CITY OF ROCKY MOUNT
NORTH CAROLINA

OFFICE OF
THE CITY MANAGER

January 23, 2013

Division of Waste Management
Brownfields Program
1646 Mail Service Center
Raleigh, NC 27699-1646
Attn: Land Use Restriction Update

Subject: Imperial Centre
Rocky Mount, Nash County
Brownfields Project Number 08018-04-64

Ladies and Gentlemen:

Enclosed is the annual certification of compliance with land use restrictions in our Brownfields Agreement for the Imperial Centre.

If you have questions, please call me at (252) 972-1329 or email ann.wall@rockymountnc.gov.

Sincerely,

Ann E. Wall
Assistant City Manager

cjw

Enclosure

331 South Franklin Street • Post Office Box 1180 • Rocky Mount, North Carolina 27802-1180
Telephone (252) 972-1325 • Fax (252) 972-1173 • *Website: www.rockymountnc.gov*

Brownfields Project #: 08018-04-64
Brownfields Property: Cultural Arts Center, 270 Gay Street & 344 Falls Road
Property Owner (In whole or part): Imperial Centre Partners, LP

FEB 2013 Brownfields

LAND USE RESTRICTIONS ("LUR") UPDATE

LUR 1: No use may be made of the Brownfields Property other than for institutional purposes. As long as Prospective Developer operates a cultural arts center on the Brownfields Property, it may also operate a related restaurant and gift shop there. The following definitions apply herein in connection with the foregoing uses:

a. Institutional: use of land or structures for a public, non- profit or quasi-public purpose, such as church, library, school, museum, art center, theater, hospital or government-owned or -operated building.

b. Impervious: prevents the absorption of surface water into the soil.

c. Hard Pervious: 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 any contaminants in the underlying soil. Pervious concrete and pervious tennis court materials are examples of hard pervious surfaces.

In compliance ✓ Out of compliance ____

Remarks: _____

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 ✓ Out of compliance ____

Remarks: _____

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 reasonably 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 4: Soil underlying paved and other impervious or hard pervious surfaces and buildings at the Brownfields Property, as identified as on the plat component of this Notice, may not be exposed, and soil anywhere on the Brownfields Property exhibiting any stain or odor may not be disturbed, without prior sampling and analysis to DENR's reasonable satisfaction as expressed in writing of soil proposed to be exposed or disturbed. If sampling results disclose contamination that DENR determines renders the Brownfields Property unsuitable for the uses specified in Land Use Restriction 1 above, the soil may only be exposed or disturbed in conformance with plans and procedures designed to protect public health and the environment while the soil is exposed or disturbed, and if as much soil as DENR requires is removed and disposed of in accordance with applicable law, or covered with an impervious or hard pervious surface, in which case the cover shall be maintained in good repair. Information satisfactory to DENR regarding the transportation and disposition of any soil removed from the Brownfields Property must be supplied in a letter report to DENR within ninety (90) days following removal.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 5: The impervious or hard pervious surface covering the "north and south garage area" and the adjacent "coal bin area," as denominated on the plat component of the Notice of Brownfields Property ("Notice"), shall not be removed without the prior written approval of DENR. The impervious or hard pervious surfaces shall be inspected annually and the findings reported to DENR as required by Land Use Restriction 12 below.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 6: Soil, landscaping and contours at the Brownfields Property may not be disturbed without the approval of DENR, except for mowing and pruning of above-ground vegetation.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 7: 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 8: 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: _____

LUR 9: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in tables (2)(a) and (b) of the Notice, 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: _____

LUR 10: The Brownfields Property may not be used 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: _____

LUR 11: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance ✓ Out of compliance ____

Remarks: _____

LUR 12: During January of each year after the Brownfields 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 remains recorded at the Nash County Register of Deeds office, that these Land Use Restrictions are being complied with, and that impervious and hard pervious surfaces at the

Brownfields Property are being maintained such that they are continuing to function as caps. The latter certification shall be accompanied by a written report of the findings of the annual inspection required by Land Use Restriction 5 above.

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 Nash County Register of Deeds office and that the Land Use Restrictions are being complied with.

This Land Use Restrictions Update is certified by John B. Kincheloe, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: John B. Kincheloe

In the case of owners that are entities:

Signature of individual signing: [signature]
Name typed or printed: John B. Kincheloe
Title: Manager

In the case of all owners:

Date: 2-7-13

Imperial Centre Partners, LP

By: _____

Name typed or printed: John B. Kincheloe
General Partner

NORTH CAROLINA
NASH COUNTY

I, Charlean J. Wilkins, a Notary Public of the county and state aforesaid, certify that John B. Kincheloe personally came before me this day and acknowledged that he is a General Partner of Imperial Centre Partners, LP, a North Carolina Partnership, and that by authority duly given and as the act of the partnership, the foregoing Land Use Restriction Update was signed in its name by him.

WITNESS my hand and official stamp or seal, this 7th day of February, 2013.

Charlean J. Wilkins

Name typed or printed: Charlean J. Wilkins
Notary Public

My Commission expires: Dec. 14, ~~2017~~ 2014 CW

CHARLEAN J. WILKINS
NOTARY PUBLIC
NASH COUNTY, N.C.

[Stamp/Seal]

REPORT OF FINDINGS OF ANNUAL INSPECTION
OF IMPERIAL CENTRE PROPERTY
BROWNFIELDS PROJECT NO. 08018-04-64

This is to certify that the undersigned inspected the impervious and hard pervious areas around the north and south garage area and the adjacent coal bin area as shown on the Brownfields Agreement plat on January 3, 2012 and found these areas undisturbed and in the same condition as they were in January 2006 when the Imperial Centre renovation was completed.

Ann E. Wall, Assistant City Manager

NORTH CAROLINA
NASH COUNTY

I, Charlean J. Wilkins, a Notary Public of the County and State aforesaid, certify that Ann E. Wall personally came before me this day and acknowledged that she is an Assistant City Manager for the City of Rocky Mount and that the foregoing certification was signed by her.

WITNESS my hand and official stamp or seal this 7th day of February, 2013.

Charlean J. Wilkins

My Commission expires: December 17, 2014.

CHARLEAN J. WILKINS
NOTARY PUBLIC
NASH COUNTY, N.C.