



Article #: 92148969009997901420974350

January 27, 2022

Certified Mail

Mr. Michael Adams
Development Manager
Brand Properties
3328 Peachtree Road, NE, Suite 100
Atlanta, GA 30326

**Re: Responsible Party Voluntary Cleanup Contract
Montague West Apartments Site; Charleston County**

Dear Mr. Adams:

Please find enclosed a Certified as True and Correct Copy of Responsible Party Voluntary Cleanup Contract 22-7647-RP which was executed by the Department on January 27, 2022.

Thank you for your patience and cooperation in this matter. The Department continues to look forward to working with Montague Development, LLC to address this Site under the South Carolina Voluntary Cleanup Program. Should you wish to further discuss the terms of the contract, please contact Lucas Berresford at (803) 898-0747.

Sincerely,

Elisa Vincent, Environmental Health Manager
Division of Site Assessment, Remediation & Revitalization
Bureau of Land and Waste Management

Enclosure

cc: G. Ken Taylor, PG, L&WM (w/ enclosure)
J. Lucas Berresford, L&WM (w/ enclosure)
Wendy Boswell, Director, Low Country EQC (w/ enclosure)
Greg Cassidy/Shawn Reed/Linda Jackson, L&WM (w/ enclosure)
BLWM File 59447

**VOLUNTARY CLEANUP CONTRACT
22-7647-RP**

**IN THE MATTER OF
MONTAGUE WEST APARTMENTS SITE, CHARLESTON COUNTY
and
MONTAGUE DEVELOPMENT, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Montague Development, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the facility known as the Montague West Apartments Site, which is located at 3229 West Montague Avenue, North Charleston, South Carolina ("Property"). The Property includes approximately 11.5 acres and is bounded generally by Pacific Street to the south, West Montague Avenue to the north, commercial property to the east, and undeveloped land to the west. The Property is identified by the County of Charleston as Tax Map Serial Numbers 409-10-00-028, 409-10-00-027, 409-10-00-026, 409-10-00-022, 409-10-00-006, 409-10-00-007, and 409-10-00-008. A legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract 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 CERCLA, the HWMA, and in regulations promulgated under these statutes.

- A. "Montague" shall mean Montague Development, LLC. Montague is a Domestic Limited Liability Company with its principal place of business located at 3328 Peachtree Road NE, Suite 100, Atlanta, GA 30326.

- B. "Contamination" shall mean impact by a Pollutant or Contaminant, Petroleum and Petroleum Product, or Hazardous Substance.
- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean 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.
- E. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. "Petroleum" and "Petroleum Product" shall mean crude oil or any fraction of crude oil, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid, which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.
- G. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. §§ 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas

- of pipeline quality or mixtures of natural gas and such synthetic gas.
- H. "Property" as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of Montague.
- I. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- J. "Site" shall mean all areas where a Hazardous Substance, Petroleum, Petroleum Product, Pollutant or Contaminant 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, as defined in CERCLA.
- K. "Voluntary Cleanup" shall mean a Response Action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 to 760, as amended.
- L. "Work Plan" shall mean the plan for additional Response Actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

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

A. Property Ownership Information:

409-10-00-028

- Westmont Holding 2 LLC 7/7/16 – Present

409-10-00-027

- Westmont Holding 1 LLC 7/7/16 – Present

409-10-00-026

- Westmont Holding 1 LLC 7/7/16 – Present

409-10-00-022

- Westmont Holding 1 LLC

7/7/16 – Present

409-10-00-006

- Westmont Holding 2 LLC

7/7/16 – Present

409-10-00-007

- Westmont Holding 2 LLC

7/7/16 – Present

409-10-00-008

- Westmont Holding 2 LLC

7/7/16 – Present

B. The Site currently contains two (2) office buildings, four (4) vacant office/storage buildings, paved parking areas, a utility easement, and undeveloped wooded land. The Site contains concrete and asphalt paved parking areas and contains undeveloped wooded land in the eastern portion of the Site. Montague Development, LLC plans to redevelop the Property for multi-family residential use.

