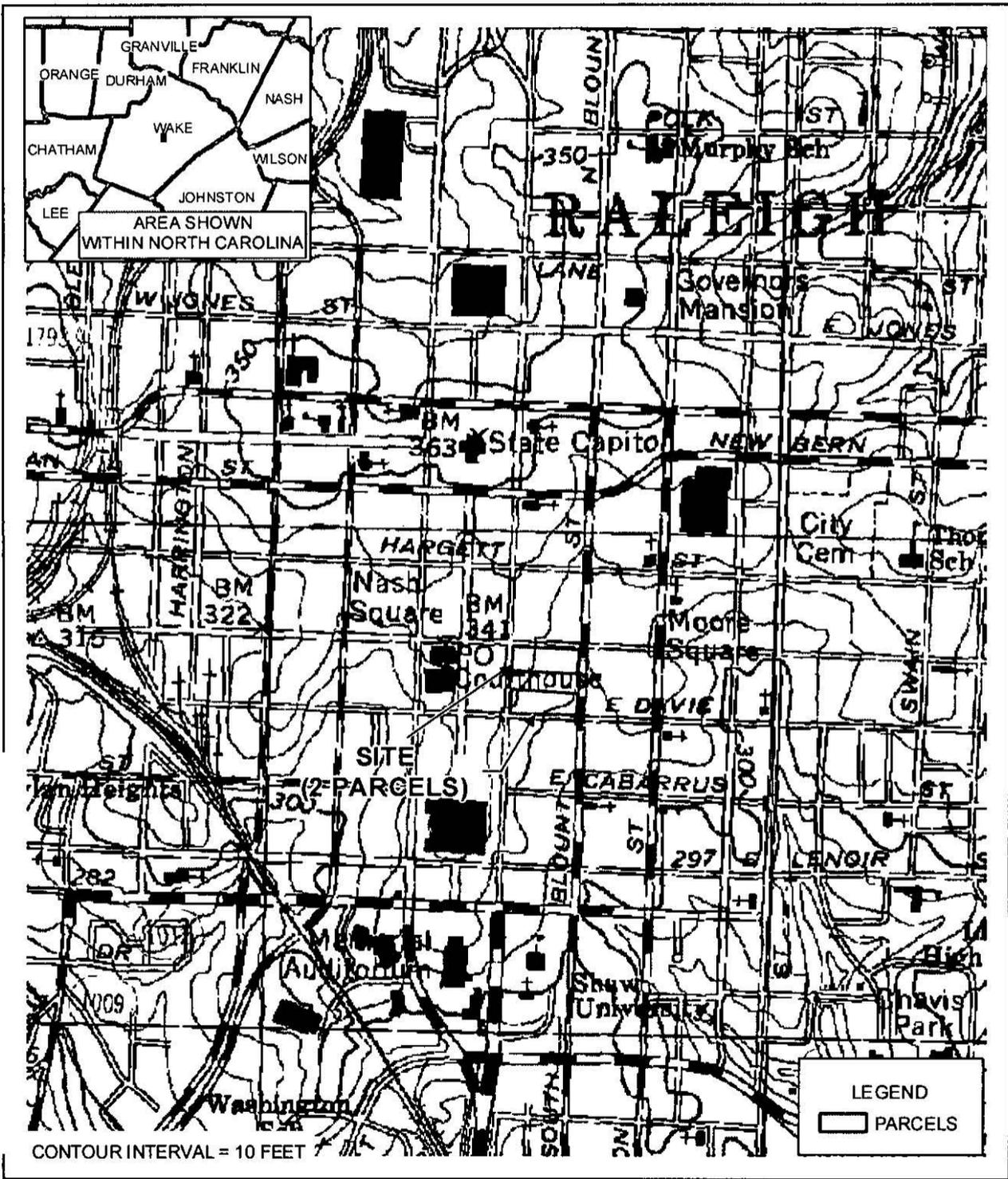
IT IS SO AGREED:
HAMILTON MERRITT, INC.

By:  _____ 10/5/12
Gregg Sandreuter Date
President

EDISON LAND, LLC
By Beacon Edison Land LLC, its Manager

By:  _____ 10/5/12
Gregg Sandreuter Date
Manager

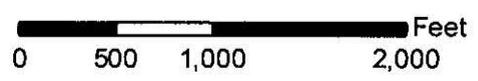
This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development restrictions



REFERENCES:

1. RALEIGH WEST, NC DIGITAL RASTER GRAPHIC, USGS, 1999. SCANNED FROM 1:24,000-SCALE USGS TOPOGRAPHIC MAP: RALEIGH WEST, NC, 1993.
2. INSET MAP DIGITAL DATA FROM 2002 NATIONAL TRANSPORTATION ATLAS, BUREAU OF TRANSPORTATION STATISTICS, WASHINGTON, D.C.

