

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF: I.T.B Holdings, L.L.C.

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Former Alcatel Facility
OF 1997, NCGS § 130A-310.30, <u>et seq.</u>)	2912 Wake Forest Road
Brownfields Project # 20028-16-92)	Raleigh, Wake County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environmental Quality (“DEQ”) and I.T.B. Holdings, L.L.C. (collectively the “Parties”) pursuant to the Brownfields Property Reuse Act of 1997, NCGS § 130A-310.30, et seq. (the “Act”) for the property located at 2912 Wake Forest Road, Raleigh, North Carolina (the “Brownfields Property”). A map showing the location of the Brownfields Property that is the subject of this Agreement is attached hereto as Exhibit 1.

I.T.B. Holdings, L.L.C. is a manager-managed North Carolina limited liability company formed on July 18, 2003. There are three managers of ITB Holdings, LLC: Mr. Sherman Richardson, Mr. Robert Richardson, and Ms. Laura Van Sant. The address of the principal office is 8 Kendall Drive, Chapel Hill, NC 27517. This Agreement concerns 20.30 acres at 2912 Wake Forest Road, Raleigh, North Carolina 27609. The Prospective Developer plans to redevelop the Brownfields Property for none other than office, including health-related professional offices; retail; hotel; fitness club; entertainment; restaurant; and subject to DEQ’s prior written approval, other commercial uses; associated parking uses; with potential high density residential use limited to areas of the Brownfields Property that are excluded from the

RCRA Permit (Permit No. NCD 003185238) in effect on the Brownfields Property.

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

The Parties agree that I.T.B. Holdings, L.L.C.'s entry into this Agreement, and the actions undertaken by I.T.B. Holdings, L.L.C. in accordance with the Agreement, do not constitute an admission of any liability by I.T.B. Holdings, L.L.C. for contaminants at the Brownfields Property.

The resolution of this potential liability, in exchange for the benefit that I.T.B. Holdings, L.L.C. shall provide to DEQ, is in the public interest.

II. DEFINITIONS

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

1. "Brownfields Property" shall mean the property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean I.T.B. Holdings, L.L.C.

III. STATEMENT OF FACTS

3. The Brownfields Property comprises one tax parcel (PIN 1715241148), which is comprised of two lots (Lot 1 and Lot 2) totaling 20.30 acres. Prospective Developer has committed itself to redevelopment for no uses other than office, including health-related

professional offices; retail; hotel; fitness club; entertainment; restaurant; and subject to DEQ’s prior written approval, other commercial uses; associated parking uses; with potential high-density residential use limited to areas of the Brownfields Property that are excluded from the RCRA Permit (Permit No. NCD 003185238) in effect on the Brownfields Property.

4. The Brownfields Property is bordered to the north by the Holly Park Shopping Center and commercial office property owned by Northside Midtown, LLC with Interstate 440 beyond; to the east by Industrial Drive with commercial office and light industrial properties beyond owned by Northside Midtown, LLC; to the south by a shopping center that includes a Lifetime Fitness Center and fast food restaurants, and commercial supply stores such as Rural Plumbing & Heating and Johnstone Supply, with Six Forks Road beyond; and to the west by Wake Forest Road, with residential and undeveloped property beyond. Of note is that the City of Raleigh plans to realign and extend Wake Towne Drive across the Brownfields Property in an east-west alignment, which will bifurcate the Brownfields Property along the boundaries of Lots 1 and 2. Lot 1 is 17.47 acres and is located south of the future Wake Towne Drive extension. Lot 2 is 2.83 acres and is located north of the future extension. The property affected by the Wake Towne Drive Extension will be dedicated to the City of Raleigh and will not be included in the boundary of the Brownfields Property.

