



January 31, 2014



NC Dept. of Environmental and Natural Resources  
Div. of Waste Management – Brownfields Program  
1646 Mail Service Center  
Raleigh, NC 27699-1646

**City Attorney's Office**

City of Winston-Salem  
P.O. Box 2511  
Winston-Salem, NC 27102  
CityLink 311 (336.727.8000)  
Fax 336.748.3816  
[www.cityofws.org](http://www.cityofws.org)

*Sent via First Class Mail and Electronic Mail*

Re: Annual land Use Restrictions Update  
Hanesbrands Theatre  
201 North Spruce Street  
Winston-Salem, Forsyth County  
Brownfields Project Number 12034-08-34

To Whom It May Concern:

Attached please find a completed Land Use Restrictions update (the, "LURU") for the above referenced site. The LURU has been certified by the North Carolina Municipal Leasing Corporation, which is the owner of the subject site. The owner has leased, and continues to lease, the subject site to The Arts Council, Inc., the developer of the site, and has not been, nor is, currently in possession of the site, either before or after development of the site. Consequently, the owner, in submitting the required certification, has relied upon information submitted by the developer via the attached affidavit.

Should you have any question, please do not hesitate to call me at 336-747-7406 or email me at [deronh@cityofws.org](mailto:deronh@cityofws.org).

Sincerely,

Deron K. Henry  
Assistant City Attorney

- cc: Minor Barnette, Director  
Forsyth County Department of Environmental Assistance Protection
- Bob Whitmwam, Director  
Forsyth County Department of Environmental Health
- Marlon Hunter, Director  
Forsyth County Department of Public Health



Call 311 or 336-727-8000  
[citylink@cityofws.org](mailto:citylink@cityofws.org)

## AFFIDAVIT

**I, RICHARD EMMET**, being duly sworn hereby deposes and says:

1. I am the Chief Operating Officer of The Arts Council, Inc., a North Carolina non-profit incorporation.
2. I am fully authorized to make the declarations contained herein and to legally bind The Arts Council, Inc.
3. I hereby certify compliance with all the following Land Use Restrictions ("LUR") for Brownfields Project Number 12034-08-34, Hanesbrands Theatre, 201 North Spruce Street, Winston-Salem, Forsyth County, North Carolina:

**LUR 1:** No use may be made of the Brownfield Property other than for a multi-purpose event venue, which can be configured to include a 300-seat theater and associated practice rooms, classrooms, and office space, and that hosts events, including, but not limited to, theater, music, and dance performances, film screenings, worships, parties, fundraisers, lectures, and readings,

**LUR 2:** No building may be constructed on the Brownfields Property until the Department of Environment and Natural Resources ("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 the proposed building 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, by DENR, in advance, within 30 days after installation of which DENR shall be provided a certification of proper installation, under seal of a professional engineer, licensed in North Carolina, as well as photographs of 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 neither a vapor barrier nor a mitigation system is required.

**LUR 3:** Neither groundwater nor surface water at the Brownfields Property may be used, contacted, or removed, unless any sampling DENR requires has been conducted, and any actions DENR requires, as a consequence of the sampling results, have been taken, to ensure the Brownfields Property is suitable for the uses specified in Land Use Restriction #1, above, and the public health and the environment are fully protected. Such actions may include the capping or treatment of soil in situ and/or disposal of the soil off-site.

**LUR 4:** Soil on the Brownfields Property, at depths greater than 15 feet below ground surface may not be disturbed, unless any sampling that DENR requires has been conducted, and any actions DENR requires as a consequence of the sampling results have been taken to ensure the Brownfields Property is suitable for the uses specified in Land Use Restriction #1, above, and

the public health and the environment are fully protected. Such actions may include the capping or treatment of soil in situ and/or disposal of the soil off-site

**LUR 5:** No mining may be conducted on or under the Brownfields Property, including, but not limited to, the extraction of coal, oil, gas, or any other minerals or non-minerals substances.

**LUR 6:** No basements may be constructed on the Brownfields Property, unless they are vested in conformance with applicable building codes, as determined, in writing, by DENR.

**LUR 7:** None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in the contamination tables in the Notice of Brownfields Property ("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.

**LUR 8:** The Brownfields Property may not be used as a playground, or for child care centers or schools.

**LUR 9:** The owner of any portion of the Brownfields Property where any existing, or later-installed, DENR-approved monitoring well is damaged shall be responsible for repair of any such wells, to DENR's written satisfaction, and within a time period acceptable to DENR.

**LUR 10:** Neither DENR nor any party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to, a permit, order, or agreement issued, or entered into by, DENR, may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation, which assessment and remediation are to be conducted using reasonable efforts to minimize interference with authorized uses of the Brownfields Property.

