

**VOLUNTARY CLEANUP CONTRACT
15-6357-NRP**

**IN THE MATTER OF
NORTH AREA TRANSMISSION SITE, CHARLESTON COUNTY
and
BALBOA EAST LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Balboa East LLC with respect to the Property located at 4412 Spruill Avenue, North Charleston, South Carolina. The Property includes approximately 0.42 acres identified by Tax Map Serial Number 470-08-00-045. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of September 21, 2015, and any amendments thereto, by Balboa East LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 et seq. (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et seq. (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et seq. (as amended), and the South Carolina Pollution Control Act, § 48-1-10 et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §44-56-710 et seq. (as amended), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina

Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et seq. (as amended), the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et seq. (as amended), the S.C. State Underground Petroleum Environmental Response Bank Act, S.C. Code Ann. § 44-2-10, et seq. (as amended) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "Balboa" means Balboa East LLC.
- B. "Beneficiaries" means Balboa's Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of Balboa or its Beneficiaries.

- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.
- I. "Site" means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel.
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

A. Owners and Operators: The owners and operators of the Property include the following:

North Charleston Lands Corporation	Unknown to 1969
E. H. Coley, Jr.	June 1969 to June 1985
Ronald A. Coley	June 1985 to September 2007
Kevin W. Middleton	September 2007 to September 2014
Kevin's North Area Transmission	
Bayview Loan Servicing LLC	September 2014 to Present

- B. Property and Surrounding Areas: The Property is bounded generally by a restaurant to the north; a railroad line to the east with residences beyond; a former tire facility to the south; and Spruill Avenue to the west with commercial businesses.

The Property is developed with two structures. The northern structure, herein identified as Auto Repair Building, was used for transmission and automobile repair. A waste oil above ground storage tank (AST), a parts washer, a parts curing station, and a hydraulic lift in the vehicle repair bay are in the Auto Repair Building along with multiple storage rooms and office space. The southern building, herein identified as Office Building, provided office space. Between the buildings is a concrete paved area presumed to have been a former fuel dispensing island. Operations ceased in 2013 and the Property is currently vacant. Bayview Loan Servicing LLC acquired the Property through foreclosure.

C. Investigations / Reports:

A Phase I Environmental Assessment Report, dated August 10, 2015, prepared by GEL Engineering, LLC, was submitted in support of the Application. This Phase I identifies the following recognized environmental conditions (RECs):

- Automobile repair business. Significant petroleum staining was noted along with a waste oil AST in the Auto Repair Building.
- The former storage and dispensing of fuel is based on the outline of former fuel dispensing island. There are no records concerning the presence of underground storage tanks (USTs).
- Hydraulic lift and subsurface covered trench in the Auto Repair Building.
- Rain water that has pooled on the concrete floor of the Auto Repair Building has potentially been impacted from operations and has repeatedly been discharged to the ground surface east of the building.

Other conditions on the Property noted in the Phase I include:

- Drum(s) potentially containing waste petroleum.
- Parts washer container with unknown liquid.
- General debris to include fallen ceiling insulation.

No off Property potential sources of contamination were identified.

D. Applicant Identification: Balboa is a Delaware limited liability company with its principal place of business located at 1800 E. Garry Avenue Suite 208, Santa Ana, California. Balboa affirms that it has the financial resources to conduct the response action pursuant to this Contract.

E. Proposed Redevelopment: Balboa intends to acquire and develop the Property for general business use. Balboa reserves the right to adapt its plans for the Property in the future in a manner consistent with this Contract in light of development patterns in the area and prevailing and evolving economic conditions.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. Balboa certifies that it is not a current owner of the Property, or parent, successor or subsidiary of a current or past owner of the Property; is not a Responsible Party for the site, or a parent, successor or subsidiary of a Responsible Party for the site; and has not had any involvement with the Property in the past other than activities performed in its due diligence as prospective purchaser of the Property and in anticipation of participation in the Voluntary Cleanup Program. Balboa also certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. Balboa agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by Balboa, or its designee, within thirty (30) days after the date of execution of this Contract by the Department, or

such earlier or later date if approved by the Department's project manager. A Report of the assessment results shall be submitted by Balboa, or its designee in accordance with the schedule provided in the initial Work Plan. Balboa acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. Balboa agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, Balboa may seek an amendment of this Contract to clarify its further responsibilities. Balboa shall perform all actions required by this Contract, and any related actions of Balboa's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). Balboa shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:

- a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. Code Ann. Regs. R.61-71, the South Carolina Well Standards. The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
 - c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
 - i. the full TAL: EPA Target Analyte List;
 - i). TAL-Metals: EPA Target Analyte List excluding cyanide;
 - ii. the full TCL: EPA Target Compound List;
 - i). TCL VOCs: EPA Target Compound List Volatile Organic Compounds;
 - ii). TCL SVOCs: EPA Target Compound List Semi-Volatile Organic Compounds;
 - iii). TCL Pesticides: EPA Target Compound List Pesticides;
 - iv). TCL PCBs: EPA Target Compound List Polychlorinated Biphenyls.
 - d) All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the “EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites” in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the “MCL-Based SSL”, if listed. If the applicable screening criteria are lower than achievable detection levels, the analytical method shall use the lowest achievable detection levels.
- 6). The Work Plan shall include the names, addresses, and telephone numbers of Balboa's consulting firm(s), analytical laboratories, and Balboa's contact person for matters relating to this Contract and the Work Plan.

- a). The analytical laboratory shall possess applicable Certification defined in 25A S.C. Code Regs. R.61-81, for the test methods specified in the Work Plan.
 - b). Balboa shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify Balboa in writing of approvals or deficiencies in the Work Plan.
 - 8). Balboa, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
 - 9). Balboa shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
 - 10). Balboa shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
 - 11). Balboa shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. Balboa shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or

Professional Geologist duly licensed in South Carolina.

- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). Balboa shall characterize all Waste Materials and Segregated Sources identified below. Assessment shall include an evaluation of contaminant concentrations and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable, or as specified below.
 - a). Contents of the AST;
 - b). Contents of the parts washer container; and
 - c). Drum(s) and debris.
- 2). Balboa shall also characterize for disposal any other Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with applicable regulations.
- 3). Upon discovery of any Segregated Source that has not yet released all contents to the environment, Balboa shall expeditiously stabilize or remove the Segregated Source from the Property.
- 4). Balboa shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. Balboa

shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). Balboa shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). Balboa shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to Balboa, of the well owner or occupant of the residence served by the well.

E. Potential USTs:

- 1). Balboa shall conduct an investigation to determine whether there is a UST(s) on the Property. Ground penetrating radar may be used. If a UST is discovered, Balboa shall remove it in accordance with applicable regulations. After removal a minimum of two subsurface soil samples shall be collected in the tank excavation at each UST discovered. Samples shall be analyzed for VOCs and SVOCs. In the event the dispenser(s) are not located above the UST(s), Balboa shall sample soil beneath the piping runs and dispenser islands. Soil samples shall be collected and analyzed for VOCs and SVOCs.

F. Assess soil quality across the Property:

- 1). Balboa shall collect and analyze soil samples from locations on the Property. Balboa shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (2 foot minimum depth) from each of the following locations:

- a). A presumed background location west of the Office Building for analysis of TAL Metals;
 - b). At the Waste Oil AST inside the Auto Repair Building;
 - c). At the parts washer / drain inside the Auto Repair Building.
 - d). At the hydraulic lift in the Auto Repair Building; a subsurface sample;
 - e). Area of significant staining inside the Auto Repair Building;
 - f). Three locations east of the Auto Repair Building; and
 - g). At the presumed former fuel dispenser island;
- 2). Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs. A minimum of two surface and two subsurface samples from probable impacted areas, the area of significant staining inside the Auto Repair Building and area of water discharge east of the Auto Repair Building, shall be analyzed for the full EPA-TAL and EPA-TCL.
 - 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