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

<i>Title</i>	<i>Prepared by</i>	<i>Date of Report</i>
RCRA Facility Assessment	CDM Federal Programs Corporation	September 18, 1992
Phase II Groundwater Assessment Report	Aquaterra, Inc.	October 18, 1994
RCRA Facility Investigation for AOC #1 and AOC #2, Volume 1 of 2	National Environmental Technologies, Inc.	February 1996

<i>Title</i>	<i>Prepared by</i>	<i>Date of Report</i>
RCRA Facility Investigation for AOC #1 and AOC #2, Volume 2 of 2	National Environmental Technologies, Inc.	February 1996
Phase II RCRA Facility Investigation	Triangle Environmental, Inc.	November 1998
Disposal of Lead Contaminated Asphalt and Soil – Area 4	TRC Environmental Corporation	September 7, 2007
Soil Excavation Report	AMEC Earth and Environmental	April 13, 2010
Corrective Measures Study	AMEC Earth and Environmental	September 16, 2010
Hazardous Waste Management Permit Modification (includes original permit)	North Carolina Department of Environment and Natural Resources	February 9, 2011
RCRA Corrective Measures Implementation Report	AMEC Environment and Infrastructure	April 22, 2013
October 2013 Groundwater Monitoring Report	AMEC Environmental & Infrastructure	February 6, 2014
April 2015 Groundwater Monitoring Report	AMEC Foster Wheeler	July 2015
December 2015 Groundwater Monitoring Report	AMEC Foster Wheeler	April 2016
RCRA Modification Request	Apex Companies, LLC	December 1, 2016
RCRA Modification Request (updated)	Apex Companies, LLC	March 14, 2017
Subsurface and Surface Water Assessment Report	Apex Companies, LLC	December 29, 2016
DEQ Approval of RCRA Updated Permit Modification Request	NC DEQ, Hazardous Waste Section	April 11, 2017

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

a. The Brownfields Property is a former telecommunications equipment manufacturing facility with operations dating back to 1958. It is a DEQ, RCRA site that has been the subject of multiple assessment, remedial, and monitoring activities over the last 30 years in accordance with its RCRA Permit No. NCD 003185238. Lot 1 of the Brownfields Property was previously occupied by a 234,000-square foot building, as well as other storage and

maintenance buildings, parking areas, and landscaped areas; all buildings at the Brownfields Property have been demolished with only concrete slabs remaining. Lot 2 was primarily used for employee parking during manufacturing operations, and was later used to store fleet vehicles, empty UPS trailers, and a tractor trailer containing traffic barricades. A maintenance shed is also located on the northwest corner of Lot 2.

b. The Kellogg Corporation, a division of ITT Corporation, began producing telecommunications equipment at the Brownfields Property in 1958. ITT Corporation purchased the Brownfields Property in 1973 and continued producing telecommunications equipment. ITT Corporation sold the facility to ITT Telecommunication Corporation in 1978. Alcatel Network Systems (Alcatel) was formerly known as ITT Telecommunications Corporation. Alcatel USA Marketing (a successor in interest to Alcatel Network Systems) sold the Brownfields Property to Alcatel USA Sourcing, LP in 1999. Alcatel USA Sourcing, LP sold the Brownfields Property to I.T.B. Holdings L.L.C. in 2003.

c. Following Alcatel's ownership of the Brownfields Property as ITT Telecommunications Corporation in 1987, it performed circuit board manufacturing including electroplating operations as part of their manufacturing process until 1990. Alcatel obtained a RCRA permit on August 5, 1983 to store hazardous wastes at the site, including wastes with the following waste codes: F001, F002, F005, F006, F008, D001, D002, and D008. After operations ceased, all circuit board manufacturing equipment was decontaminated and sold. Structures associated with the manufacturing process, such as holding tanks and plating trenches, were decontaminated and decommissioned following the shut-down of manufacturing operations. The waste water treatment plant (WWTP) was also closed and decontaminated in 1991. The former WWTP equalization basin was converted into a chilled water storage tank unit, which was then

used as part of the facility heating, ventilating, and air-conditioning (HVAC) system. The remaining WWTP equipment was dismantled. The area was decontaminated and a level concrete floor was poured over the existing floor. The area was converted for use as a maintenance area. The facility was then used for research and development, and offices.

d. The Brownfields Property was sold in July 2003 to the Prospective Developer, I.T.B. Holdings, L.L.C., which currently owns the property. Following the acquisition by I.T.B. Holdings, L.L.C., the manufacturing building was demolished. The Brownfields Property is currently not occupied. I.T.B. Holdings, L.L.C. has not conducted any operations at the facility except for leasing certain areas for vehicle parking.