RESPONSE ACTIONS

3. Montague agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and Montague's contact person for matters relating to this Contract. Montague will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Montague in writing of any deficiencies in the Work Plan, and Montague will respond in writing to the Department's comments within thirty (30) days. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Conduct an Environmental Assessment to determine the source, nature, and extent of Contamination at the Site.

 - B. Submit to the Department an Assessment Report (to include a Baseline Risk Assessment or other evaluation of risk to human health and the environment) in accordance with the schedule in the approved Work Plan. The Department shall review the report for determination of completion of the Assessment and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to Montague, and Montague shall subsequently conduct additional field investigation to further determine the source, nature, and extent of Contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to Montague a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Montague shall submit a revised report addressing the Department's comments.

 - C. If determined necessary by the Department, conduct a Feasibility Study or other evaluation of remedial and/or removal alternatives for addressing Contamination at the Site.
4. Montague shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted to the Department for information purposes only. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Montague.
5. Montague shall inform the Department in writing at least five (5) working days in

advance of all field activities pursuant to this Contract and, if deemed necessary by the Department, shall allow the Department and its authorized representatives to take duplicates of any samples collected by Montague pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Montague shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence by either party to the other shall be in writing and deemed sufficiently given if delivered by (A) email, (B) regular U.S. mail, (C) certified or registered mail, postage prepaid, return receipt requested, (D) nationally recognized overnight delivery service company, or (E) hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

Unless otherwise directed in writing by either party, all correspondence, work plans, and reports should be submitted to:

The Department: Greg Cassidy
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
cassidga@dhec.sc.gov

Montague Development, LLC: Michael Adams
Development Manager
Brand Properties
3328 Peachtree Road, NE, Suite 100
Atlanta, Georgia 30326
madams@brandproperties.com

With copy to:

Gerald L. Pouncey, Jr.
Chairman
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
glp@mmmlaw.com

All final work plans and reports shall be submitted via email or electronic file transfer, unless the Department requests paper copies and/or electronic copy on compact disk.

PUBLIC PARTICIPATION

8. Upon execution of this Contract by Montague, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. Montague will reimburse the Department's costs associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. In accordance with S.C. Code Ann. §§ 44-56-200 and 44-56-740, Montague shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract. Oversight Costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its Oversight Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

Montague Development, LLC:

Michael Adams
Development Manager
Brand Properties
3328 Peachtree Road, NE, Suite 100
Atlanta, Georgia 30326
madams@brandproperties.com

All of Montague's payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the Past Costs or of the quarterly billing of Oversight Costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing Response Actions will not be denied access to the Site during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). Montague and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee (except for residential tenants) or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If Montague is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All of the Department's costs associated with access and said Response Actions will be reimbursed by Montague.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Montague has completed the actions required under this Contract, Montague shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of Montague and witnessed, signed, and sealed by a notary public. Montague shall record this restrictive covenant with the Register of Deeds in Charleston County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require Montague or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Montague or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. 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 a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor or assign.

13. Subject to the provisions of Paragraph 15, nothing in this Contract is intended to limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of 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.

14. Subject to the provisions of Paragraph 15, 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 that the Department may have against Montague for any matters not expressly addressed by and settled through this Contract.

15. Upon successful completion of the terms of this Contract, Montague shall submit to the Department a request for a Certificate of Completion.

Once the Department determines that Montague has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. §§ 44-56-740(A)(5) and (B)(1), will give Montague a Certificate of Completion that provides a covenant not to sue to Montague, its signatories, parents, subsidiaries, successors, and assigns for the work done in completing the Response Actions specifically covered in this Contract and completed in accordance with the approved work plans and reports. The covenant not to sue is contingent upon the Department's determination that Montague successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, Montague, its signatories, parents, subsidiaries, successors, and assigns agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

16. Montague and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should Montague elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial Response Action

addressing Contamination identified in this Contract.

17. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:
- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
 - B. Failure to complete the terms of this Contract or the Work Plan;
 - C. Failure to submit timely payments for Oversight Costs as defined in Paragraph 9 above;
 - D. Additional Contamination or releases or consequences at the Site caused by Montague, its parents, subsidiaries, successors, and assigns;
 - E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
 - F. Change in Montague's or its parents', subsidiaries', successors', and assigns', business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract;
or
 - G. Failure by Montague to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

18. Upon termination of this Contract, the covenant not to sue will be null and void. Termination of this Contract by Montague or the Department does not end the obligations of Montague to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

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

SIGNATURE E. Vincent

THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

BY: [Signature]

DATE: 1-27-2022

Henry J. Porter, Chief
Bureau of Land and Waste Management
S.C. Department of Health & Environmental Control

[Signature]
Reviewed by Office of General Counsel

DATE: 1/27/22

MONTAGUE DEVELOPMENT, LLC

[Signature]
Signature

DATE: 1/21/2022

Derek Kahn, Authorized Signer

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE E. Vincent

Printed Name and Title

APPENDIX A

Legal Description of the Property

County of Charleston

Tax Map Serial Numbers 409-10-00-028, 409-10-00-027, 409-10-00-026, 409-10-00-022, 409-10-00-006, 409-10-00-007, and 409-10-00-008

409-10-00-026 and 409-10-00-027

All those lots, pieces or parcels of land, with buildings and improvements thereon, situate, lying and being in Charleston County, S.C., identified as Tract D-1A on plat of property of Davis & Floyd, Inc. prepared by Davis & Floyd, Inc., Engineers, dated April 6, 2015, attached hereto as Exhibit A-1. According to said plat, Tract D-1A is bounded now or formerly as follows: on the North by Montague Avenue and property of City of North Charleston; and on the East South and West by other property of Davis & Floyd, Inc.

This being a portion of the property acquired by deed of Francis Edgar Bunch, also known as Francis E. Bunch, and Bessie P. Bunch dated February 26, 1976, and recorded February 27, 1976 in Deed Book VI08 at Page 159 in the R.M.C. Office for Charleston County, South Carolina and deed of Dollie B. Swintz recorded January 23, 1978 in Deed Book T114 at Page 402 in the R.M.C. Office for Charleston County, South Carolina, and being the property acquired by deed of Emily C. Sweatman dated April 1, 1985 and recorded April 3, 1985 in Deed Book H 144 at Page 669 in the R.M.C. Office for Charleston County.

409-10-00-022

All those lots, pieces or parcels of land, with buildings and improvements thereon, situate, lying and being in Charleston County, S.C., identified as Residual Tract D-1 on plat of property of Davis & Floyd, Inc. prepared by Davis & Floyd, Inc., Engineers, dated April 6, 2015, attached hereto as Exhibit A-1. According to said plat, Residual Tract D-1 is bounded now or formerly as follows: on the North by Montague Avenue, other property of Davis & Floyd, Inc. identified as Proposed Tract D- 1A and property bearing TMS# 409-10-00-028, and property of Lenevar, LLC; on the East by property of Cooper River Properties, LLC; on the South by Pacific Avenue; and on the West by property of the Mosley Family Limited Partnership, other property of Davis & Floyd, Inc. and property of The Charleston Corporation.

This being a portion of the property acquired by deed of Francis Edgar Bunch and Bessie P. Bunch dated February 26, 1976, and recorded February 27, 1976 in Deed Book 108 at Page 159 in the R.M.C. Office for Charleston County, South Carolina and deed recorded in Deed Book T114 at Page 402 in the R.M.C. Office for Charleston County, South Carolina.

409-10-00-028

ALL that certain lot, piece, parcel or tract of land, with the improvements thereon, situate, lying and being in Camps Subdivision, near Lambs, in Goose Creek Parish, Charleston County, South Carolina, known and designated as Lot 7 of Block K on Map of Blocks K and L, in Camps Subdivision, made by W. L. Gaillard, Surveyor, dated February, 1956, which plat is recorded in the R.M.C. Office for Charleston County in Plat Book L, Page 3.