G. Assess groundwater quality:

- 1). Balboa shall assess groundwater quality and determine the direction of groundwater flow across the Property. Assessment shall include samples from a minimum of four (4) monitoring wells. Specific locations shall be as follows:
 - a). A location east of the Auto Repair Building where water from inside the building has been discharged to the ground surface;
 - b). A location at the hydraulic lift, which is inside the Auto Repair Building.
 - c). A location southeast of the presumed former fuel dispenser island;
 - d). At the southwestern corner of the Property near Spruill Avenue and east of Justice Street to assess potential off Property source.

- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs. In addition, the sample from the well located east of the northern building shall be analyzed for the full TAL/TCL parameters.
- 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

H. Evaluate and control potential impacts to indoor air:

- 1). Balboa shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface based on EPA OSWER "Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air" dated June 2015 and supplemental EPA guidance. The Department's evaluation will be constrained towards predicting commercial exposures consistent with the building construction on the Property.
- 2). This evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of indoor air samples from within the building during two separate sampling events approximately six months apart. One sample shall be collected per every 1000 square feet of building footprint potentially subject to Vapor Intrusion. One sampling event shall be in the winter. Each sampling event shall include collection of a representative number of indoor air samples for laboratory analysis of all site-related volatile organic constituents. The samples collected for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events. The method shall be capable of detecting gas concentrations at screening levels indicative of a 10^{-6} risk. The applicable screening concentrations shall be based upon the EPA OSWER

“Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air” dated June 2015 and supplemental EPA guidance.

- 3). The Department may allow Balboa to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department’s sole discretion, offer a similar degree of data usability.
- 4). Balboa shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the measured indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

I. Institute reasonable Contamination control measures:

- 1). Balboa shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
 - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - b). Balboa shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.
- 2). Balboa shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property
 - a). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure. Known media or Waste Materials that require Corrective Measures include, but may not be limited

to, the following:

- i. Contents of the AST;
 - ii. Contents of the parts washer container; and
 - iii. Drum(s) and debris.
- b). The corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination.
- c). Balboa may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, Balboa shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.
- d). Based upon the results of the environmental assessment, Balboa shall propose a Media Management Plan for management of contaminated media during any Property development activities that will disturb contaminated media remaining on the Property. This plan shall identify procedures for management of contaminated soil and groundwater that may be encountered during development activities on the Property. The Media Management Plan shall address management of contaminated media when encountered on the Property, its characterization if necessary for offsite disposal, and identification of the final disposal location for all contaminated media.
- e). Upon completion of any corrective measures, Balboa shall provide a Corrective Measures Report to document satisfactory completion of the

corrective measures for Department review and approval prior to obtaining a Certificate of Completion.

- f). In the event that corrective measures include engineering controls that must be maintained and monitored for future use of the Property, a Stewardship Plan may be required by the Department. If required, the Stewardship Plan shall identify procedures for management of contaminated media that may be encountered as a result of any disturbance of the engineering controls, and for repair or replacement of the engineering controls.

J. Monitor and/or abandon the monitoring wells:

- 1). Balboa shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). Balboa shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. Balboa shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one electronic copy on compact disk (in .pdf format). Balboa agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Balboa.

PUBLIC PARTICIPATION

6. Balboa and the Department will encourage public participation to implement this Contract as follows:
 - A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by Balboa.
 - B. Balboa shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by Balboa East LLC under Voluntary Cleanup Contract 15-6357-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of Balboa. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
 - 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
 - 3). Balboa shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
 - 4). Balboa agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.