SCALE: 1:12,000



MID-ATLANTIC ASSOCIATES, INC.
Engineering & Environmental Solutions

EXHIBIT I
LOCATION MAP

DRAWN BY:	DATE:
DRAFT CHECK:	JOB NO:
ENG. CHECK:	GIS NO:
APPROVAL:	DWG NO: 1

Exhibit 2 – Contaminant Tables

Table A (Groundwater Contaminants)

Groundwater Contaminant	Sample Location	Date of Maximum Concentration Sampling	Maximum Concentration above Unrestricted Use Screening Level (µg/L)	Unrestricted Use Screening Level ¹ (for reference only) (µg/L)	Unrestricted Use Groundwater Standard ² (for reference only) (µg/L)
Benzene	GP-19	3-8-02	650	13	1
	GP-26	3-7-02	14		

Notes: 1. Screening Levels are contained in NC DENR’s Superfund Section’s Inactive Hazardous Sites Branch (IHSB) “IHSB Residential Vapor Intrusion Screening Tables,” February 2012 version.
 2. Groundwater Standard are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202, January 1, 2010 version.

Table B (Soil Contaminants)

Soil Contaminant	Sample Location	Depth	Date of Maximum Concentration Sampling	Maximum Concentration above Unrestricted Use Screening Level (mg/kg)	Unrestricted Use Screening Level ^{1,2} (for reference only) (mg/kg)
Benzo[a]pyrene ²	GP-31-5	5	3-7-02	5.57	0.015

Notes: 1. Soil screening levels are from the “Inactive Hazardous Sites Branch Preliminary Soil Remediation Goals (PSRG) Table,” January 2012 version, as referenced in the IHSB Guidelines for Assessment and Cleanup.
 2. Applicable polynuclear aromatic hydrocarbon reported as Benzo[a]pyrene using the Toxicity Equivalence Factor method in “Inactive Hazardous Sites Branch Soil Remediation Goals (SRG) Table,” February 2011 version.