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

a. Alcatel-Lucent USA, Inc. is the RCRA permittee and is the responsible party for the RCRA Hazardous Waste Permit (NCD 003185238) obligations regardless of the Brownfields Property owner. Alcatel-Lucent USA, Inc. is currently in RCRA corrective action activities under this permit. Permit NCD 003185238 was modified and reissued on February 9, 2011. A RCRA Modification Request was submitted to the DEQ Hazardous Waste Section by Apex Companies, Inc. on December 1, 2016 with an updated request on March 14, 2017 on behalf of Alcatel-Lucent USA, Inc. in anticipation of the changes due to City of Raleigh and the North Carolina Department of Transportation road construction plans as well as future redevelopment of the Brownfields Property. Alcatel-Lucent USA, Inc. communicated via correspondence dated March 14, 2017 to DEQ Hazardous Waste Section that it has no objection to the proposed permit modifications, and acknowledged and consented to the proposed request. The DEQ Hazardous Waste Section issued approval of the RCRA Permit Modification on April

11, 2017 in general accordance with the permit modification request submitted on March 14, 2017.

b. Both soil and groundwater were contaminated by previous on-site activities associated with the manufacture of telecommunication equipment and circuit boards. The RCRA areas of concern (AOCs) were located in the process area and in the area referred to as the alleyway due to the presence of elevated concentrations of volatile organic compounds (VOCs) in soils such as tetrachloroethene (PCE), 1,1,2-trichloroethane (TCA), dichloroethane (DCA), and dichloroethene (DCE). In addition, one AOC contained soils that were impacted with lead at concentrations which constituted a hazardous waste. This material was excavated for closure of this AOC; the underlying soils were analyzed using the Toxic Characteristic Leaching Procedure (TCLP) method.

c. Groundwater is currently known to be impacted in both the shallow overburden and bedrock aquifers with PCE, 1,4-Dioxane, 1,2-TCA, 1,1-DCA, 1,2-DCA, trichloroethylene (TCE), and vinyl chloride at concentrations that exceed the North Carolina 15A NCAC 2L Groundwater Standards and certain of these constituents also exceed the Division of Waste Management's Vapor Intrusion Screening Levels for groundwater.

d. Remedial activities conducted at the Brownfields Property by Alcatel-Lucent USA, Inc. pursuant to its RCRA Permit included operation of a large pump and treat groundwater remediation system for over 20 years, groundwater monitoring, and additional assessment activities to fully define the source area. As a result, in 2009, over 300 tons of impacted soil were removed from the Brownfields Property and transported off-site for disposal under the NCDEQ Contained Out policy.

e. Once the manufacturing building was razed, the source material below the building was accessible and additional remediation was conducted. Soil blending was performed below the building footprint in 2012. . The saturated soil column was treated with persulfate from approximately 13 feet below land surface (bls) to 22 feet bls. The portion of the Brownfields Property remaining under the RCRA permit remains under a monitored natural attenuation alternative and groundwater monitoring is being conducted every 15 months.

f. During the RCRA Facility Investigation (RFI) conducted in 1996, surface water samples were collected from an unnamed perennial stream which transects the western portion of the property to assess for water quality in the stream. A portion of the stream was culverted approximately on or before 1993, leaving a 322-foot length of the stream exposed on the Brownfields Property. Carbon disulfide, copper and lead were detected in the samples collected from the stream in 1996. These constituents did not exceed the North Carolina 15A NCAC 02B Surface Water Standards and Protective Values and EPA Nationally Recommended Water Quality Criteria for acute Freshwater Aquatic life. The surface water was re-sampled in November of 2016 and these constituents were not identified; however, acetone, bromomethane, copper, and lead were detected in sediment samples collected during the November 2016 sampling event. Similar to prior results, the surface water results from 2016 were below both the North Carolina 15A NCAC 02B Surface Water Standards and Protective Values and EPA Nationally Recommended Water Quality Criteria for both acute and chronic Freshwater Aquatic Life Values, and sediment sample results from 2016 were below the Inactive Hazardous Sites Branch Industrial/Commercial PSRGs. In connection with the redevelopment, approximately 300 feet of existing stream that currently flows across the Brownfields Property is contemplated to be piped pursuant to a U.S. Corps of Engineers Nationwide Permit 39.

