

LICENSE AND INDEMNITY AGREEMENT

THIS LICENSE AND INDEMNITY AGREEMENT ("Agreement") is made this 2nd day of April, 2012 by and between SOUTHPORT INVESTMENTS, LLC, a North Carolina limited liability ("Licensor"), and the NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES, an instrumentality of the State of North Carolina ("Licensee").

STATEMENT OF FACTS

Licensor is the fee owner of that certain parcel of real property located at the corner of N. Irwin Street and West 5th Street in Charlotte, North Carolina, which has a tax address of 900 W. Trade Street and is identified as Tax Parcel Number 07812401 (the "Licensor's Property"). Licensee desires to conduct an investigation of subsurface environmental conditions on Licensor's Property. Licensee has engaged a consultant to investigate and evaluate subsurface soil and groundwater conditions on adjacent and surrounding properties, including Licensor's Property. Licensee has requested access to Licensor's Property in order to perform its investigations and evaluations of soil and groundwater conditions. The parties desire to enter into this Agreement in order to define their respective responsibilities and obligations during the temporary use of Licensor's Property.

NOW THEREFORE, BE IT AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Revocable License. For and in consideration of \$1.00 and other good and valuable consideration, the undersigned Licensor does hereby give to Licensee a revocable license to access Licensor's Property for the express purpose of investigating and evaluating subsurface soil and groundwater conditions on Licensor's Property (the "Licensed Uses") and for no other purpose. The Licensed Uses shall be limited to the following: (a) the right to install and maintain one (1) monitoring well ("Well") on Licensor's Property and to perform four (4) soil borings, all of which shall be in the locations shown on Exhibit A attached hereto and made a part hereof; provided, however, that Licensee shall be responsible for closing and abandoning the Well prior to the expiration of the term of this Agreement or, in the event of termination of this Agreement by Licensor, no later than thirty (30) days after such termination; and (b) the right to collect soil samples during the installation of the Well and borings and to sample groundwater from the Well. The Licensed Uses and any activities on or associated with Licensor's Property shall be conducted in accordance with applicable laws and regulations, and in accordance with the terms and conditions of this Agreement. No soil cuttings, investigation derived wastes or wastes of any type shall remain unsupervised or be stored and/or staged on Licensor's Property. If the activities performed by Licensee hereunder result in the generation or presence on Licensor's Property of any hazardous substances, Licensee shall promptly remove such hazardous substances in compliance with any and all applicable federal, state or local laws, ordinances or regulations, and Licensee shall be named on any manifests as the generator of such hazardous substances. Prior to the expiration of the term of this Agreement, or immediately upon termination of this Agreement by Licensor, Licensee shall close and abandon the Well in accordance with all current applicable federal, state or local laws, ordinances or regulations, remove all equipment, tools, materials and other objects of Licensee located on Licensor's Property, and restore Licensor's Property to the condition that existed as of the commencement of the Licensed Uses. Licensee's use of Licensor's Property as set forth herein shall in no way unreasonably impede or interfere with Licensor's business operations located on Licensor's Property.

2. Term. The term of this Agreement shall be for a period of time commencing on the date of full execution hereof and ending on December 31, 2012, unless sooner terminated by Licensor as set forth in Paragraph 10 below.

3. Title. Licensee certifies, represents and declares that it has no title in and to Licensor's Property and has not and does not claim any such title or any easement over Licensor's Property.

4. Indemnity. Licensor shall not be liable to Licensee or to its consultant or to their employees, agents, guests or invitees, or to any other person whomever, for any injury to persons or damage to property on or about Licensor's Property (collectively and individually, a "Licensee Claim"), including but not limited to, consequential damage. Licensee agrees to indemnify, defend and hold harmless Licensor and its consultants, employees, agents, guests and invitees for any liability, loss, expense, claim and/or damages (including, but not limited to reasonable attorneys' fees and consequential damages) whatsoever (each being hereinafter referred to as an "Indemnified Claim"), whether known or unknown, foreseen or unforeseen, arising out of or directly or indirectly related to: (a) any act or omission of Licensee or its consultant, their employees, agents, guests or invitees or of any other person entering Licensor's Property by express or implied invitation of Licensee or its consultant; or (b) the Licensed Uses; or (c) the use of Licensor's Property by Licensee or its consultant, their employees, agents, guests or invitees and/or any Licensee Claim; or (d) any breach or default by Licensee or its consultant, in the performance of their obligations hereunder; provided, however, this indemnity shall not apply to any liability, loss, expense, claim or damage caused by the gross negligence or the intentional or willful acts of Licensor or its consultants, employees or agents or invitees. The indemnity provided to Licensor by Licensee pursuant to Paragraph 4 of this Agreement shall survive the termination or expiration of this Agreement. Licensor shall provide Licensee with written notice of any Indemnified Claim within a reasonable period of time of being made aware of same.

5. Condition of Premises. Licensee accepts Licensor's Property in its "as is" condition. Licensee and its consultant assume all risks in connection with the physical condition of Licensor's Property.

