

# VAN BUREN LAW, PLLC

ENCLOSURE MEMORANDUM



VIA EMAIL & CERTIFIED MAIL

TO: Ms. Shirley Liggins  
NCDENR  
1646 Mail Service Center  
Raleigh, NC 27699-1646

DATE: January 31, 2013

RE: Mitchells's Formal Wear, 125 Scaleybark Road, Charlotte, NC;  
Brownfields Project # 09013-05-60 (the "Property")

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Please find enclosed a Land Use Restriction Update for the Property for 2013.

By:

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Carol Jones Van Buren, Esq.

Cc: Ms. Carolyn Minnich (via email only)(w/ encl)  
Mr. Ian Bruce (via email only)(w/ encl)  
Mr. Brian Bennett (via email only)(w/ encl)

**Brownfields Project #:** 09013-05-60

**Brownfields Property:** Mitchell's Formal Wear, 125 Scaleybark Road, Charlotte, NC

**Property Owner (In whole or part):** Crosland Greens, LLC

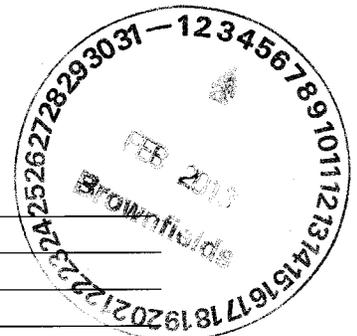
**LAND USE RESTRICTIONS ("LUR") UPDATE**

LUR 1: Without prior written Department of Environment and Natural Resources' ("DENR") approval, no use may be made of the Brownfields Property other than for multi-family residential purposes, office and library purposes, grocery and other retail purposes, restaurant purposes, greenspace (assuming compliance with LUR 5 below), and related stormwater management structures, streets, parking and roadways. Within the meaning of this restriction, the following definitions apply:

- a. "Retail" refers to the sale of goods or services directly to the consumer.
- b. "Office" refers to the provision or rendering of business or professional services.
- c. "Multi-family residential" refers to duplexes, triplexes or larger multiplexes, condominiums, town homes, apartments or other structures containing multiple units used as permanent human dwellings.
- d. "Greenspace" refers to open and unobstructed land used for recreation, amenities or buffers, including areas improved for active or passive recreation.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



LUR 2: No building on the Brownfields Property may be constructed, nor may any building depicted on the plat component of the Notice of Brownfields Property ("Notice") be upfitted, renovated or remodeled until DENR has been consulted regarding the proximity of the planned building to the Brownfields Property's volatile contaminant plume. If DENR determines that the footprint of any building proposed to be constructed would fall within 100 feet of said plume, it may not be constructed without:

- a. a vapor barrier system and/or mechanical or passive vapor mitigation system approved in writing in advance by DENR, within 30 days after

installation of which DENR shall be provided certification of proper installation under seal of a professional engineer licensed in North Carolina, as well as photographs illustrating the installation and a brief narrative describing it; or

- b. an assessment of the risk posed by soil gas to potential users of the building that demonstrates to DENR's written satisfaction that no vapor measures are required.

In compliance  Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 3: Neither surface water, other than in connection with legally compliant stormwater collection and reuse techniques, nor groundwater at the Brownfields Property may be used for any purpose without the prior written approval of DENR.

In compliance  Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 4: Soil within the area denominated "Area of Possible Soil Contamination" on the plat component of the Notice may not be disturbed unless DENR has been given a minimum of seven (7) business days written notice (unless a shorter period is agreed to in writing in advance by DENR) and approved in writing a plan, including a health and safety component, for the work in connection with which soil is proposed to be disturbed, unless DENR states otherwise in writing in advance in regard to particular soil-disturbing work. Other than the notice requirement, this restriction does not apply to soil disturbed in connection with environmental assessment or remedial work performed or authorized by DENR. Further, unless DENR agrees otherwise in writing in advance, no such platted area may be put to:

- a. office or other commercial use, unless and until the proponent of such use demonstrates to DENR's written satisfaction that concentrations of tetrachloroethylene ("PCE") in the area's soil do not exceed:
  - i. 2.7 parts per million to a depth of two (2) feet, and
  - ii. 8.25 parts per million from a depth of two (2) feet to a depth to be determined by DENR that shall not exceed 15 feet below grade. Provided, however, this subparagraph 15.d.i. does not apply to current commercial and office uses in any existing building within the Area of Possible Soil Contamination shown on the on the plat component of the Notice.
  