g. Additional soil and groundwater assessment was conducted in November 2016 to evaluate soils that would be disturbed during construction activities; as possible use as fill material in other areas of the Brownfields Property; for waste disposal characterization; for confirmatory sampling purposes; and to evaluate whether groundwater contaminants may have migrated onto the Brownfields Property from upgradient areas. Soil samples collected during the November 2016 assessment did not exceed the IHSB Industrial/Commercial PSRGs.

h. Based upon the RCRA groundwater sampling performed by Alcatel-Lucent USA, Inc., groundwater concentrations in the central portion of the property exceed the DEQ Division of Waste Management (DWM) industrial/commercial vapor intrusion groundwater screening levels. A soil vapor assessment was conducted in October 2016 within the proposed building footprints and other portions of the Brownfields Property to evaluate whether the observed groundwater impacts would pose an environmental risk to indoor air quality. The results of the soil vapor assessment indicate that PCE and its breakdown products were detected in soil vapor beneath the proposed structures at concentrations that are below the applicable DEQ DWM industrial/commercial soil gas vapor intrusion screening levels, except for one detection of TCE in the southern portion of the Brownfields Property outside of the proposed building footprint. This TCE detection exceeds the DEQ DWM residential soil gas vapor intrusion screening level.

8. The most recent environmental sampling at the Brownfields Property reported in the Environmental Reports occurred on November 17, 2016. The tables set forth in Exhibit 2 to this Agreement present contaminants detected at the Brownfields Property above applicable standards or screening levels for each media sampled.

9. For purposes of this Agreement DEQ relies on Prospective Developer's representations that Prospective Developer's involvement with the Brownfields Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DEQ a Brownfields Property Application (BPA) dated April 11, 2016, a revised application on May 19, 2016, and a second revised application on December 28, 2016, and purchasing the Brownfields Property on July 28, 2003.

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

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

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

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

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

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

11. The Parties agree that a \$30,000 “Redevelopment Now” fee Prospective Developer has paid suffices as the \$2,000 fee to seek a brownfields agreement required by NCGS § 130A-310.39(a)(1), and, within the meaning of NCGS § 130A-310.39(a)(2), the full cost to DEQ and the North Carolina Department of Justice of all activities related to this Agreement, unless a change is sought to a Brownfields document after it is in effect, in which case there shall be an additional fee of at least \$1,000.

IV. BENEFIT TO COMMUNITY

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

- a. return to productive use of the Brownfields Property and elimination of the drawbacks of unoccupied property;
- b. the creation of approximately 350 construction jobs as part of the redevelopment process and hundreds of full-time permanent jobs after redevelopment is completed;
- c. an increase in tax revenue for affected jurisdictions;
- d. additional commercial, office, retail, hotel, and possibly high density residential space for the area; and
- e. “smart growth” through use of land in an already developed area, which avoids development of land beyond the urban fringe (“greenfields”).

V. WORK TO BE PERFORMED

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

14. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DEQ's Covenant Not to Sue and Reservation of Rights), DEQ is not requiring Prospective Developer to perform any active remediation at the Brownfields Property other than remediation that may be required pursuant to a DEQ-approved Environmental Management Plan (EMP) required by this Section; however, if the RCRA permit requirements described above in paragraph 7.a. are not completed to the satisfaction of DEQ, the provisions of paragraph 15.e. below shall apply.

