

October 2, 2012

direct dial 336 607 7304  
direct fax 336 734 2614  
sberlin@kilpatricktownsend.com

**CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Mr. David Peacock  
NC Division of Waste Management  
Brownfields Program  
1646 Mail Service Center  
Raleigh, NC 27699-1646



**RE: NOTICE OF NONCOMPLIANCE  
NORTH CAROLINA BROWNFIELDS PROGRAM  
BROWNFIELDS PROJECT NUMBER 07008-03-41  
ANNUAL LAND USE RESTRICTIONS UPDATE  
4925 W. MARKET STREET, GREENSBORO, GUILFORD COUNTY, NC**

Dear Mr. Peacock:

The enclosed Land Use Restrictions Update (LURU) for Brownfields Project Number 07008-03-41 is hereby submitted in response to the September 7, 2012 Notice of Noncompliance issued to Kim's Greensboro Real Estate, LLC by the North Carolina Department of Environment and Natural Resources (NCDENR). The enclosed LURU was prepared in accordance with the instructions stated in your e-mail to Rick Reich of this office dated September 18, 2012. A copy of that e-mail is also enclosed.

Please let me know if anything more is required by the Brownfields Program regarding this matter.

Sincerely,

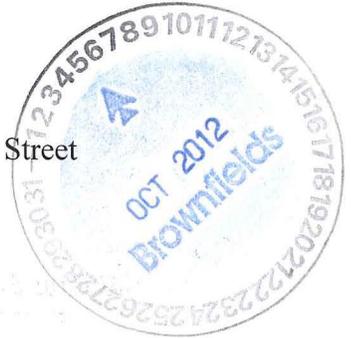
Stephen R. Berlin

Enclosures  
cc: Mr. Chong K. Kim

**Brownfields Project #:** 07008-03-41

**Brownfields Property:** Guilford Mills – W. Market St., 4925 West Market Street

**Property Owner (In whole or part):** Kim's Greensboro Real Estate, LLC



**LAND USE RESTRICTIONS (“LUR”) UPDATE**

LUR 1: No use may be made of the Brownfields Property other than commercial use consisting of retail establishments, including restaurants and other service businesses, indoor recreational and festival space, office condominiums and warehousing. As defined herein, “commercial use” means an occupation, employment, or enterprise carried on for profit by the owner, lessee, or licensee; “retail” refers to an activity the principal use or purpose of which is the sale of goods, products, or merchandise directly to the consumer; and “indoor recreational and festival” refers to any type of indoor recreational use (e.g., basketball, dodge ball and other athletic games, bingo and other non-athletic games, club meetings) or indoor festival use, which may include food and beverage service. These activities occur in buildings and are operated on a commercial or membership basis.

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

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 2: Surface water and underground water at the Brownfields Property may not be used for any purpose without the approval of the Department of Environment and Natural Resources (“DENR”).

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

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 3: 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 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 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: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 4: Soil underlying, and within 100 feet of, buildings and paved surfaces appearing on the plat component of the Notice of Brownfields Property ("Notice") referenced in paragraph 23 of the Brownfields Agreement ("Agreement") may not be exposed without a minimum of five (5) business days advance written notice to DENR, unless DENR states otherwise in writing. At the time such soil is exposed, DENR may inspect and sample, or require sampling of, the exposed soil for contaminants. If soil contamination is discovered that DENR determines would likely contaminate groundwater even if capped, or that may pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law, and any other actions that DENR reasonably requires to make the Brownfields Property suitable for the uses specified in the Agreement while fully protecting public health and the environment shall be taken. If soil contamination is discovered that DENR determines would not contaminate groundwater if capped or likely pose an imminent threat to public health or the environment if exposed, but would make the Brownfields Property unsuitable for the uses specified in land use restriction 1 above, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law or capped to the satisfaction of DENR.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 5: Soil, landscaping and contours at the Brownfields Property may not be disturbed without the approval of DENR, except in connection with mowing and pruning of above-ground vegetation and replacement in the same location of landscaping plants, bushes or trees in the same area. Such approval shall not be unreasonably withheld.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 6: Unless compliance with this land use restriction is waived in writing by DENR in advance in regard to particular buildings, no indoor space on the Brownfields Property may be occupied until mechanical ventilation with outdoor air is provided in compliance with the most current version of the Mechanical Ventilation section of the Ventilation chapter of the North Carolina State Building Code (“Code”), the most current EPA guidance on radon-resistant techniques for new residential construction, or another standard approved in writing in advance by DENR. If the choice is made to comply with the Code, then i. or ii. below, as applicable, also applies.

- a. This subparagraph applies to buildings on the Brownfields Property that already possess mechanical ventilation systems.
  - i. A professional engineer registered in North Carolina shall inspect the mechanical ventilation system and shall document any measures required to bring the system into compliance with the Code.
  - ii. A heating, ventilation and air-conditioning contractor shall implement any measures documented by the professional engineer.
  - iii. A party other than the heating, ventilation and air-conditioning contractor, who is certified by the American Association of Balancing Contractors or the National Environmental Balancing Bureau, shall perform testing, adjusting and balancing of the system when any work by the contractor is complete. Within seven (7) days after its issuance, a copy of the Certified Test and Balance Report shall be submitted to DENR.
  - iv. The professional engineer shall provide DENR certification under seal that all reasonable efforts have been made to seal all possible entrances for contaminant vapors that would, as determined by DENR, render the Brownfields Property unsuitable for the uses specified in this Agreement, including without limitation foundation cracks, holes in concrete floors, gaps around pipes and utility lines, major cracks in walls, sumps and floor drains, and that the ventilation system complies with the Code.
- b. As to new buildings constructed on the Brownfields Property and any existing buildings lacking mechanical ventilation, within thirty (30) days following installation of mechanical ventilation, that fact shall be confirmed in writing to DENR.

