

**VOLUNTARY CLEANUP CONTRACT
18-6317-NRP**

**IN THE MATTER OF
URBAN OUTFITTERS, RICHLAND COUNTY
and
912 GERVAIS, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and 912 Gervais, LLC, a wholly owned subsidiary of Burroughs & Chapin Company, Inc., with respect to the Property located at 912 Gervais Street, Columbia, South Carolina. The Property includes approximately 0.68 acres identified by Tax Map Serial Number R08916-02-02. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of March 20, 2018 and any amendments thereto, by 912 Gervais, 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. (2018); the South Carolina Hazardous Waste Management Act (SCHWMA), S.C. Code Ann. §§ 44-56-10, et seq. (2018 & Supp. 2017); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.; the State Underground Petroleum Environmental Response Bank Act, (SUPERB Act), S.C. Code Ann. §§ 44-2-10, et seq. (2018 & Supp. 2017); and the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (2008 & Supp. 2017).

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, and if not set forth therein, shall have the meaning assigned to them pursuant to the SCHWMA, the PCA, the SUPERB Act, or CERCLA.

- A. "912 Gervais" means 912 Gervais, LLC

- B. "Beneficiaries" means 912 Gervais'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 912 Gervais 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:

Charlton F. Hall, Jr.	1974 – 2010
First Community Bank	2010 – 2012
C4 Gervais St.	2012 – 2015
Bayrock 912 Gervais Exchange	2015 - Present

B. Property and Surrounding Areas: The Property is located in the downtown central business district of Columbia. The Property is covered in its entirety with a 15,000-square foot single-story building with the exception of paved access and parking. A paved alley runs adjacent to the Property's eastern boundary with commercial buildings beyond; and, paved parking with commercial buildings beyond abut the western boundary. The northern property boundary fronts Gervais Street and the southern boundary fronts Senate Street. The building on the Property was constructed in 1929. A retail clothing store and restaurant

occupy the building. Through time the Property has been developed as a saloon, restaurant, offices, grocery store, and residential. According to the 1919 Sanborn Insurance Map, railroad tracks ran through the Property.

C. Investigations / Reports; Regulatory Issues: Review of the Phase I Environmental Site Assessment (ESA) conducted by Criterium-Giles Engineers and dated February 16, 2018 submitted along with the application for the Contract identified no Recognized Environmental Conditions on the Property. The Property has been used as commercial space since first developed. There are no records indicating that a commercial or industrial process with hazardous substances or petroleum products has ever operated on the Property.

A Phase I ESA, dated January 2014, states that twenty-seven (27) sites within a ½-mile radius of the Property were identified on the Leaking Registered Storage Tank list, sixteen (16) Brownfields sites were identified within a ¼-mile radius of the Property, and 4 sites within a ½-mile radius were identified as Voluntary Cleanup Sites.

A Phase I ESA dated November 1, 2012, conducted by ECS Carolinas, LLP did not identify any onsite recognized environmental conditions (RECs). Several off-site RECs were identified. The Phase I stated that groundwater flow is expected to be west/southwest towards the Congaree River.

The Property is hydraulically downgradient of multiple off-site RECs to include an automobile garage and repair shop, meat packaging, laundry and drycleaners. In November 2012, four groundwater samples were collected in the alleyway on the eastern Property boundary, which is in an upgradient direction. Volatile organic compounds and polynuclear aromatic hydrocarbons were detected at concentrations that exceed their respective primary maximum contaminant level (MCL).

In January of 2015, the Department entered into a Letter of Agreement with Bayrock 912 Gervais Exchange, LLC (Bayrock) acknowledging data demonstrating migration of groundwater contamination beneath the Property

from off-property sources. On March 16, 2015, Bayrock entered into, and recorded, a Declaration of Covenants and Restrictions (Declaration), and provided a copy of that Declaration as record of recordation with the Richland County Registrar of Deeds at Book 2012 Page 2804.

D. Applicant Identification: 912 Gervais is a South Carolina limited liability company with its principal place of business located at 8800 Marina Parkway, Myrtle Beach, SC 29577.

E. Proposed Redevelopment: 912 Gervais will acquire the Property and intends to lease the property for commercial uses.

CERTIFICATIONS

3. 912 Gervais has certified upon application that: 1) 912 Gervais is not a Responsible Party at the Site, or a parent, successor, or subsidiary of a Responsible Party at the Site and has not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program; 2) its activities will not aggravate or contribute to Existing Contamination on the Site or pose significant human health or environmental risks; and, 3) it is financially viable to meet the obligations under this Contract.

