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February 3, 2004

Robert R. Gelblum
State of North Carolina
Department of Justice
Environmental Division
P.O. Box 629
Raleigh, NC 27602-0629

RECEIVED

FEB 10 2004

N.C. ATTORNEY GENERAL
Environmental Division

Re: Former Cherokee Oil Brownfields Project No. 06006-02-60
Charlotte, NC

Dear Mr. Gelblum:

Enclosed are a copy of recorded Notice of Brownfields Property, copy of recorded plat and copy of receipts from the Register of Deeds for these documents in connection with the above project.

If you need anything further, please call me.

Sincerely,



W. Chris Parnell

cc: M & J Equities, LLC

FILE COPY	
FILE # 1191	DOC. # 024879
DATE 2-3-04	TIME 11:07
BOOK 14737	PAGE 54
STAMPS	REC FEE 89 -
J. A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY

NOTICE OF BROWNFIELDS PROPERTY

This Notice of Brownfields Property (“Notice”) is filed on February 2, 2004 by M&J Equities, LLC (hereinafter “Prospective Developer”), and is recorded at the Mecklenburg County Register of Deeds office in Book 14737 Page 54. The owner of the property that is the subject of this Notice is M&J Equities, LLC.

This is a notice regarding contaminated property.

A copy of this Notice certified by the North Carolina Department of Environment and Natural Resources (hereinafter “DENR”) is required to be filed in the Register of Deeds’ Office in the county or counties in which the land is located, pursuant to North Carolina General Statutes (hereinafter “NCGS”), Section (hereinafter “§”) 130A-310.35(b).

This Notice is required by NCGS § 130A-310.35(a), in order to reduce or eliminate the danger to public health or the environment posed by environmental contamination at a property (hereinafter the “Brownfields Property”) being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 (hereinafter the “Act”).

Pursuant to NCGS § 130A-310.35(b), the Prospective Developer must file a certified copy of this Notice within 15 days of Prospective Developer’s receipt of DENR’s approval of the Notice or Prospective Developer’s entry into the Brownfields Agreement required by the Act, whichever is later. Pursuant to NCGS § 130A-310.35(c), the copy of the Notice certified by DENR must be recorded in the grantor index under the names of the owners of the land and, if Prospective Developer is not the owner, also under Prospective Developer’s name.

The Brownfields Property comprises a 2.5-acre parcel at 925 South Summit Avenue in Charlotte, Mecklenburg County, North Carolina. Prospective Developer has committed itself to make no other use of the Brownfields Property than as a parking lot, improved through installation of a new asphalt cap. Groundwater and soil are contaminated at the Brownfields Property due to historical operations by a waste disposal business known as Cherokee Resources.

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.

Attached hereto as **Exhibit B** is the survey plat required by NCGS § 130A-310.35(a). It is a plat of areas designated by DENR that has been prepared and certified by a professional land surveyor and that meets the requirements of NCGS § 47-30. That plat contains the following information required by NCGS § 130A-310.35(a):

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location and quantity of regulated substances and contaminants known to exist on the Brownfields Property. The following table also sets forth the type and quantity of such substances:

a. Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are contained in Rule .0202, Subchapter 2L of Title 15A of the North Carolina Administrative Code:

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Maximum Concentration above Std. (ug/L)	Standard (ug/L)
Cadmium	GP3W	12/23/98	6	5
Chromium	GP3W	12/23/98	56	50
Lead	GP1W	12/23/98	19	15
	GP2W	12/23/98	179	
	GP3W	12/23/98	107	
	GP4W	12/23/98	151	

b. Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the standards for which are derived using the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section:

Soil Contaminant	Sample Location	Depth (ft)	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
Arsenic	GP2-02	0-2	12/98	58.2	4.4
	GP3-02	0-2	12/98	234	
	FS-F	0.5-1	5/93	5.13	
	FS-I	0-0.5	5/93	9.88	
	FS-J	0-0.5	5/93	6.16	
	FS-K	0-0.5	5/93	12.9	
	FS-K	0.5-1	5/93	21.4	

Soil Contaminant	Sample Location	Depth (ft)	Date of Max. Concentration Sampling	Maximum Concentration above Std. (mg/kg)	Standard (mg/kg)
Lead	FS-F	0.5-1	5/93	874	400

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). Those restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No water supply wells may be installed or used at the Brownfields Property and groundwater may not be otherwise accessed or used at the Brownfields Property for any purpose.