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

a. No use may be made of the Brownfields Property other than for office, including health-related professional offices; retail; hotel; fitness club; entertainment; restaurant; and subject to DEQ's prior written approval, other commercial uses; associated parking uses;

with potential high-density residential use limited to areas of the Brownfields Property that are excluded from the RCRA Permit (Permit No. NCD 003185238) in effect on the Brownfields Property. Therefore, residential use is strictly prohibited on Lot 1 of the Brownfields Property. For purposes of this restriction, the following definitions apply:

i. “Office” is defined as the location where the provision of business or professional services occurs, including providers of short-term educational tutoring where children are present only for short durations of time.

ii. “Health-related professional offices” are defined as the location where medical, dental, optical or other health-related professional personnel provide medical, dental, optical, or other health-related services to patients.

iii. “Retail” is defined as the sale of goods or services, products, or merchandise directly to the consumer or businesses and includes showrooms, personal service, and the sales of food and beverage products. Dry cleaning operations, other than drop off locations or dry cleaning operations which do not use PCE, may not be operated on-site.

iv. “Hotel” is defined as the provision of overnight lodging to paying customers, and to associated food services, gym, reservation, cleaning, utilities, parking and on-site hospitality, management and reception services.

v. “Fitness club” is defined as a place that offers exercise equipment and physical fitness classes, such as cardio, gymnastics, dance or yoga classes, for paying customers for health and physical fitness purposes, and is also known as a health club, gym, or exercise studio.

vi. “Entertainment” is defined as private, public, and community activities (such as, for example, festivals, theater, musical events or shows), which may include food and

beverage service;

vii. “Restaurant” is defined as a commercial business establishment that prepares and serves food and beverages to patrons including outside dining;

viii. “Commercial” is defined as an enterprise carried on for profit or nonprofit by the owner, lessee or licensee.

ix. “Parking” is defined as the temporary accommodation of motor vehicles in an area designed for same.

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

b. Physical redevelopment of the Brownfields Property may not occur other than in accord, as determined by DEQ, with an Environmental Management Plan (“EMP”) approved in writing by DEQ in advance (and revised to DEQ’s written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Brownfield Property, the timing of redevelopment phases, and 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:

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 above and within Exhibit 2;

iii. contingency plans for addressing newly discovered potential sources of environmental contamination (e.g., USTs, tanks, drums, septic drain fields, oil-water separators, soil contamination); and

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

c. Within 90 days after each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Brownfields Property continues (except that the final deadline shall fall 90 days after the conclusion of physical redevelopment), the then owner of the Brownfields Property shall provide DEQ a report subject to written DEQ approval on environment-related activities since the last report, with a summary and drawings, that describes:

i. actions taken on the Brownfields Property in accordance with this Work to Be Performed section;

ii. soil grading and cut and fill actions;

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

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

v. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Brownfields Property (copies of all

legally required manifests shall be included).

d. Groundwater at the Brownfields Property may not be used for any purpose without the prior written approval of DEQ, except with respect to the current or future groundwater monitoring performed by Alcatel-Lucent USA, Inc. pursuant to its RCRA Hazardous Waste Permit (NCD 003185238), and other than in connection with legally compliant storm water collection and reuse techniques.

e. If DEQ determines that the holder of the Brownfields Property's RCRA Part B Permit has failed to comply with the requirements imposed on it by said permit (including without limitation the requirement to complete the assessment, remediation and/or monitoring requirements of said permit and the requirement to maintain financial assurance), and that the holder continues to fail to do so after notice from DEQ, DEQ may require the then-owner of the portion(s) of the Brownfields Property subject to the RCRA Permit to conduct active assessment, remediation and/or monitoring of such portions(s) of the Brownfields Property in compliance with the RCRA Part B Permit.

f. Soil may not be removed from, or brought onto, the Brownfields Property without prior sampling and analysis to DEQ's written satisfaction, unless conducted in accordance with an approved EMP as outlined in paragraph 15.b.

