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*Building, Preserving, and Protecting Success*

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March 8, 2012

VIA COURIER

Hon. E. E. Coleman, Jr., Clerk  
Mecklenburg County Circuit Court – Civil Division  
393 Washington Street  
Boydton, Virginia 23917

Re: GS Virginia Land, LLC, et al. v. Town of South Hill, et al.

Dear Mr. Coleman:

I am enclosing for filing one original and six service copies each of a Complaint and Emergency Motion for Temporary Injunction to be filed as one matter for the purpose of initiating suit in the above-referenced matter. Please file the originals and hold the service copies for pickup by our private process server (R & W Services) to be served on each of the defendants. Our check in the amount of \$296.00 has been enclosed to cover the required filing fee.

Should you have any questions or require any additional information at this time, please contact my office. Thank you for your assistance.

Yours sincerely,

Daniel A. Carrell

Enclosures



R & W Services, Inc. (w/o enclosures)  
John W. Albee, Esq.  
Michael G. Montgomery, Esq.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MECKLENBURG

[REDACTED] )  
and )  
[REDACTED] )

Plaintiffs, )

v. )

Case No. \_\_\_\_\_

TOWN OF SOUTH HILL, VIRGINIA, )

Serve: Mr. Kim Callis )  
Town Manager )  
211 S. Mecklenburg Ave. )  
South Hill, VA 23970 )

MECKLENBURG COUNTY )  
INDUSTRIAL DEVELOPMENT )  
AUTHORITY, )

Serve: Ms. Angie D. Kellett )  
Treasurer )  
350 Washington St. )  
Boydton, VA 23917 )

BRUNSWICK COUNTY INDUSTRIAL )  
DEVELOPMENT AUTHORITY, )

Serve: Ms. Joan V. Moore )  
Executive Director )  
116 West Hicks Street )  
Lawrenceville, VA 23868 )

BRUNSWICK COUNTY, )

Serve: Phyllis C. Katz, Esq. )  
County Attorney )  
Sands Anderson )  
1111 East Main Street )  
Richmond, VA 23218 )

REPUBLIC SERVICES, INC., )

Serve: CT Corporation System )  
Registered Agent )  
4701 Cox Road, Ste. 301 )  
Glen Allen, VA 23060 )

And )

EDMUNDS TRANSPORT, INC., )  
Serve: Thomas F. Edmunds, III, Esq. )  
Registered Agent )  
8507 McKenney Highway )  
McKenney, VA 23872 )  
) )  
Defendants. )

**COMPLAINT**

1. Plaintiffs, GS Virginia Land LLC (“GSVL”) and American Industrial Heat Transfer, Inc. (“AIHT”), by counsel, present this Complaint for negligence, nuisance, and inverse condemnation against Defendants, the Town of South Hill, Virginia (“South Hill”), Mecklenburg County Industrial Development Authority (“Mecklenburg IDA”), Brunswick County Industrial Development Authority (“Brunswick IDA”), Brunswick County, Virginia (“Brunswick County”), Republic Services, Inc. (“Republic”), and Edmunds Transport, Inc. (“Edmunds Transport”).

**PARTIES**

2. GSVL is an Illinois limited liability company with its principal office located at 355 American Industrial Drive, Lacrosse, Virginia.

3. AIHT is a Wisconsin corporation authorized to transact business in Illinois and Virginia, with its principal office located at 355 American Industrial Drive, Lacrosse, Virginia.

4. Mecklenburg IDA is a political subdivision of the Commonwealth of Virginia created under the Industrial Development and Revenue Bond Act.

5. Brunswick IDA is a political subdivision of the Commonwealth of Virginia created under the Industrial Development and Revenue Bond Act.

6. Brunswick County is a county of the Commonwealth of Virginia.

7. South Hill is a municipality located in Mecklenburg County, Virginia.

8. Republic is a Delaware corporation with an office in Lawrenceville, Virginia.
9. Edmunds Transport is a Virginia corporation with its principal office in McKenney, Virginia.

#### **JURISDICTION AND VENUE**

10. The Court has subject matter jurisdiction over this action pursuant to § 17.1-513 of the Code of Virginia.
11. The Court has personal jurisdiction over the Defendants pursuant to §§ 8.01-299, 8.01-300, and 8-01-301 of the Code of Virginia.
12. Venue is proper in the Court pursuant to § 8.01-261 of the Code of Virginia.

#### **FACTUAL BACKGROUND**

13. GSVL owns the property located at 355 American Industrial Drive, Lacrosse, Virginia (the "Property"), which consists of approximately 54 acres and contains a manufacturing plant occupied and operated by AIHT (the "Plant") pursuant to a lease between GSVL as lessor and AIHT as lessee, through which AIHT shares with GSVL an interest in the quiet enjoyment of the Property.
14. AIHT manufactures heat transfer products and employs approximately 65 people at the Plant.
15. The Plant is the only operating facility within the Roanoke River Regional Business Park (the "Park"), which is jointly owned by Mecklenburg IDA and Brunswick IDA.
16. The Plant was constructed in 2006 at a cost of approximately \$8 million.
17. Despite the passage of some six years, the remainder of the Park is currently unoccupied despite representations by numerous state and local officials to AIHT, prior to its entry into Virginia, that other businesses would be locating in the Park.

18. South Hill is the beneficial interest holder of a 20-foot-wide sanitary sewer easement (the "Sewer Line") that runs through the Park and in part underneath the Plant.

19. Brunswick County owns a waste management facility located at 107 Mallard Crossing Road, Lawrenceville, Virginia (the "Brunswick Facility").