2. No activities which result in direct exposure to or removal of soil from beneath the Brownfields Property's paved surfaces or the building slab may be conducted without prior sampling and analysis of soil in the area where such activities are to be conducted, submittal of the analytical results to DENR or its successor in function along with plans and procedures to protect human health and the environment during those activities, and approval of those activities by DENR or its successor in function.

3. Portions of the Brownfields Property which remain pervious, including planters and landscape portions of the Brownfields Property surrounding the building and islands in the parking area, must contain or be comprised of clean fill dirt. Existing soils in such areas must either be capped with asphalt or removed from these areas and replaced with clean fill dirt prior to any disturbance of those soils.

4. Without the approval of DENR, the Brownfields Property shall not be used for playground facilities and/or organized sporting activities of any kind, including, but not limited to, golf, football, soccer and baseball.

5. The Brownfields Property shall not be used for agricultural or grazing purposes.

6. The Brownfields Property shall not be used for mining, including extraction of coal,

oil, gas or any other mineral or non-mineral substances.

7. No basements, and no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater, may be constructed on the Brownfields Property without the approval of DENR or its successor in function.

8. The Brownfields Property shall not be used for residential or day care purposes, or for schools, without the approval of DENR or its successor in function.

9. During January of each year after this Agreement becomes effective, the owner(s) of each portion of the Brownfields Property shall submit a notarized Land Use Restrictions Update to DENR certifying that the Notice of Brownfields Property containing the land use restrictions set forth above in this paragraph remains recorded at the Mecklenburg County Register of Deeds office, that the land use restrictions are being complied with, and that all paved and gravel surfaces and the building slab at the Brownfields Property remain in place and are being maintained such that they continue to function as impervious caps.

For purposes of the land use restrictions set forth above, "DENR" shall mean the DENR official and address referenced in paragraph 26.a. of Exhibit A hereto.

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 Declaration without the approval of the Secretary of DENR (or its successor in function), or his/her delegate, shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS

When any portion of the Brownfields Property is sold, leased, conveyed or transferred, pursuant to NCGS § 130A-310.35(d) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the Brownfields Property has been classified and, if appropriate, cleaned up as a brownfields property under the Brownfields Property Reuse Act.

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this 20th day of January, 2004

M&J Equities, LLC

By: [Signature]
Name typed or printed: JOHN J. MANCINO
Member/Manager

NORTH CAROLINA
Mecklenburg COUNTY

I, Susan Esquivel, a Notary Public of the county and state aforesaid, certify that John J. Mancino personally came before me this day and acknowledged that he/she is a Member of M&J Equities, LLC, a North Carolina limited liability corporation, and its Manager, and that by authority duly given and as the act of the corporation, the foregoing Notice of Brownfields Property was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this 20 day of January, 2004.

[Signature]
Name typed or printed: Susan Esquivel
Notary Public

My Commission expires: 1-20-07

[Stamp/Seal]

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

January 13, 2004
Date

CERTIFICATION OF REGISTER OF DEEDS

The foregoing Notice of Brownfields Property is certified to be duly recorded at the date and time, and in the Book and Page, shown on the first page hereof.

Register of Deeds for Mecklenburg County

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

COPY

EXHIBIT A
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: M&J Equities, LLC

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Former Cherokee Oil Site
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	925 South Summit Avenue
)	Charlotte, Mecklenburg County
		Brownfields Project # 06006-06-20

I. INTRODUCTION

This Brownfields Agreement ("Agreement") is made and entered into by and between the North Carolina Department of Environment and Natural Resources ("DENR") and M&J Equities, LLC (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the "Act").

M&J Equities, LLC is a limited liability company registered in North Carolina. The company is owned equally by Margaret E. Mancino and John M. Mancino. The property that is the subject of this Agreement comprises approximately 2 acres and is located at 925 South Summit Avenue in the City of Charlotte, Mecklenburg County, North Carolina. M&J Equities, LLC intends to upgrade the existing parking area on the property for use by the nightclub on the property and for uptown Charlotte events. A legal description and map of the property which is the subject of this Agreement are attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the potential

liability of M&J Equities, LLC for contaminants at the property which is the subject of this Agreement.

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

The resolution of this potential liability, in exchange for the benefit M&J Equities, 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 described and depicted in Exhibit 1 of this Agreement.
2. "Prospective Developer" shall mean M&J Equities, LLC.