g. No enclosed building may be constructed on the Brownfields Property until DEQ determines in writing that:

i. the building is or would be protective of the building's users, public health and the environment from risk of vapor intrusion based on site assessment data or a site-specific risk assessment approved in writing by DEQ;

ii. the building is or would be sufficiently distant from the Brownfields

Property's groundwater and/or soil contamination based on assessment data approved in writing by DEQ that the building's users, public health and the environment will be protected from risk from vapor intrusion related to said contamination; or

iii. vapor intrusion mitigation measures are installed and/or implemented 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. Any design specification for vapor intrusion mitigation measures shall be approved in writing by DEQ in advance of installation and/or implementation of said measures. The design specifications shall include methodology(ies) for demonstrating performance of said measures.

h. Any and all stream restoration activities conducted on the Brownfields Property shall be implemented in accordance with requirements imposed by the United States Army Corps of Engineers and/or the North Carolina Division of Water Quality.

i. Lot 1 of the Brownfields Property may not be used for child care, adult care centers or schools without the prior written approval of DEQ, unless the child care was solely provided as short-term indoor care that is ancillary to a use which is allowed herein, such as a fitness club or tutoring facility.

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

k. Any deed or other instrument conveying an interest in the Brownfields

Property shall contain the following notice: “This property is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Wake County land records, Book ____, Page ____.” A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted. Prospective Developer may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease or rider (as applicable) is identical in form, Prospective Developer may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases or riders, to the persons listed in Section XV (Notice and Submissions); or (ii) Prospective Developer may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

1. None of the contaminants known to be present in the environmental media at the Brownfields Property, as described in Exhibit 2 of this Agreement and as modified by DEQ in writing if additional contaminants in excess of applicable standards are discovered at the Brownfields Property, may be used or stored at the Brownfields Property without the prior written approval of DEQ, except:

i. in de minimis quantities for cleaning and other routine housekeeping and maintenance activities;

ii. as constituents of products and materials customarily used and stored in office, health-related professional office, retail, hotel, fitness club, entertainment; restaurant; commercial, and if applicable, high density residential environments, provided such products and materials are stored in original retail packaging and used and disposed of in accordance with applicable laws;

iii. as constituents of fuels, lubricants and oils in emergency generators, machinery, equipment and vehicles in on-board tanks integral to said equipment; or

iv. in flammable liquid storage containers totaling no more than 25 gallons.

m. Within 30 days prior to land disturbance activities that will impact existing wells unless an alternate schedule is approved by DEQ, the Prospective Developer shall coordinate with Alcatel-Lucent USA, Inc. to abandon monitoring wells, injection wells, recovery wells, piezometers and other man-made points of groundwater access at the Brownfields Property, except if their location permits, for monitoring wells that are required for compliance with RCRA Permit No. NCD 003185238 (modified approved April 11, 2017), in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code. Prospective Developer shall, on a schedule acceptable to DEQ, effect said abandonment of those monitoring wells that are no longer needed for compliance with the RCRA Permit (MW-2dr, MW-11s, MW-17i, MW-19i, MW-20i, MW-22i), and of those wells required under the RCRA Permit that must be abandoned to avoid damage or loss during construction activities (MW-2s, MW-3s, MW-3d, MW-4s, MW-4d, MW-12s, MW-16d, MW-22s, MW-18i, MW-21i, MW-23s, MW-24s, MW-24d) and, within 30 days after doing so, Alcatel-Lucent USA, Inc. and/or Prospective Developer shall provide DEQ a report, setting forth the procedures and results. With respect to the wells to be abandoned to allow construction activities, monitoring wells MW-2s, MW-3s, MW-3d, MW-4s, MW-4d, MW-12s, MW-16d, MW-22s, MW-18i, MW-21i, MW-23s, MW-24s, and MW-24d shall be re-installed by the Prospective Developer, on a schedule acceptable to DEQ, for future monitoring to be performed by Alcatel-Lucent USA, Inc. pursuant to its RCRA Permit regulated by the DEQ RCRA Hazardous Waste Section. Replacement wells shall be constructed in the

same manner as the original wells, with screened intervals at the same elevations, although surface completions may vary from the original construction based on the redeveloped landscape and other localized restrictions.