6. Insurance. Licensee shall ensure that its consultant carries and maintains the following minimum levels of insurance during the entire term of this Agreement:

a. Workers' Compensation and Employers' Liability

- i. Statutory Worker's Compensation insurance as required by law.
- ii. Employers' Liability insurance with limits of at least \$2,000,000.00 per occurrence.

b. General Liability Insurance

- i. Commercial General Liability policy form on an occurrence basis including Premises/Operations Liability, Contractual Liability (which shall include coverage for, but shall not limit, Licensee's indemnification obligations hereunder), Independent Contractors Coverage and Products/Completed Operations Liability with the explosion, collapse and underground (XCU) exclusions eliminated.

- ii. Limits of Liability: Two Million Dollars (\$2,000,000) combined single limit for Bodily Injury and Property Damage coverage, and Five Million Dollars (\$5,000,000.00) for Pollution Liability coverage. Limits of Liability may be provided under a Commercial General Liability and Umbrella Liability Policy, if desired.

Licensee will cause its consultant to provide Licensor with a copy of its insurance certificate showing Licensor as an additional insured. Licensor and Licensee agree that the provisions of this Paragraph 6 shall not in any way limit the liability of Licensee under this Agreement.

7. Removal of Personalty. Licensee shall be responsible for the removal of any and all personalty used or located within Licensor's Property in connection with the Licensed Uses, which shall be removed prior to the expiration of the term of this Agreement or, in the event of termination of this Agreement by Licensor, removed immediately following such termination but in no event later than thirty (30) days thereafter. Any personalty that is not removed within the appropriate timeframe as specified herein shall be deemed to be abandoned and Licensor may dispose of same without liability therefore.

8. Nonassignable. This License is personal to Licensee. It is nonassignable and any attempt to assign this License, except to a company affiliated with Licensee, will immediately terminate this Agreement and all of the privileges granted hereunder. Notwithstanding the above, Licensee shall remain liable under this Agreement regardless of an assignment to an affiliated company.

9. Notice. Any notices or other communications required or permitted to be given under this Agreement, unless otherwise specifically provided, shall be deemed given if sent by first-class mail, postage prepaid, or via nationally recognized overnight courier (e.g., Federal Express) to such party at its address set forth below and shall be effective as of the date of actual delivery of the notice. Either party may change its notice address by a written notice as provided herein.

If to Licensor: Bank of America, National Association
Sherrill Building, 6th Floor
NC2-109-06-05
13510 Ballantyne Corporate Place
Charlotte, North Carolina 28277
Attn: Lease Administration

With a copies to: Bank of America, National Association
Corporate Workplace-Transactions and Investments
NC2-416-01-01
1235 East Blvd., Suite 130
Charlotte, North Carolina 28203
Attn: Sherry Cronan Watts

and

Bank of America, National Association
DE5-002-05-04
Bracebridge II
1020 N. French Street
Wilmington, Delaware 19884
Attn: Galina Chadwick
SVP; Mg. – Environmental SVCS Dept.

If to Licensee: Jay King, Project Manager-Hydrogeologist
NCDENR
Dry Cleaning Solvent Cleanup Program
Superfund Section, Division of Waste Management
1646 Mail Service Center
Raleigh, NC 27699
919-707-8367

If to Consultant: URS Corporations- North Carolina (NCDENR-DSCA Program)
Rob Mac Williams
Principal Geologist-Vice Preside
6135 Park South Drive, Suite 300
Charlotte, NC 28210

Licensee is required to give written notice to Licensor if the name or address of the consultant changes from the information listed above.

10. Termination. This Agreement may be revoked by Licensor at will, at any time, by providing written notice to Licensee as provided in Paragraph 9. If not sooner revoked, this License shall terminate upon the expiration of the term in accordance with Paragraph 2 above.

11. Reports. Licensee, at Licensee's sole cost and expense, shall promptly deliver to Licensor copies of all reports, data and other information obtained by Licensee that are not protected by any legal privilege, as well as any correspondence to or from a regulatory agency regarding Licensor's Property, with respect to the investigation and evaluation of subsurface soil and groundwater conditions on Licensor's Property.

12. Confidential Information. Licensee acknowledges and agrees that the Licensed Uses and the results thereof and the site conditions (the "Confidential Information") are considered by Licensor to be proprietary and confidential. Licensee acknowledges that Licensor is willing to disclose and permit disclosure of the Confidential Information to Licensee in its ordinary and regular course of business only upon the express terms and conditions contained herein. Except as otherwise indicated herein, Licensee shall not at any time disclose, permit the disclosure of, release, disseminate or transfer, whether orally or by any other means, any information concerning the site or the site conditions, publish or use in any manner a description or depiction of the site or the Licensed Uses (including any results thereof), without the express prior written consent of an authorized representative of the Licensor. Notwithstanding the above, Licensor acknowledges and agrees that Licensee and/or its consultant may disclose Confidential Information as otherwise required by law without the express prior written consent of the Licensor.