III. STATEMENT OF FACTS

3. Prospective Developer owns an approximately 2.5-acre parcel which contains one building (of approximately 12,600 square feet) currently in use as a nightclub and a parking lot that is partially gravel and partially asphalt. The Property is located at 925 South Summit Avenue in Charlotte, Mecklenburg County, North Carolina. Prospective Developer plans to improve the parking lot by installing a new asphalt cap, with subsequent use for the nightclub and for uptown Charlotte events. The Property is located within walking distance of the Carolina Panther's Stadium.

4. For purposes of this Agreement, DENR relies on the following representations by the Prospective Developer as to the prior and current use of the Property. These representations are contained in Prospective Developer's Brownfields Letter of Intent and Appendix Document, dated February 20, 2002. The Appendix Document contained site-specific information, including: letters of support for the proposed reuse, site plans, a topographic map, charts, a survey of the Property, analytical data, regulatory correspondence, a site inspection report, laboratory analytical reports, and sampling location maps (all herein referred to collectively as the "environmental reports").

a. Historical uses of the Property listed in the environmental reports include the following: Brown's Equipment (1950's to 1960's) a trailer construction business; United States Postal Service maintenance garage (1967-1975); Mecklenburg County Recycling Center (1980); Saunders Systems (1985-1990) a truck leasing operation; and Cherokee Resources (1990-1991) a waste disposal facility. E.C. Griffith owned the site from the 1950's until 2000 and leased it to the above-referenced enterprises. The Property was unused from 1992-2000. In 2000, Prospective Developer purchased the Property.

b. From August 1990 to August 1991, Cherokee Resources operated an unpermitted hazardous waste facility at the Property. According to the environmental reports and DENR files, the US EPA removed the following from the Property: 6,069 drums, 13 roll-off containers, and several tankers containing liquids consisting of PCBs, flammable solvents, and cyanides. In addition, four (4) underground storage tanks containing diesel fuel, heating oil, gasoline, and residual sludge were removed from the north and south sides of the warehouse. Prior operations at the Property may have generated wastes including solvents and petroleum wastes from operations of the

maintenance garage and from vehicle painting operations conducted by Brown's Equipment.

c. In 1993, post-removal activity soil sampling was conducted. The samples were analyzed for volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), total metals, cyanide, pesticides, polychlorinated biphenyls ("PCBs"), and oil & grease ("O&G"). Concentrations of lead, cadmium, chromium, and arsenic were detected above the state's soil remediation goals.

d. In 1998 and 2000, the Charlotte Mecklenburg Utility Department ("CMUD") contracted with Camp Dresser McKee (CDM) to install soil borings and collect samples for a sewer line extension along Irwin Creek. Soil and groundwater samples were collected at the Property and analyzed for VOCs, SVOCs, total and dissolved metals, pesticides, PCBs, and total petroleum hydrocarbons ("TPH"). The soil results indicated the presence of TPH and various metals in site soils including barium, cadmium, chromium, lead, and mercury, but no soil or groundwater contaminants were detected above remediation goals of DENR's Inactive Hazardous Sites Program.

e. The federal Superfund status of the site is "No Further Remedial Action Planned" ("NFRAP"). The site is listed on North Carolina's Inactive Hazardous Waste uSite Priority List as "Cherokee Oil" and is ranked 232 as of October 2001.

5. The Property is located in an industrial and commercial area of Charlotte. The Property is bordered to the south and east by Irwin Creek and Interstate 77, to the west by South Summit Avenue, and to the north by Bryant Road.

6. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to the following:

a. The Prospective Developer acquired the Property in 2000 from E. C. Griffith Company.

b. The Prospective Developer submitted a Brownfields Letter of Intent and supporting documentation on February 20, 2002.

c. The Prospective Developer obtained or commissioned the environmental reports cited above in Paragraph 4.

7. Prospective Developer has provided DENR with information, or sworn certifications regarding that information on which DENR relies for purposes of this Agreement, necessary 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.

8. Prospective Developer has paid the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1). Pursuant to N.C.G.S. § 130A-310.39(a)(2), the procedure upon which Prospective Developer and DENR have agreed for payment of the full cost to DENR and the North Carolina Department of Justice (“DOJ”) of all activities related to this Agreement is that Prospective Developer shall pay an amount equal to DOJ’s hours multiplied by \$36.24 per hour, and that Prospective Developer shall only pay that portion of the calculated DOJ cost that exceeds the \$2,000 fee referenced above in this paragraph (DENR has incurred no costs).