- b. multi-family residential use, unless and until the proponent of such use demonstrates to DENR's written satisfaction that concentrations of PCE in the area's soil do not exceed:
  - i. 0.57 parts per million to a depth of two (2) feet and
  - ii. 8.25 parts per million from a depth of two (2) feet to a depth to be determined by DENR that shall not exceed 15 feet below grade.

In addition to any sampling required to make the above-required demonstrations, prior to or while soil is disturbed in an affected area DENR may inspect and sample, or require sampling of, the disturbed soil for contaminants other than PCE.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

LUR 5: Except for mowing and pruning aboveground vegetation, no landscaping of the areas denominated "Area of Possible Soil Contamination" on the plat component of the Notice may occur, nor may such areas be used for greenspace, without DENR's prior written approval on such conditions as DENR imposes, including at a minimum the following:

- a. three (3) feet of clean fill, or another cover approved in writing in advance by DENR, shall be placed to DENR's written satisfaction on the area to be landscaped or used for greenspace; and

- b. soil in landscaped or greenspace areas shall be maintained to DENR's satisfaction and shall remain undisturbed absent DENR's prior written approval.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 8: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Tables A and B above, may be used or stored at the Brownfields Property without the prior written approval of DENR, except:

- a. in *de minimis* amounts for cleaning and other routine housekeeping activities;
- b. as constituents of fuels and oils in emergency generators and other machinery, equipment and vehicles; and
- c. with respect to any portions of the Brownfields Property used for office or commercial purposes, as constituents of products customarily offered for sale in retail grocery stores, home improvement stores, hobby stores, retail paint and wall paper stores, and similar businesses that typically operate in mixed use developments, or customarily used and stored in office and commercial environments (for example, fluids in copying machines and office supplies), so long as such products are stored, used and disposed of in compliance with all applicable laws and regulations.
- d. with respect to any portions of the Brownfields Property used for multi-family residential purposes, as constituents of products customarily used and stored in multi-family residential environments so long as such products are stored, used and disposed of in compliance with all applicable laws and regulations.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 9: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 10: The Brownfields Property may not be used for horse-riding without advance written DENR approval.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 11: The owner of any portion of the Brownfields Property where any existing or later DENR-approved monitoring well is damaged shall be responsible for repair of such well(s) to DENR's written satisfaction and within a time period acceptable to DENR.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 12: No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to notify at least one (1) owner of the Brownfields Property and minimize interference with authorized uses of the Brownfields Property. This provision shall not render unenforceable any agreements regarding access to the Brownfields Property on the part of the North Carolina Dry-Cleaning Solvent Cleanup Act Program.

In compliance  Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 13: During January of each year after the year in which the Notice is recorded, the owner of any part of the Brownfields Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Mecklenburg County Register of Deeds office, the land use restrictions are being complied with, that any clean fill or other cover installed pursuant to LUR 5 above is being properly maintained, and stating:

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

Crosland Greens, LLC continues to own the Brownfields Property.

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

N/A

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- c. whether any vapor measures installed pursuant to LUR 2 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.

No vapor measures pursuant to LUR 2 have been installed on the Brownfields Property to date.

For purposes of the portions of the Brownfields Property in multi-family residential use, “owner” shall mean a duly constituted owners’ association.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_

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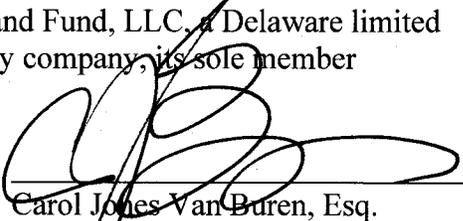
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Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that the Notice remains recorded at the Mecklenburg County Register of Deeds office and that the Land Use Restrictions are being complied with.

This Land Use Restrictions Update is certified by Crosland Greens, LLC, owner of at least part of the Brownfields Property.

CROSLAND GREENS, LLC, a North Carolina limited liability company

By: C – Land Fund, LLC, a Delaware limited liability company, its sole member

By:   
Name: Carol Jones Van Buren, Esq.  
Title: Signing as Attorney-In Fact for C-Land Fund, LLC

North Carolina  
Mecklenburg COUNTY

I, Theresa M. Bowles, a Notary Public of the county and state aforesaid, certify that Carol Jones Van Buren, Esq. personally came before me this day and acknowledged that he/she is the Attorney-In-Fact for C-Land Fund, LLC, a Delaware limited liability company, which is the sole member of Crosland Greens, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this 30 day of January, 2013.

Theresa M. Bowles

Name typed or printed:  
Notary Public

My Commission expires: 5-18-2016

[Stamp/Seal]

