WISHART NORRIS
HENNINGER & PITTMAN
ATTORNEYS AT LAW

CELESTE M. ADAMS
celeste.adams@wnhplaw.com

704-716-5223 (Direct)

ENCLOSURE MEMO

VIA OVERNIGHT DELIVERY

TO: David Peacock
Brownfields Program, NC Division of Waste Management

FROM: Celeste M. Adams, NCCP

DATE: January 24, 2013

RE: Brownfields Project No. 06016-02-60
Property: Radiator Specialty, 2001 Suttle Avenue
Owner: APS Wilkinson Properties, LLC

Enclosed on behalf of APS Wilkinson Properties, LLC is the fully completed, signed and notarized Land Use Restrictions Update dated January 17, 2013, for Brownfields Project No. 06016-02-60.

6832 Morrison Blvd., Charlotte, North Carolina 28211 Tel. 704.364.0010, Fax.704.364.0569
312 S. Church Street, P.O. Box 1998, Burlington, North Carolina 27216-1998 Tel. 336.584.3388 Fax. 336.584.5993

Brownfields Project #: 06016-02-60
Brownfields Property: Radiator Specialty, 2001 Suttle Avenue
Property Owner (In whole or part): APS WILKINSON PROPERTIES, LLC

LAND USE RESTRICTIONS ("LUR") UPDATE

LUR 1: No use may be made of the Brownfields Property other than for retail, office and other commercial purposes if the Department of Environment and Natural Resources ("DENR") issues prior written approval, and for residential, school, medical and institutional purposes. Unless otherwise approved in writing in advance by DENR, each use may occur only in areas of the Brownfields Property designated for that use on the plat component of the Notice of Brownfields Property ("Notice"), and consistent with LUR 2 and 3 below. For purposes of this restriction, the following definitions apply:

a. "Retail" refers to the sale of goods, products, or merchandise directly to the consumer.

b. "Office" refers to the rendering of business or professional services.

c. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

d. "Residential" refers to duplexes, triplexes or quadriplexes, condominia, town homes, apartments or other multifamily structures used as human dwellings. The term does not include single family housing.

e. "School" refers to an institution that provides primary (including pre-kindergarten), secondary, vocational (including adult vocational) or post-secondary education.

f. "Medical" refers to the provision or rendering of goods and services related to the maintenance of human health, including without limitation via hospitals, physicians' offices, diagnostic and treatment centers, and pharmacies.

g. "Institutional" refers to organizations or enterprises engaged in religious, hospital, scientific or charitable endeavors, and can include funds, foundations or corporations organized and operated for religious or other charitable purposes.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 2: No area of exposed soil at the Brownfields Property may be used:

a. unless DENR determines in writing that said area is free of concentrations of polychlorinated biphenyls ("PCBs") in excess of one (1) part per million to a depth of five (5) feet; and

b. unless DENR determines in writing that said area is free of concentrations of PCBs in excess of 830 parts per million from a depth of five (5) feet to a depth of 14 feet.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 3: No area of the Brownfields Property covered by impervious surface (as defined in Land Use Restriction 6.a. below) may be used unless DENR determines in writing that said area is free of concentrations of PCBs in excess of:

a. 83 parts per million to a depth of five (5) feet; and

b. 830 parts per million from a depth of five (5) feet to a depth of 14 feet.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 4: Except as provided in the Phase II and III Environmental Action Plans for a portion of the Brownfields Property approved by and available from DENR, no building may be constructed on the Brownfields Property 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 a building proposed to be constructed on the Brownfields Property would fall within 100 feet of said plume, it may not be constructed without a vapor barrier system and/or mechanical or passive vapor mitigation system approved in writing by DENR in advance. Within thirty 30 days following installation of the vapor barrier system and/or mechanical or passive vapor mitigation system, 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.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 5: No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Brownfields Property without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results disclose to DENR contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the prior written approval of DENR on such conditions as DENR imposes, including at a minimum compliance with plans and procedures, approved pursuant to applicable law, to protect public health and the environment during the proposed activities.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 6: Soil within the areas denominated "Area of Known 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 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. Soil disturbance in accordance with the Phase II and III Environmental Action Plans for a portion of the Brownfields Property approved by and available from DENR is

hereby authorized. Further, soil disturbance for purposes of this land use restriction shall not include pile driving (the use of mechanical devices to drive wooden, steel or other structural members into soil to provide foundation support for buildings or other structures). While disturbed soil is exposed pursuant to this land use restriction, DENR may inspect and sample, or require sampling of, the disturbed soil for contaminants. The exposed soil shall, to DENR's written satisfaction, be covered with clean fill, an impervious or hard pervious surface, or a combination of clean fill, impervious surface and hard pervious surface, in which case the cover shall be maintained to DENR's satisfaction. Alternatively, the soil may remain exposed if it is demonstrated to DENR's written satisfaction that the Brownfields Property will nevertheless remain suitable for the purposes specified in LUR 1 above. For purposes of this requirement, the following definitions apply.