Licensee shall take reasonable measures to avoid any disclosure of any Confidential Information to any unauthorized person by the Licensee's and/or its consultant's employees, agents, representatives, affiliates and/or attorneys. Licensee acknowledges and agrees that unauthorized disclosure of any Confidential Information may cause injury to Licensor inadequately compensable in damages. Accordingly, in addition to any other remedies that may be available to the Licensor under this Agreement, at law or in equity, Licensor shall be entitled to injunctive relief against the breach or threatened breach of any of the provisions of this Agreement as provided under applicable law. If Licensor believes Licensee has breached or may breach the provisions of this Agreement, before pursuing any remedies hereunder, including but not limited to injunctive relief, Licensor agrees to provide Licensee: (a) with prompt written notice of such breach or threatened breach; and (b) thirty (30) days from Licensee's receipt of such notice to cure or resolve the breach or threatened breach. If Licensee is unable to cure or resolve the breach or threatened breach within such thirty (30) day period, Licensor may pursue its available remedies against Licensee.

13. Tolling of Defenses. If the activities performed by Licensee hereunder result in the generation or presence on Licensor's Property of any hazardous substances, until notice has been provided by Licensee to Licensor that a Remedial Goal (as defined below) has been achieved, all statutes of limitations and repose and all other time related defenses including, but not limited to, laches, are tolled as of the date of this Agreement, with respect to any claim that Licensor may have against Licensee or its consultant, their employees, agents, guests or invitees arising out of or related to hazardous or toxic substances, materials or wastes released on Licensor's Property or released as a result of operations on Licensor's Property, including, but not limited to, any migration of said constituents to Licensor's Property (collectively, the "Release"). For the purposes of this Agreement, "Remedial Goal" shall mean a closure letter or other document from any government agency with jurisdiction over the Release indicating that no further remedial actions are necessary at the current time with respect to the Release. This tolling provision shall survive the termination of this Agreement until a Remedial Goal is achieved. The tolling of statutes of limitations and repose and all other time related defenses pursuant to this Paragraph 13 shall end upon achievement of a Remedial Goal.

14. Notice of Licensed Uses. Licensee shall provide fifteen (15) business days' advance notice to Licensor prior to conducting any Licensed Uses on Licensor's Property. Such notice shall contain a detailed description satisfactory to Licensor of all Licensed Uses to be conducted on Licensor's Property.

15. Amendment. No amendment, supplement, or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by all parties.

16. Sole Benefit. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person, firm, or entity, other than Licensor, Licensee or a company affiliated with Licensee, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions in this Agreement. It is the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities herein, and all conditions and provisions of this Agreement are for the sole benefit of the parties hereto, and for the benefit of no other person, firm or entity, except as otherwise provided in this Agreement.

17. Additional Provisions. The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties shall be governed by the laws of the state of North Carolina. A failure or delay by Licensor or Licensee to enforce at any time any of the

provisions of this Agreement, or to exercise any option that is provided in this Agreement, or to require at any time performance of any of the provisions of this Agreement, shall in no way be construed to be a waiver of such provisions of this Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements, promises, representations, whether written or oral, between the parties with respect to the subject matter of this Agreement. The article and section headings in this Agreement are for convenience only and do not constitute part of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, which, when taken together, shall constitute one Agreement.

19. Digital Images. Licensor and Licensee agree to accept a digital image of this Agreement, and any amendments hereto, as executed, as true and correct originals and admissible as best evidence for the purposes of State law, Federal Rule of Evidence 1002, and the like statutes and regulations.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date on which the latter of Licensor or Licensee executes the Agreement as noted below.

LICENSOR:

SOUTHPORT INVESTMENTS, LLC,
a North Carolina limited liability company

By: Bank of America, National Association,
a national banking association,
its sole member

By: Sherry C. Watts
Name: ~~Mark Hohman~~ Sherry C. Watts
Title: ~~Manager~~ Asst V.P.
Date: 4.2.12

LICENSEE:

North Carolina Department of Environmental and Natural Resources,
an instrumentality of the State of North Carolina

By: J. W. King
Name: Jay W. King
Title: Project Manager
Date: 3-26-12

EXHIBIT A



Source: Mecklenburg County Aerial Photography, dated 2009.

- ▲ Proposed DSCA Soil Boring Location
- Sump Location (assumed)
- ⊕ Monitoring Well Location
- ⊖ Proposed DSCA Monitoring Well Location
- Approximate Area of Former Dry Cleaning Facility located at 915 West 8th Street (Mecklenburg County City Directory)
- Approximate Area of Former Dry Cleaning Facility located at 924 West Trade Street (Sanborn Map 3" x 3", Vol. 3 dated 1929; republished 1953)
- ↖ Approximate Direction of Ground Water Flow

0 87.5 175 350 525 700 Feet



**AERIAL PHOTOGRAPH
900 WEST TRADE STREET
AND 125 NORTH IRWIN AVENUE
CHARLOTTE, NORTH CAROLINA**

PREPARED BY	HMF	DATE	1/10/12	CHECKED BY	AMC	DATE	1/10/12	PROJECT	SITE ACCESS CONSIDERATION	FIGURE	1
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