RESPONSE ACTION

4. The Department shall ask 912 Gervais to perform work only to the extent to ensure the property is safe for the proposed commercial use. 912 Gervais agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by 912 Gervais, 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 912 Gervais, or its designee in accordance with the schedule provided in the initial Work Plan. 912 Gervais

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. 912 Gervais 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, 912 Gervais may seek an amendment of this Contract to clarify its further responsibilities. 912 Gervais shall perform all actions required by this Contract, and any related actions of 912 Gervais' 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). 912 Gervais 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 Well Standards, 6 S.C. Code Ann. Regs. 61-71(2012 & Supp. 2016). 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 EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
 - ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
 - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
 - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
- d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the “United States Environmental Protection Agency Regional Screening Levels for Chemical Contaminants at Superfund Sites” (EPA RSLs) in effect at the time of sampling. The applicable Protection of Groundwater Soil Screening Level (SSL) 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 912 Gervais's consulting firm(s), analytical laboratories, and 912 Gervais's contact person for matters relating to this Contract and the Work Plan.
 - a). The analytical laboratory shall possess applicable Certification defined in the State Environmental Laboratory Certification Program, 7 S.C. Code

Ann. Regs. 61-81(2012), for the test method(s) and parameters specified in the Work Plan.

- b). 912 Gervais 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 912 Gervais in writing of approvals or deficiencies in the Work Plan.
- 8). 912 Gervais, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). 912 Gervais 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). 912 Gervais 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). 912 Gervais 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. 912 Gervais 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. Report(s) 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). 912 Gervais shall characterize for disposal any 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.
- 2). Upon discovery of any Segregated Source that has not yet released all of its contents to the environment, 912 Gervais shall expeditiously stabilize or remove the Segregated Source from the Property.
- 3). 912 Gervais shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. 912 Gervais shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). 912 Gervais 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). 912 Gervais 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 912 Gervais, of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). No recognized environmental conditions were identified on the Property during the Phase I Environmental Assessment. The Property is completely covered with building or pavement, so no complete risk exposure pathway for soil exists. Therefore, assessment of soil quality is not warranted at this time. However, the Department reserves the right through land use restrictions as specified in Paragraph 9 of this Contract to compel 912 Gervais or its beneficiaries to conduct soil assessment in the future if the above conditions change in such way to produce a complete exposure pathway.

F. Assess groundwater quality:

- 1). 912 Gervais shall assess groundwater quality and flow direction across the Property. Assessment shall include samples from a minimum of three monitoring wells to be installed at locations within the alley along the eastern property boundary. Specific well locations will be identified in the work plan.
- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs. In addition, groundwater samples collected from

the northernmost well shall be analyzed for the full EPA-TAL (includes cyanide) and EPA-TCL.

- 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the State Primary Drinking Water Regulations, 4 S.C. Code Ann. Regs.61-58(2011 & Supp. 2017), or, if not specified in R.61-58, to the EPA RSL for “Tapwater.”

G. Evaluate and control potential impacts to indoor air:

- 1). 912 Gervais shall evaluate potential impacts to indoor air if the Department determines that the concentrations of VOCs present in the subsurface pose a threat to indoor air quality 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 (“Vapor Intrusion Technical Guide”). The Department’s decision will be constrained towards predicting commercial exposures consistent with the building construction existing on the Property.
- 2). If required, 912 Gervais shall submit a Vapor Intrusion Assessment Work Plan followed by a report of the results. (*Select from the following for proposed buildings and/or existing buildings as applicable for the Property*)
 - a). For existing buildings, 912 Gervais’s evaluation of vapor intrusion risk shall, unless otherwise agreed to by the Department, consist of collection and analysis of a representative number of indoor air, soil gas, and sub-slab soil gas samples over areas potentially subject to vapor intrusion. Assessment activities shall also include evaluation of other factors that may affect vapor intrusion as discussed in the Vapor Intrusion Technical Guide.
 - b). Indoor air samples shall be collected from within the building during a minimum of two separate sampling events approximately six months apart. One sampling event shall be in the winter. The samples collected

for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events.