a. "Impervious surface" means any structure or groundcover consisting of asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or other natural or man-made material, either alone or in combination, that prevents the absorption of surface water into the soil.

b. "Hard pervious surface" means any structure or groundcover that allows absorption of surface water into the soil, but has a hard surface formed or cast in place that protects land users from exposure to potential contaminants in the soil. Pervious concrete and pervious tennis court materials are examples.

c. "Clean Fill" means soil that does not contain contaminants exceeding any Soil Remediation Goals of DENR's Inactive Hazardous Sites Branch, except that such soil may contain up to one (1) part per million of PCBs.

In compliance ✔ Out of compliance ____

Remarks: _____

_____

_____

_____

LUR 7: Except as provided in the Phase II and III Environmental Action Plans for a portion of the Brownfields Property approved by and available from DENR, no portion of the Brownfields Property denominated "Area of Known Contamination" on the plat component of the Notice may be used recreationally (including without limitation for swimming pools, playgrounds and parks) unless it is covered with five (5) feet of clean fill (as defined in LUR 6.c. above) or another cover approved in writing in advance by DENR, or unless it is demonstrated to DENR's written satisfaction in advance that, with less than five (5) feet of such fill, said portion can suitably be used recreationally with public health and the environment fully protected. Grass may not be planted in the

Brownfields Property's "Area of Known Contamination" unless two (2) feet of such fill are placed above it; trees may not be planted in said area unless five (5) feet of such fill are placed above it. Any recreational areas installed on said portion shall be maintained to DENR's satisfaction

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 8: 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 9: 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 10: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Tables A, B1 and B2 of the Notice, may be used or stored at the Brownfields Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities; as constituents of fuel customarily used in vehicles and landscaping equipment; as constituents of products customarily offered for sale in retail

grocery stores, drug stores, photo processing operations, and retail paint and wallpaper stores typically operating in retail shopping centers; and in amounts customarily used as vehicle, emergency generator and landscaping equipment fuel or other fluid; 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 11: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 12: The Brownfields Property may not be used for kennels, private animal pens or horse-riding without the prior written approval of DENR.

In compliance ✔ Out of compliance ____

Remarks: _____

LUR 13: 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.

In compliance ✔ Out of compliance ____

acting as agent for said owners, and that accepts responsibility for compliance with this subparagraph pursuant to a notarized instrument satisfactory to DENR.

In compliance ✔ Out of compliance ____

Remarks: _____

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 **ALAN BLUMENTHAL, MANAGER OF APS WILKINSON PROPERTIES, LLC**, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: **ALAN BLUMENTHAL, MANAGER OF APS WILKINSON PROPERTIES, LLC**

In the case of owners that are entities:

Signature of individual signing: Alan Blumenthal
Name typed or printed: **ALAN BLUMENTHAL**
Title: **MANAGER**

In the case of all owners:

Date: January 17, 2013

[use for LLCs]

APS WILKINSON PROPERTIES, LLC

By: Alan Blumenthal
Name typed or printed: **ALAN BLUMENTHAL**
Member/Manager: **MANAGER**

NORTH CAROLINA
MECKLENBURG COUNTY

I, Vickie L. Kimray, a Notary Public of the county and state aforesaid, certify that **ALAN BLUMENTHAL** personally came before me this day and acknowledged that he/she is MANAGER of APS WILKINSON PROPERITES, 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 17 day of January, 2013.

Vickie L. Kimray
Name typed or printed: Vickie L. Kimray
Notary Public

My Commission expires: July 1, 2014

VICKIE L. KIMRAY
NOTARY PUBLIC - CABARRUS COUNTY
NORTH CAROLINA
My Commission Expires On: 7-01, 2014

[Stamp/Seal]