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

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 7: No construction may occur on the Brownfields Property until DENR has been consulted regarding proximity of the planned building to the Brownfields Property's volatile contaminant plume. If DENR determines that the building's footprint would fall within two hundred (200) feet of said plume, a vapor barrier, at least four (4) millimeters thick and consisting of a material resistant to the contaminants listed in paragraph 7 of the Agreement shall be installed under the entire slab-on-grade foundation of the building. The vapor barrier shall be sealed around any vertical pilings and other support structures underneath the slab, and overlapped and taped, or otherwise stabilized, so as to minimize air migration pathways. A spray membrane liner system consisting of a material resistant to the same contaminants may be installed in lieu of a vapor barrier. Within thirty (30) days following installation of the vapor barrier or spray membrane liner system, DENR shall be provided the certification under seal of a professional engineer registered in North Carolina that the installation has been proper, as well as photographs illustrating the installation and a brief narrative describing it.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

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: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 9: No basements may be constructed on the Brownfields Property unless they are, as determined by DENR, vented in conformance with applicable building codes.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 10: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in paragraph 10 of the Agreement, may be used or stored at the Brownfields Property without the prior approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 11: The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the approval of DENR.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 12: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 13: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance  Out of compliance

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 14: The Brownfields Property may not be used for kennels, private animal pens or horse-riding.

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

Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

LUR 15: During January of each year after the Agreement becomes effective, the then current owner of any part of the Brownfields Property shall submit a notarized Land Use Restrictions Update to DENR certifying that the Notice containing these land use restrictions remains recorded at the Guilford County Register of Deeds office, and that the land use restrictions are being complied with.

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

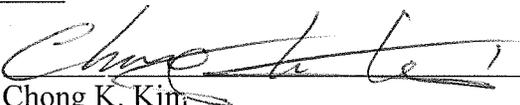
Remarks: **Kim's Greensboro Real Estate, LLC confirms compliance with the recorded Notice of Brownfields Property/Brownfields Agreement for the missing January 2011 Land Use Restriction Update.**

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

This Land Use Restrictions Update is certified by Kim's Greensboro Real Estate, LLC, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: Kim's Greensboro Real Estate, LLC

In the case of owners that are entities:

Signature of individual signing:   
Name typed or printed: Chong K. Kim  
Title: Member

In the case of all owners:

Date: 9-27-2012

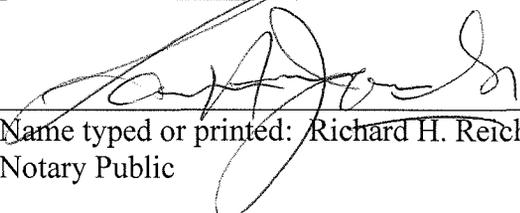
**KIM'S GREENSBORO REAL ESTATE, LLC**

By:   
Name typed or printed: Chong K. Kim  
Member/Manager

NORTH CAROLINA  
FORSYTH COUNTY

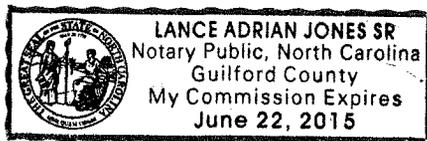
I, Richard H. Reich, a Notary Public of the county and state aforesaid, certify that Chong K . Kim personally came before me this day and acknowledged that he is a Member of Kim's Greensboro Real Estate, LLC, a North Carolina limited liability company, and its Manager, and that by authority duly given and as the act of the company, the foregoing Land Use Restriction Update was signed in its name by him.

WITNESS my hand and official stamp or seal, this 27 day of SEPT, 2012.

  
Name typed or printed: Richard H. Reich *Lance*  
Notary Public *ADRIAN*  
*JONES SR*

My Commission expires: \_\_\_\_\_

[Stamp/Seal]



## Reich, Rick

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**From:** Peacock, David <david.peacock@ncdenr.gov>  
**Sent:** Tuesday, September 18, 2012 10:10 AM  
**To:** Reich, Rick  
**Subject:** NC Brownfields - Guilford Mills W. Market (#07008-03-41)  
**Attachments:** Guilford Mills - W. Market LURU Model.doc

Mr. Rick Reich  
Kilpatrick Townsend & Stockton LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101-2400

Mr. Reich:

Thank you for contacting me today concerning the subject brownfields site. I have attached the LURU form as requested.

Our records indicate that the last submitted LURU for this brownfields was on Feb. 1, 2010. These LURUs are due every January. Therefore, I request that a statement of whether or not the current owner of the brownfields has complied with the recorded NBP/BFA for the missed January 2011 LURU. Please add any other appropriate comments in the areas provided on the form.

If I can be of further assistance, please let me know.

Sincerely,

David Peacock  
**Brownfields Program**  
NC Division of Waste Management  
Mail Service Center 1646  
Raleigh, NC 27699-1646  
(910)796-7401 : (919)280-3408 cell  
[david.peacock@ncdenr.gov](mailto:david.peacock@ncdenr.gov)  
<http://portal.ncdenr.org/web/wm/bf>

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