Butting, Bounding, Measuring and Containing as follows: on the North by Goodrich Road, Seventy-Five (75.00') Feet; on the East by Lot No. 8, Block K, Two Hundred (200.00') Feet; on the South by lands now or formerly of Williams Furniture Corporation, Eighty-Eight (88.00') Feet; and on the West by Lot No. 6, Block K, Two Hundred (200.00') Feet, be all of the said dimensions a little more or less.

Lot 7 being the same property acquired by deed of Claude W. Meese dated December 23, 1985, and recorded January 6, 1986 in Volume V150 at Page 129 in the R.M.C. Office for Charleston County.

409-10-00-006

All that lot, piece or parcel of land situated in the County of Charleston, State of South Carolina, known and described as follows:

Lot No. 6 Block DD of Camps Subdivision as per map or plat thereof made by A.L. Glen, Reg. P.E. & L.S. 264, dated April 24, 1964, and recorded in Plat Book R, Page 79, in the RMC Office for Charleston County.

The Lot is bounded as follows: On the North by Seiberling Road; on the South by easement of the South Carolina Public Service Authority; on the West by Lot 5 of the said Block DD; on the East by Lot 7 of said Block DD. The said Lot having such size, shape, dimensions, buttings and boundings as shown on the abovementioned plat recorded in Plat Book R, Page 79, as by reference thereunto will more fully and at large appear.

Subject to that certain right of way from Williams Furniture Corporation to South Carolina Electric & Gas Company dated August 10, 1961, and recorded at Book K-74, Page 246, RMC Office for Charleston County, South Carolina.

This being the identical property acquired by the Grantor from Fabtech, Inc., by deed dated June 2, 1992, and recorded June 3, 1992, in Volume N214 at Page 812 in the R.M.C. Office for Charleston County, South Carolina.

409-10-00-007

All that lot, piece or parcel of land situated in the County of Charleston, State of South Carolina, and being shown and designated as Tract B, containing 0.59 acres, more or less, on that certain plat of survey prepared by Davis and Floyd, Inc., dated September 23, 1980, and recorded in the R.M. C. Office for Charleston County, South Carolina, in Plat Book AR at Page 100. According to said plat of survey, the lot is bounded now or formerly as follows: on the North by Tract A as shown on the aforesaid Plat; on the East by Tract C as shown on the aforesaid Plat; on the South by Right of Way; and on the West by property of The Electricians, Inc. (now of Grantor). Reference is craved to the aforesaid plat for a more accurate description as to metes, bounds, courses and distances.

This being the identical property acquired by the Grantor from Palmetto Moving and Storage, Inc., by deed dated December 4, 1980, and recorded December 4, 1980, in Volume D 124 at Page 114 in the R.M.C. Office for Charleston County, South Carolina.

409-10-00-008

All that lot, piece or parcel of land situated in the County of Charleston, State of South Carolina, and being shown and designated as Tract A, containing 2.385 acres, more or less, on that certain plat of survey prepared by Davis and Floyd, Inc., dated September 23, 1980, and recorded in the R.M. C. Office for Charleston County, South Carolina, in Plat Book AR at Page 100. According to said plat of survey, the lot is bounded now or formerly as follows: on the North by properties of Ricker, Fullerton, Mathis, Kemmerlin, and Deer; on the East by Tract C as shown on the aforesaid Plat; on the South by Right of Way for Seiberling Road and Tract B; and on the West by property of Sweatman. Reference is craved to the aforesaid plat for a more accurate description as to metes, bounds, courses and distances.

This being the identical property acquired by the Grantor from Louis E. Storen and Randall C. Stoney by deed dated October 30, 1979, and recorded October 30, 1979, in Volume A121 at Page 434 in the R.M.C. Office for Charleston County, South Carolina.