IV. BENEFIT TO COMMUNITY

9. Redevelopment of the Property will provide the following public benefits:

- a. an increased tax base for the City of Charlotte, Mecklenburg County, and the State of North Carolina;
- b. employment opportunities for local residents during construction;
- c. improved condition and appearance of an uptown Charlotte property;
- d. a more productive use of property; and,
- e. if Prospective Developer installs it, an improved asphalt-and-gravel impervious cap on parking areas and walkways, to minimize surface water infiltration and groundwater migration at the Property and provide a barrier to possible public exposure to contaminated groundwater at the Property.

V. WORK TO BE PERFORMED

10. Based on the information in the environmental reports, and subject to imposition of and compliance with the land use restrictions cited below in paragraph 10.a, and except as may be

required pursuant to Section IX of this Agreement (Reservation of Rights and DENR's Covenant Not to Sue and Reservation of Rights), active remediation at the Property shall be unnecessary.

a. Based on the information revealed in the environmental reports, DENR has determined that it is necessary for Prospective Developer to impose the following land use restrictions that run with the land, to make the Property safe for the uses specified in this Agreement while fully protecting public health and the environment.

i. No water supply wells may be installed or used at the Property and groundwater may not be otherwise accessed or used at the Property for any purpose.

ii. No activities which result in direct exposure to or removal of soil from beneath the Property's paved surfaces or the building slab may be conducted without prior sampling and analysis of soil in the area where such activities are to be conducted, submittal of the analytical results to DENR or its successor in function along with plans and procedures to protect human health and the environment during those activities, and approval of those activities by DENR or its successor in function.

iii. Portions of the Property which remain pervious, including planters and landscape portions of the Property surrounding the building and islands in the parking area, must contain or be comprised of clean fill dirt. Existing soils in such areas must either be capped with asphalt or removed from these areas and replaced with clean fill dirt prior to any disturbance of those soils.

iv. Without the approval of DENR, the Property shall not be used for playground facilities and/or organized sporting activities of any kind, including, but not limited to,

golf, football, soccer and baseball.

v. The Property shall not be used for agricultural or grazing purposes.

vi. The Property shall not be used for mining, including extraction of coal, oil, gas or any other mineral or non-mineral substances.

vii. No basements, and no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater, may be constructed on the Property without the approval of DENR or its successor in function.

viii. The Property shall not be used for residential or day care purposes, or for schools, without the approval of DENR or its successor in function.

ix. During January of each year after this Agreement becomes effective, the owner(s) of each portion of the Property shall submit a notarized Land Use Restrictions Update to DENR certifying that the Notice of Brownfields Property containing the land use restrictions set forth above in this paragraph remains recorded at the Mecklenburg County Register of Deeds office, that the land use restrictions are being complied with, and that all paved and gravel surfaces and the building slab at the Property remain in place and are being maintained such that they continue to function as impervious caps.

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

c. The guidelines, including parameters, principles and policies, within which the desired results are to be accomplished are those embodied in the current version of the *Guidelines*

for Assessment and Cleanup of the Inactive Hazardous Sites Branch of DENR's Superfund Section.

d. The consequences of achieving or not achieving the desired results will be a site that is suitable or is not suitable for the uses specified in the Agreement while fully protecting public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

11. Commencing upon the effective date of this Agreement Prospective Developer agrees to provide to DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by the Prospective Developer, for the purposes of performing or overseeing response actions at the Property under applicable law. DENR agrees to provide reasonable notice to the Prospective Developer of the timing of response actions to be undertaken 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.

12. 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. 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 Mecklenburg County, North Carolina register of deeds' office, and within three days thereafter

shall furnish DENR a copy containing a certification by the register of deeds that the Notice has been recorded and the book and page number where recorded.

13. 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 Mecklenburg 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.