**LUR 11:** During January of each year after 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, and to the chief public health and environmental officials of Forsyth County, North Carolina, certifying that as of January 1<sup>st</sup>, the Notice remains recorded at the Forsyth County Register of Deeds Office, and that the Land Use Restrictions are being complied with, and stating:

a. The name, mailing address, e-mail addresses, telephone numbers, and facsimile numbers of the owner submitting the LURU, if said owner acquired any part of the Brownfields Property during the previous calendar year, insert information here: **Not Applicable**.

b. The transferee's name, mailing address, e-mail addresses, telephone numbers, and facsimile numbers, if said owner transferred any part of the Brownfields Property during the previous calendar year, insert information: **Not Applicable**.

c. Whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction #2, above, are performing as designed, and whether the uses of the ground floors or any buildings containing such vapor barrier and/or mitigation systems have changed and, if so, how.

Yes, installed mitigation system is performing as designed.

There have been no changes in the use of the ground floors of the building containing the mitigation system.

Affiant, further saith not.

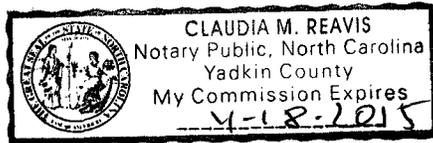
[Signature] / RICHARD EMMET 1/31/14  
Signature/Printed Name Date

NORTH CAROLINA,  
FORSYTH COUNTY

I, Claudia M. Reavis a Notary Public of the County and State aforesaid, certify that Richard Emmet, Chief Operating Officer of The Arts Council, Inc., personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 31<sup>st</sup> day of January, 2014.

[Signature]

My Commission expires: 4-18-2015 Notary Public



**Brownfields Project #:** 12034-08-34  
**Brownfields Property:** Hanesbrands Theatre, 201 N. Spruce Street  
**Property Owner (In whole or part):** North Carolina Municipal Leasing Corporation



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

LUR 1: No use may be made of the Brownfields Property other than for a multi-purpose event venue which can be configured to include a 300-seat theater, and associated practice rooms, classrooms, and office space, that hosts events including but not limited to theater, music and dance performances, film screenings, workshops, parties, fundraisers, lectures and readings.

In compliance  Out of compliance

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

LUR 2: 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 the Department of Environment and Natural Resources ("DENR") determines that the footprint of the proposed building 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 by DENR in advance, within 30 days after installation of which 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; 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 barrier nor mitigation system is required.

In compliance  Out of compliance

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

LUR 3: Neither groundwater nor surface water at the Brownfields Property may be used, contacted or removed unless any sampling DENR requires has been conducted, and any actions DENR requires have been taken based on the sampling results, to ensure the Brownfields Property is suitable for the uses specified in Land Use Restriction 1 above and public health and the environment are fully protected. Such actions may include the capping or treatment of soil *in situ* and/or disposal of soil off-site.

In compliance  Out of compliance

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

LUR 4: Soil on the Brownfields Property at depths greater than 15 feet below ground surface may not be disturbed unless any sampling DENR requires has been conducted, and any actions DENR requires have been taken based on the sampling results, to ensure the Brownfields Property is suitable for the uses specified in Land Use Restriction 1 above and public health and the environment are fully protected. Such actions may include the capping or treatment of soil *in situ* and/or disposal of soil off-site.

In compliance  Out of compliance

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

LUR 5: 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 6: 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 7: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in the contaminant tables in the Notice of Brownfields Property ("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.

In compliance  Out of compliance

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

LUR 8: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance  Out of compliance

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

LUR 9: The owner of any portion of the Brownfields Property where any existing, or later-installed, DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR.

In compliance  Out of compliance

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

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LUR 10: Neither DENR nor any party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit, order or agreement issued or entered into 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 minimize interference with authorized uses of the Brownfields Property.

In compliance  Out of compliance

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

LUR 11: 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, and to the chief public health and environmental officials of Forsyth County, certifying that, as of said January 1<sup>st</sup>, the Notice remains recorded at the Forsyth County Register of Deeds office and that the Land Use Restrictions are being complied with, 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. Insert information:

Ownership of the property has not changed.

- 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. Insert information:

N/A

- c. whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 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.

Yes  No  (attach any additional information)

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

This Land Use Restrictions Update is certified by the North Carolina Municipal Leasing Corporation, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: North Carolina Municipal Leasing Corporation.

In the case of owners that are entities:

Signature of individual signing:   
Name typed or printed: Lisa Saunders  
Title: ~~Secretary/Treasurer~~ President

In the case of all owners:

Date: 1/31/14

North Carolina Municipal Leasing Corporation

By: *Lisa Saunders*  
Lisa Saunders  
Secretary/Treasurer *President*

ATTEST:

*[Handwritten Signature]*

Name typed or printed: GREGORY M TURNER  
~~Secretary~~, NCML (corporation name)  
DIRECTOR

NORTH CAROLINA  
Forsyth COUNTY

I, Claudia M. Reavis, a Notary Public of the county and state aforesaid, certify that Gregory M. Turner personally came before me this day and acknowledged that he/she is the Director of NCML (corporation name), a NC (state) corporation, and that by authority duly given and as the act of the corporation, the foregoing Land Use Restriction Update was signed in its name by its President and attested by him/her as its Secretary.

WITNESS my hand and official stamp or seal, this 31<sup>st</sup> day of January, 2014

*Claudia M. Reavis*  
Name:

Notary Public

My Commission expires: 4-19-2015