n. Upon completion of the well abandonment activities described in paragraph 15.m. above, the owner of any portion of the Brownfields Property where any existing, or subsequently installed, DEQ-approved monitoring well is damaged by the owner, its contractors, or its tenants shall be responsible for repair of any such wells to DEQ's written satisfaction and within a time period acceptable to DEQ, unless compliance with this Land Use Restriction is waived in writing by DEQ in advance.

o. During January of each year after the year in which the Notice referenced below in paragraph 20 is recorded, the owner of any part of the Brownfields Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DEQ, and to the chief public health and environmental officials of 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 Brownfields Property during the previous calendar year;

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

iii. whether any vapor barrier and/or mitigation systems installed pursuant

to subparagraph 15.g. above are performing as designed, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

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

q. A joint LURU may be submitted for multiple owners by a duly constituted board or association, or another person or entity approved in advance by DEQ. Such joint LURU shall include the name, mailing address, telephone and facsimile numbers, and contact person's email address of the entity or person submitted the joint LURU as well as for each of the owners on whose behalf the joint LURU is submitted.

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

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

18. The consequence of achieving the desired results will be that the Brownfields Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment. The consequence of not achieving the desired results will be that

modifications to land use restrictions and/or remediation in some form may be necessary to fully protect public health and/or the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

19. In addition to providing access to the Brownfields Property pursuant to subparagraph 15.j. above, Prospective Developer shall provide DEQ, its authorized officers, employees, representatives, and all other persons performing response actions under DEQ oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Brownfields Property under applicable law. Such access is to occur after prior notice and using reasonable efforts to minimize interference with authorized uses of such other property except in response to emergencies and/or imminent threats to public health and the environment. While Prospective Developer owns the Brownfields Property, DEQ shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DEQ at the Brownfields Property. Except as may be set forth in the Agreement, DEQ retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

20. DEQ has approved, pursuant to NCGS § 130A-310.35, a Notice of Brownfields Property for the Brownfields Property containing, inter alia, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Brownfields Property. Pursuant to NCGS § 130A-310.35(b), within 15 days of the effective date of this Agreement, Prospective Developer shall file the Notice of Brownfields Property in the Wake County, North Carolina, Register of Deeds' Office. Within three (3) days thereafter, Prospective Developer shall furnish DEQ a copy of the documentary component of the Notice containing a

certification by the register of deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

21. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Brownfields Property shall contain the following notice: “This property is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Wake County land records, Book ____, Page ____.” A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted. Prospective Developer may use the following mechanisms to comply with the obligations of this paragraph: (i) If every lease and rider is identical in form, Prospective Developer may provide DEQ with copies of a form lease or rider evidencing compliance with this paragraph, in lieu of sending copies of actual, executed leases, to the persons listed in Section XV (Notices and Submissions); or (ii) Prospective Developer may provide abstracts of leases, rather than full copies of said leases, to the persons listed in Section XV.

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

VII. DUE CARE/COOPERATION

23. The Prospective Developer shall exercise due care at the Brownfields Property with respect to the manner in which regulated substances are handled at the Brownfields Property and shall comply with all applicable local, State, and federal laws and regulations. The Prospective

Developer agrees to cooperate fully with any assessment or remediation of the Brownfields Property by DEQ and further agrees not to interfere with any such assessment or remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Brownfields Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, shall comply with any applicable notification requirements under NCGS § 130A-310.1 and 143-215.85, Section 103 of CERCLA, 42 USC § 9603, and/or any other law, and shall immediately notify the DEQ Official referenced in paragraph 35.a. below of any such required notification.