- c). All indoor air, soil gas and sub-slab soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting concentrations at screening levels indicative of a 10^{-6} cancer risk or a hazard quotient of 1 (or 0.1 as applicable) for non-carcinogens, and using appropriate attenuation factors for soil gas and sub-slab soil gas.
 - d). Indoor air quality results shall be compared to the current EPA RSL Resident Air and Industrial Air Screening Levels. 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.
 - e). Soil gas and sub-slab soil gas sampling results shall be compared to screening levels indicative of a 10^{-6} cancer risk or a hazard quotient of 1 (or 0.1 as applicable) for non-carcinogens for the proposed use of the Property. Comparison criteria shall be based on the Vapor Intrusion Technical Guide.
- 3). Should the results of the Vapor Intrusion Assessment indicate that contaminant concentrations exceed levels indicative of a 10^{-6} cancer risk or a hazard quotient/hazard index of 1 for non-carcinogens for the proposed use of the Property, 912 Gervais shall evaluate options for corrective measures and engineering controls to ensure acceptable indoor air quality. At a minimum, 912 Gervais shall propose and implement engineering controls to mitigate contaminant vapor intrusion to meet acceptable levels in accordance with Paragraph 4.H of this Contract.
 - 4). The Department may allow 912 Gervais to implement pre-emptive vapor intrusion mitigation measures in lieu of the above Vapor Intrusion Assessment. Vapor intrusion mitigation measures shall be completed and evaluated in accordance with Paragraph 4.H of this Contract.

H. Institute reasonable Contamination control measures:

- 1). 912 Gervais shall remove from the Property and properly dispose of all Waste Materials and Segregated Sources of Contamination in accordance with applicable regulations based on characterization results.
 - a). 912 Gervais 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.
 - b). Subject to Department approval, buried Waste Materials, if present, may be stabilized in place on the Property in a manner that will effectively limit or prevent human exposure and release of contaminants to the environment. If any Waste Materials are to be stabilized in place, 912 Gervais shall propose plans for stabilization of the Waste Materials in a Corrective Measures Plan in accordance with Paragraph 4.H.2 below. 912 Gervais shall also enter into a Declaration of Covenants and Restrictions to document the area of stabilization, and to maintain the stabilization measures in accordance with Paragraph 9 of this Contract.
- 2). 912 Gervais shall take reasonable measures to effectively limit or prevent human exposure to Existing Contamination in any media on the Property. 912 Gervais shall evaluate options for corrective measures in an Analysis of Brownfields Cleanup Alternatives (ABCA). Upon Department approval of the corrective measures selected in the ABCA, 912 Gervais shall prepare a Corrective Measures Plan. The Corrective Measures Plan shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
 - a). Corrective measures shall be required for 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.
 - b). 912 Gervais 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, 912 Gervais shall submit for Department approval, an overview of risk assessment assumptions including identification of Contamination 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.

- c). Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. Subject to Department approval, corrective measures may include a land use restriction in accordance with Paragraph 9 (Declaration of Covenants and Restrictions) of this Contract
 - d). If required, vapor intrusion control measures shall be designed to effectively mitigate vapor intrusion risk to a 10^{-6} risk for carcinogens and a hazard quotient/hazard index of 1 for non-carcinogens based on current EPA RSLs and guidance on vapor intrusion. All vapor intrusion control measures shall include monitoring to confirm that the vapor mitigation system is effective, and procedures to ensure and document proper and effective operation and maintenance of the vapor intrusion mitigation system for as long as it is required at the Property. The Department shall give reasonable consideration of data or other demonstration that shows any unacceptable indoor air contaminant concentrations do not result from the subsurface conditions.
 - e). Upon completion of any corrective measures, 912 Gervais 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.
- 3). In the event that development of the Property will require disturbance of contaminants in soil or groundwater, 912 Gervais shall propose a Media

Management Plan. 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.

- 4). 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.

I. Monitor and/or abandon the monitoring wells:

- 1). 912 Gervais 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. To date, groundwater contamination requiring an ongoing groundwater monitoring program has not been identified on the property. If concentrations identified on the Property during the VCC assessment are consistent with historical data, a groundwater monitoring program will not be required.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis. Such program will be designed to avoid unreasonable interference with the use and enjoyment of the Property.
- 3). 912 Gervais 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 Well Standards, 6 S.C. Code Ann. Regs.61-71(2012& Supp. 2016).