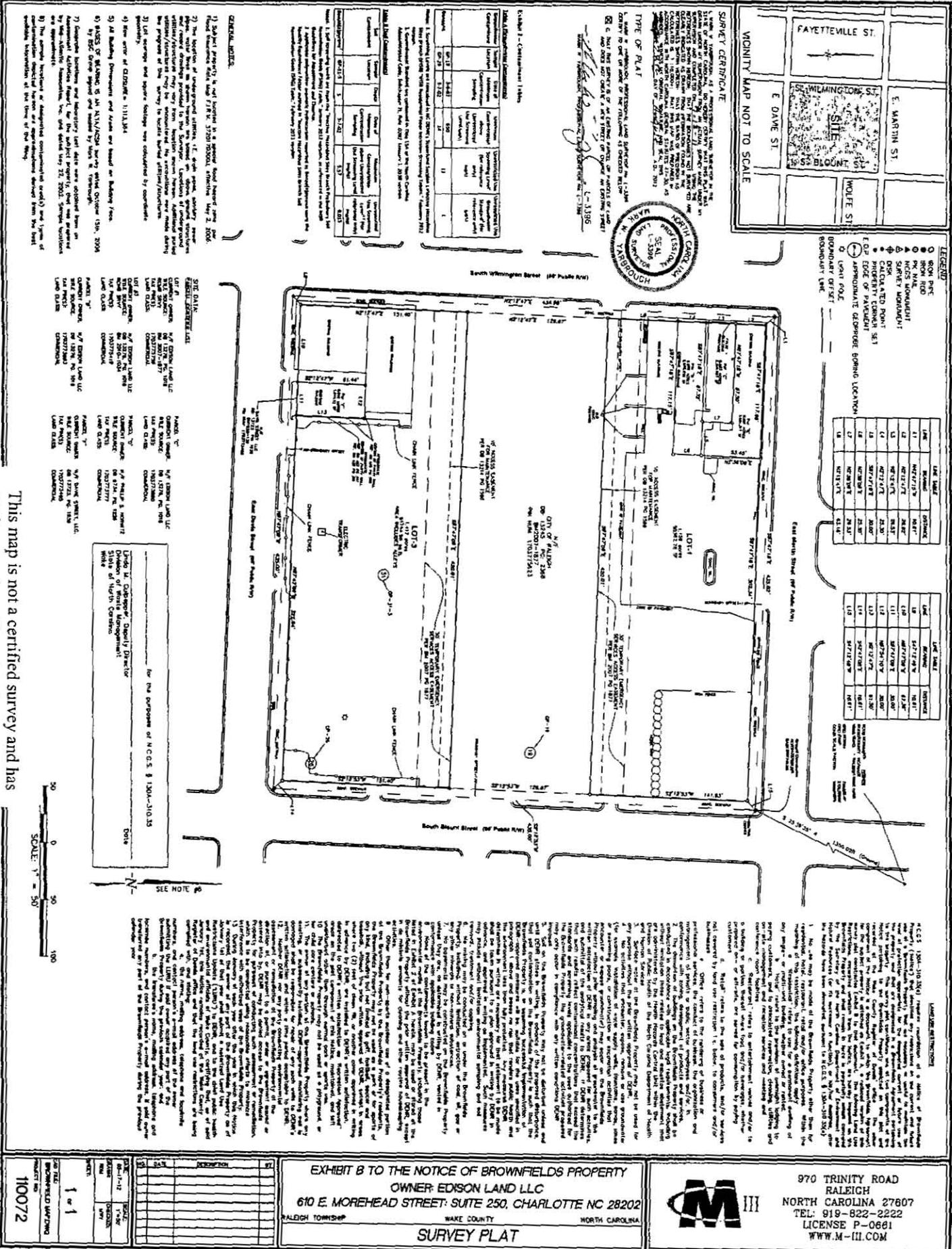


EXHIBIT C

Legal Description
for
EDISON LAND, LLC

Lot 1

Being a portion or all of that tract(s) or parcel(s) of land, identified in the Wake County Register of Deeds as being owned by Edison Land, LLC, and Davie Street, LLC and lying and being in the City of Raleigh, Wake County, North Carolina and being more particularly described as follows:

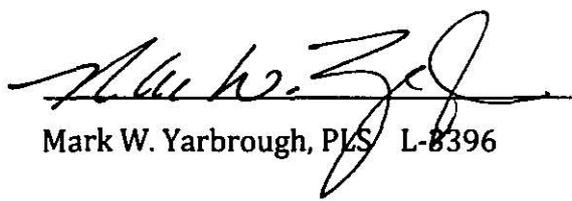
Commencing at an existing 1" diameter brass cap, as shown in Book of Maps 2007 Page 1877 as the Control Corner, having NC NAD 83 Ground Coordinates of Northing 737,839.59 and Easting 2,107,748.31, said control corner being located S 25°39'35" W 1350.02' from NC Geodetic Survey control monument "Pernew", having NC Grid coordinates of Northing 739,056.47 and Easting 2,108,332.90; thence S 47°12'48" W a distance of 10.61' to the Point and Place of Beginning, said point being at the intersection of the western margin of South Blount Street and the southern margin of East Martin Street and being the northeast corner of Lot 1 as shown in Book of Maps 2007 Page 1877; thence along the western margin line of South Blount Street S 02°12'53" W a distance of 141.93' to a point in the northern line of lands of The City of Raleigh (Deed Book 13245 Page 2368); thence leaving said western margin of South Blount Street and continuing along the common line with the City of Raleigh N 87°47'09" W a distance of 420.01' to a point, said point being located in the eastern margin of South Wilmington Street; thence leaving said common line and continuing along said margin N 02°12'47" E a distance of 141.91' to a point in the southern margin of East Martin Street; thence leaving said margin of South Wilmington Street and continuing along the margin of East Martin Street S 87°47'18" E a distance of 420.02 to the Point and Place of Beginning, containing 1.368 acres, more or less.

Lot 3

Being a portion or all of that tract(s) or parcel(s) of land, identified in the Wake County Register of Deeds as being owned by Edison Land, LLC and Phillip S. Horwitz and lying and being in the City of Raleigh, Wake County, North Carolina and being more particularly described as follows:

Commencing at an existing 1" diameter brass cap, as shown in Book of Maps 2007 Page 1877 as the Control Corner, having NC NAD 83 Ground Coordinates of Northing 737,839.59 and Easting 2,107,748.31, said control corner being located S 25°39'35" W 1,350.02' from NC Geodetic Survey control monument "Pernew", having NC Grid coordinates of Northing 739,056.47 and Easting 2,108,332.90; thence S 47°12'48" W a distance of 10.61' to a point, said point being at the intersection of the western margin of South Blount Street and the southern margin of East Martin Street and the northeast corner of Lot 1 as shown in Book of Maps 2007 Page 1877; thence along the western margin line of South Blount Street

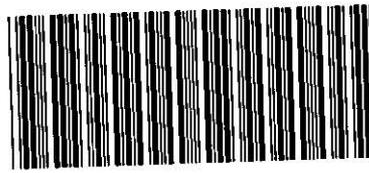
S 02°12'53" W a distance of 141.93' to a point in the northern line of lands of The City of Raleigh (Deed Book 13245 Page 2368) ; thence continuing along said margin S 02°12'53" W a distance of 126.67' to the Point and Place of Beginning, said point being the northeastern corner of Lot 3 as shown in Book of Maps 2007 Page 1877; thence continuing along said margin S 02°12'53" W a distance of 151.40' to a point, said point being in the northern margin of East Davie Street; thence leaving said margin of South Blount Street and continuing along the margin of East Davie Street N 87°47'09" W a distance of 420.00' to a point in the eastern margin of South Wilmington Street; thence leaving said margin of East Davie Street and along the margin of South Wilmington Street N 02°12'47" E a distance of 151.40' to a point; thence leaving said margin of South Wilmington Street and along a common line with lands of the City of Raleigh (Deed Book 13245 Page 2368) S 87°47'09" E a distance of 420.01' to the Point and Place of Beginning, containing 1.460 acres, more or less.


Mark W. Yarbrough, PLS L-8396

Oct. 2, 2012
Date

Seal





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**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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This Document
_____ 33 New Time Stamp
_____ # of Pages ✓