- 5). Balboa shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, Balboa shall restore the sign within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. Balboa shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within sixty (60) days of Work Plan approval and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
 - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
 - B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

8. Balboa shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require

implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. Balboa shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. Balboa or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property to restrict the use of the Property from residential, recreational, agricultural, child day care, and adult day care use and to maintain the existing building/pavement as an engineering control. Additional restrictions may be required based on the response actions completed under this Contract. The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:
 - A. The Department shall prepare and sign the Declaration prior to providing it to Balboa. An authorized representative of Balboa or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. Balboa or its Beneficiaries shall record the executed Declaration with the Registrar of Deeds or Mesne Conveyance for the county where the Property is located.
 - C. Balboa or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
 - D. In the event that Contamination exceeds levels acceptable for unrestricted use (Regional Screening Levels for residential use) on a portion of the Property, Balboa or its Beneficiaries may create a new parcel of that portion of the property

that will be subject to the Declaration.

- E. The Declaration shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for Balboa or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). Balboa or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.
 - 2). Balboa or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. The Declaration shall provide that the Department has an irrevocable right of access to the Property after Balboa acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.
- H. Balboa or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.

- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

- A. All correspondence, notices, work plans, and reports shall be submitted to:

Jo Cherie Overcash
Bureau of Land and Waste Management

2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to Balboa shall be submitted to Balboa's designated contact person who as of the effective date of this Contract shall be:

William F. Pavone Jr.
Manager
P.O. Box 8707
Newport Beach, California 92658

FINANCIAL REIMBURSEMENT

11. Balboa or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. Code Ann. §44-56-750 (D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to Balboa on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

William F. Pavone Jr.
Manager
P.O. Box 8707
Newport Beach, California 92658

A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.

- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

ACCESS TO THE PROPERTY

- 12. Balboa agrees the Department has an irrevocable right of access to the Property for environmental response matters after Balboa acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

- 13. A Certificate of Completion shall be issued to Balboa or its Beneficiaries for the Property under this Contract as follows:
 - A. Balboa or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
 - B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that Balboa or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. § 44-56-710 through 760 (as amended).

C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.

- 1). A Provisional Certificate of Completion will include specific performance standards that Balboa or its Beneficiaries shall continue to meet.
- 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if Balboa or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. Balboa or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. Balboa shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, Balboa, and its Beneficiaries as set forth below. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:

- A. Balboa or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. If the Certificate of Completion has not been issued, Balboa or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:
- 1). Is not a Responsible Party for the Site;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract,
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, Balboa or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.
- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
 - 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has

approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

CONTRACT TERMINATION

16. Balboa, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may not terminate this Contract without cause and before termination, shall provide Balboa or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:
- 1). Failure to complete the terms and conditions of this Contract;
 - 2). Change in Balboa's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
 - 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
 - 4). Failure of Balboa or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by Balboa or its Beneficiaries;
 - 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
 - 6). Failure by Balboa or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
 - 7). Failure by Balboa or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of Balboa's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

- B. Should Balboa or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by Balboa or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of Balboa or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any party who has received protections through a Certificate of Completion for this Contract, and who did not participate in the actions giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. Balboa and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
 - 1). Protection from contribution claims under CERCLA Section 113.42 U.S.C. § 9613 and § 44-56-200, et seq.

- 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.

B. Effective on the date the Certificate of Completion is issued by the Department.

- 1). The Department's covenant not to sue Balboa and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by Balboa or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by Balboa or its Beneficiaries. The Department retains all rights under State and Federal laws to compel Balboa and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by Balboa or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than Balboa and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than Balboa and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY BALBOA

19. Balboa retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. Balboa and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute. However, Balboa and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. Balboa and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by Balboa or its Beneficiaries. Balboa and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY BALBOA AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, Balboa and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

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SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste
Management

DATE:

Reviewed by Office of General Counsel

BALBOA EAST LLC

BY:

DATE:

William F. Pavone Jr.
Manager

APPENDIX A

Balboa East LLC

Application for Non-Responsible Party Voluntary Cleanup Contract

October 6, 2015