HEALTH AND SAFETY PLAN

5. 912 Gervais 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). 912 Gervais 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 912 Gervais.

PUBLIC PARTICIPATION

6. 912 Gervais 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 (30)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 912 Gervais.
 - B. 912 Gervais 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 (1) day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign(s) will state "Voluntary Cleanup Project by 912 Gervais, LLC under Voluntary Cleanup Contract 17-6317-NRP with the South Carolina Department of Health and Environmental Control." The sign(s) 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 912 Gervais. 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). 912 Gervais shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the sign(s). The photographs shall be submitted to the Department within ten (10) days of erecting the sign(s).
- 4). 912 Gervais agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). 912 Gervais 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, 912 Gervais shall restore the sign(s) within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. 912 Gervais 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 ninety days of the execution date of this Contract 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. 912 Gervais 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. 912 Gervais shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. On March 16, 2015, Bayrock entered into, and recorded, a Declaration of Covenants and Restrictions (Declaration), and provided a copy of that Declaration as record of recordation with the Richland County Registrar of Deeds at Book 2012 Page 2804. The Declaration restricts the use of the Property from residential, recreational, agricultural, child day care, and adult day care use; requires maintenance of the existing building and pavements as an engineering control; and, prohibits the use of groundwater on the Property. Additional restrictions may be required based on the response actions completed under this Contract. A copy of the recorded Declaration shall be incorporated into this Contract as an Appendix.

The Declaration reserves a right of entry and inspection for 912 Gervais or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.

The Declaration provides that the Department has an irrevocable right of access to the Property after 912 Gervais 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.

912 Gervais 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.

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:

Chris Stanbery
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

- B. All correspondence and notices to 912 Gervais shall be submitted to 912 Gervais's designated contact person who as of the effective date of this Contract shall be:

April D. Doane, Vice President
c/o Burroughs & Chapin Company, Inc.
8800 Marina Parkway
Myrtle Beach, SC 29577

FINANCIAL REIMBURSEMENT

11. 912 Gervais 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 912 Gervais on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

April D. Doane, Vice President
c/o Burroughs & Chapin Company, Inc.
8800 Marina Parkway
Myrtle Beach, SC 29577

- 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. 912 Gervais agrees the Department has an irrevocable right of access to the Property for environmental response matters after 912 Gervais acquires the Property. The Department will provide 912 Gervais with at least five (5) days advance notice before it accesses the Property, except in cases of emergency, and shall avoid unreasonable interference with the use and enjoyment of 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 912 Gervais or its Beneficiaries for the Property under this Contract as follows:
 - A. 912 Gervais 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 § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that 912 Gervais 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.

- 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 912 Gervais 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 912 Gervais or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14.912 Gervais 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. 912 Gervais 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, 912 Gervais, 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. 912 Gervais 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. 912 Gervais and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property allowing residential occupancy.
- C. If the Certificate of Completion has not been issued, 912 Gervais 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.
- D. 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, 912 Gervais or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty (30) 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. 912 Gervais, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty (30) 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 912 Gervais 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 912 Gervais'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 912 Gervais or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by 912 Gervais or its Beneficiaries;
- 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;

- 6). Failure by 912 Gervais 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 912 Gervais or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of 912 Gervais's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should 912 Gervais 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 912 Gervais 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 912 Gervais 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. 912 Gervais 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 §113, 42 U.S.C. § 9613 and SCHWMA § 44-56-200.
- 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 the Income Tax Act, S.C. Code Ann. § 12-6-3550 (2014).

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

- 1). The Department's covenant not to sue 912 Gervais and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by 912 Gervais 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 912 Gervais or its Beneficiaries. The Department retains all rights under State and Federal laws to compel 912 Gervais and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by 912 Gervais 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 912 Gervais and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than 912 Gervais 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 912 GERVAIS

19. 912 Gervais 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. 912 Gervais 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, 912 Gervais and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. 912 Gervais and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by 912 Gervais or its Beneficiaries. 912 Gervais 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 912 GERVAIS AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, 912 Gervais 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

912 GERVAIS, LLC

BY:

DATE:

(Print Name and title)

APPENDIX A

Application for Non-Responsible Party Voluntary Cleanup Contract

912 Gervais, LLC

March 20, 2018