VIII. CERTIFICATION

24. By entering into this Agreement, the Prospective Developer certifies that, without DEQ approval, it will make no use of the Brownfields Property other than that committed to in the Brownfields Property Application dated April 11, 2016, and by the Amended Brownfields Property Application dated May 19, 2016, and by the Second Amended Brownfields Property Application dated December 28, 2016 by which it applied for this Agreement. That use is for none other than office, including health-related professional offices; retail; hotel; fitness club; entertainment; restaurant; and subject to DEQ's prior written approval, other commercial uses; associated parking uses; with potential high density residential use limited to areas of the Brownfields Property that are excluded from the RCRA Permit (Permit No. NCD 003185238) in effect on the Brownfields Property. Therefore, residential use is strictly prohibited on Lot 1 of the Brownfields Property. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DEQ all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees,

contractors and agents which relates in any way to any past use of regulated substances or known contaminants at the Brownfields Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Brownfields Property.

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

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

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Brownfields Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Brownfields Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.
- c. A land use restriction set out in the Notice of Brownfields Property required under NCGS § 130A-310.35 is violated while the Prospective Developer owns the Brownfields Property, in which case the Prospective Developer shall be responsible for remediation of the Brownfields Property to unrestricted use standards.
- d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Brownfields Property.
- e. New information indicates the existence of previously unreported

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

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

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

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under NCGS § 130A-310.35.

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

27. This Agreement does not waive any applicable requirement to obtain a permit, license or certification, or to comply with any and all other applicable law, including the North Carolina Environmental Policy Act, NCGS § 113A-1, et seq.

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

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

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

XI. PARTIES BOUND

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

XII. DISCLAIMER

31. This Agreement in no way constitutes a finding by DEQ as to the risks to public health and the environment which may be posed by regulated substances at the Brownfields

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

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

XIII. DOCUMENT RETENTION

33. The Prospective Developer agrees to retain and make available to DEQ all business and operating records, contracts, site studies and investigations, remediation reports, and documents generated by and/or in the control of the Prospective Developer, its affiliates or subsidiaries relating to storage, generation, use, disposal and management of regulated substances at the Brownfields Property, including without limitation all Material Safety Data Sheets or Safety Data Sheets, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. Said records may be retained electronically such that they can be retrieved and submitted to DEQ upon request. At the end of six (6) years, the Prospective Developer shall notify DEQ of the location of such documents and shall provide DEQ with an opportunity to copy any documents at the expense of DEQ. To the extent DEQ retains any copies of such documents, Prospective Developer retains all rights it then may have to seek protection from disclosure of such documents as confidential business information.

XIV. PAYMENT OF ENFORCEMENT COSTS

34. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be

liable for all litigation and other enforcement costs incurred by DEQ to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

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

a. for DEQ:

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

b. for Prospective Developer:

Sherman Richardson, Manager (or successor in function)
I.T.B. Holdings, L.L.C
8 Kendall Drive
Chapel Hill, NC 27517

Kevin Benedict
ITB Holdings, LLC
4812 Patton Ridge Court
Raleigh, NC 27612

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

XVI. EFFECTIVE DATE

36. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving the signed, conditionally approved Agreement from DEQ. DEQ's approval of

this Agreement is conditioned upon the complete and timely execution and filing of this Agreement in the manner set forth herein. Prospective Developer shall expeditiously sign the Agreement in order to effect the recordation of the full Notice of Brownfields Property within the statutory deadline of 15 days following such receipt. If the Agreement is not signed by Prospective Developer within 45 days after such receipt, DEQ has the right to revoke its approval and certification of this Agreement, and invalidate its signature on this Agreement.

XVII. TERMINATION OF CERTAIN PROVISIONS

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

XVIII. CONTRIBUTION PROTECTION

38. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by NCGS § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DEQ or any other person in relation to the Brownfields Property.

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

40. The Prospective Developer also agrees that, with respect to any suit or claim for

contribution brought against it in relation to the subject matter of this Agreement, it will notify DEQ in writing within 10 days of receiving said suit or claim.

XIX. PUBLIC COMMENT

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

IT IS SO AGREED:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY
By:

Michael E. Scott
Director, Division of Waste Management

Date

IT IS SO AGREED:
I.T.B. HOLDINGS, L.L.C.
By:

Sherman Richardson
Manager

Date