14. The Prospective Developer shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. 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, Section V (Work to be Performed) and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

VII. DUE CARE/COOPERATION

15. 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 recognizes that remediation at the Property may interfere with the Prospective Developer's use of the Property, and may require closure of its operations or

a part thereof. 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. DENR agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Prospective Developer's operations by 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 143-215.84, 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

16. 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 Letter of Intent dated February 20, 2002 by which it applied for this Agreement. That use is as a parking area for the nightclub and uptown events. 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. If DENR determines that certifications provided by Prospective Developer have been violated, or that information provided by Prospective Developer

is not materially accurate and complete, the Agreement, within the sole discretion of DENR, shall be null and void and DENR reserves all rights it may have, including the right to compel remediation of the Property to current standards by Prospective Developer pursuant to the following paragraph.

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

17. The Prospective Developer shall only be liable to the Department for remediation of the Property as specified in this Agreement, and not for remediation of the Property to current standards, unless:

- 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.
- 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.
- 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 current 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.

18. 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 of Chapter 143 of the General Statutes.

19. This Agreement does not waive any applicable requirement to obtain a permit, license or certification.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

20. 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 the Property or this Agreement, including but not limited to, any claims arising out of response activities at the Property, including claims based on DENR's oversight of such activities or approval of plans for such activities.

XI. PARTIES BOUND/TRANSFER OF COVENANT

21. 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.

22. No later than fourteen (14) days prior to any transfer or assignment by Prospective Developer of any interest in the Property, Prospective Developer shall provide in writing to DENR the transferee or assignee's name, mailing address, telephone and facsimile numbers, and e-mail address.

XII. DISCLAIMER

23. 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.

XIII. DOCUMENT RETENTION

24. 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 years following the effective date of this Agreement or until Prospective Developer's completion of the work to be performed at the Property to the satisfaction of DENR, whichever is longer, unless otherwise agreed to in writing by the Parties. At the end of six 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

25. 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

26. Unless otherwise required by DENR, all notices and submissions pursuant to this Agreement may be sent by prepaid first class U.S. mail, as follows:

a. for DENR:

Ms. Carolyn Minnich
Brownfields Project Manager
Division of Waste Management
NCDENR
401 Oberlin Road, Suite 150
Raleigh, NC 27605

b. for Prospective Developer:

Mr. John M. Mancino
M&J Equities, LLC
3623 Knapdale Lane
Charlotte, NC 28226

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

27. The effective date of this Agreement shall be the earlier of the third day after DENR sends notice to Prospective Developer by prepaid first class U.S. mail, or the day DENR notifies Prospective Developer by facsimile, if DENR does so, that DENR has fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION OF CERTAIN PROVISIONS

28. 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

29. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, the Parties hereto agree that the 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.

30. 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.

31. 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

32. This Agreement shall be subject to a sixty-day public comment period dating from 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 the North Carolina Register or a newspaper of general circulation serving the area in which the Property is located, whichever shall occur later. 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:

Linda M. Culpepper January 13, 2004
Linda M. Culpepper, Date
Deputy Director, Division of Waste Management

IT IS SO AGREED:

M&J Equities, LLC

By:

John S. Mancino 1/20/04
John S. Mancino - President Date
Name typed or printed:
Title typed or printed:

EXHIBIT "C"

BEING all of Lots 1 and 2 of M & J EQUITIES, LLC PROPERTY, MAP 1, as same is shown on map thereof recorded in Map Book 38 at Page 367 in the Mecklenburg County Public Registry.

MECKLENBURG CO REG OF DEEDS
720 EAST FOURTH STREET
CHARLOTTE, NC 28202
(704)336-2443

ISSUED TO: W CHRIS PARNELL PA

RECEIPT # 620342
DATE 02/03/2004

TIME	BOOK	PAGE	FEE
11:09 AM	41	37	2004024883
MAP			21.00

=====
Total Amount Due \$21.00

CHECK 7231 21.00

=====
Total Payments: \$21.00

THANK YOU
JUDITH A. GIBSON
REGISTER OF DEEDS
Deputy: DREHEEM

MECKLENBURG CO REG OF DEEDS
720 EAST FOURTH STREET
CHARLOTTE, NC 28202
(704)336-2443

ISSUED TO: W CHRIS PARNELL PA

RECEIPT # 620339
DATE 02/03/2004

TIME	BOOK	PAGE	FEE
11:07 AM	16737	54	2004024879
NOTICE OF INTENT			89.00

=====
Total Amount Due \$89.00

CHECK 7230 89.00

=====
Total Payments: \$89.00

THANK YOU
JUDITH A. GIBSON
REGISTER OF DEEDS
Deputy: DREHEEM