20. Republic operates the Brunswick Facility.

21. In or around January 2012, South Hill entered into an agreement with Brunswick County and Republic for South Hill to accept landfill leachate from the Brunswick Facility for treatment at the South Hill waste water treatment plant, located at 1015 Rocky Branch Road, South Hill, Virginia.

22. Landfill leachate is a contaminated liquid that is produced from precipitation that passes through landfill waste.

23. On or about February 1, 2012, without notice to or consent from either Plaintiff, Mecklenburg IDA and Brunswick IDA began allowing South Hill, Brunswick County, and Republic to have access to the Park through tanker trucks operated by Edmunds Transport for the dumping of leachate from the Brunswick Facility into the Sewer Line at a location adjacent to the Property and in close proximity to the AIHT Plant.

24. On information and belief, trucks of Edmunds Transport had previously been dumping such leachate at least miles away, in a location and manner that caused no problems for AIHT.

25. Since February 1, however, at least one Edmunds Transport truck has typically been arriving at the Park on an hourly basis throughout the day to dump leachate into the Sewer Line. More recently three trucks have typically been arriving each hour to dump leachate into the

Sewer Line. Throughout this period the dumping has caused noxious fumes from the landfill leachate to enter the Plant.

26. GSVL being the owner of the Property, and AIHT being the lessee of a parcel, each is entitled to unhindered quiet enjoyment of the Property, including the Plant.

27. The landfill leachate fumes produce constant noxious odors and effects. By spreading throughout portions of the Plant, the fumes have led to illnesses and other physical maladies among the AIHT employees, thereby interfering with their work and slowing the production of the Plant.

28. The leachate fumes have caused nearly unbearable working conditions for AIHT and its employees despite remedial efforts recently taken by AIHT at its own considerable expense on the advice of an independent engineer.

29. The leachate fumes have diminished the value of the Property and the Plant.

30. At no time has either Plaintiff consented to or otherwise approved the dumping of the leachate into the Sewer Line.

31. Despite the efforts of AIHT to communicate with state and local officials about the problems arising from the dumping of leachate into the Sewer Line, no such official has taken any effective step to cure the problem. Most appear to have ignored it altogether -- for example, by failing to provide the courtesy of returning even one of the repeated phone calls made to them by directors of AIHT.

32. Plaintiffs have been denied their right to quiet enjoyment of the Plant by the dumping of the landfill leachate into the Sewer Line in such close proximity to the AIHT Plant.

33. Plaintiffs have not been compensated for the loss of their enjoyment of the Plant, and AIHT has not been compensated for the tortious disruption of its business.

34. Defendants' actions in permitting and causing the dumping of the leachate into the Sewer Line are, in part, for the benefit of the public.

## **CAUSES OF ACTION**

### **COUNT I: NEGLIGENCE**

35. Plaintiffs incorporate paragraphs 1 – 34 above as if fully set forth in this Count.

36. Defendants owe a duty of care to Plaintiffs to perform their landfill leachate transfer and disposal activities in a reasonable, safe, and non-harmful manner.

37. Defendants have breached this duty of care by transferring and disposing of the landfill leachate in a manner that causes noxious fumes to enter the Plant and creates unsafe conditions upon the Property.

38. As a direct and proximate consequence of Defendants' ongoing wrongful activities, undertaken jointly and severally, AIHT has suffered damages from interruptions to its business and loss of production, and GSVL has suffered damage from the decline in the value of its Property.

39. Due to the ongoing problems arising from the noxious fumes, Plaintiffs are also suffering irreparable injuries for which monetary damages will not adequately compensate them.

### **COUNT II: NUISANCE**

40. Plaintiffs incorporate paragraphs 1 – 39 as if fully set forth in this Count.

41. Defendants have injured Plaintiffs and the Plant by: (1) diminishing the value of the Property and the Plant; (2) continuously interfering with AIHT's quiet enjoyment and full and proper use of the Plant; and (3) causing material disturbance and annoyance to Plaintiffs in their use and occupation of the Property and the Plant.

42. As stated above, by allowing and intentionally causing landfill leachate to be dumped

into the Sewer Line in such close proximity to the AIHT Plant, Defendants have caused, and continue to cause, a nuisance that is significantly and adversely affecting the use and quiet enjoyment of the Property and the Plant.

43. As a direct and proximate consequence of Defendants' ongoing wrongful activities, undertaken jointly and severally, AIHT has suffered damages from interruptions to its business and loss of production, and GSVL has suffered damage from the decline in the value of its Property.

44. Due to the ongoing problems arising from the noxious fumes, Plaintiffs are also suffering irreparable injuries for which monetary damages will not adequately compensate them.

### **COUNT III: INVERSE CONDEMNATION**

45. Plaintiffs incorporate paragraphs 1 – 34 above as if fully set forth in this Count.

46. Through their own acts and the acts of those contracting with them, South Hill, Brunswick County, Mecklenburg IDA, and Brunswick IDA (the "Public Defendants") have (1) taken and damaged the AIHT Plant for public use without consent of the Plaintiffs; and (2) failed to offer just compensation to Plaintiffs for the taking and damage brought about by the Public Defendants.

47. As stated above, by allowing and intentionally causing landfill leachate to be dumped into the Sewer Line in such close proximity to the AIHT Plant, the Public Defendants have taken away Plaintiffs' right to a full and proper use and enjoyment of the Plant.

48. As a direct and proximate consequence of the Public Defendants' ongoing wrongful activities, undertaken jointly and severally, AIHT has suffered damages from interruptions to its business and loss of production, and GSVL has suffered damage from the decline in the value of its Property.



49. Due to the ongoing problems arising from the noxious fumes, Plaintiffs are also suffering irreparable injuries for which monetary damages will not adequately compensate them.

50. By letter of March 5, 2012 (delivered on March 6), the undersigned counsel provided each of the Public Defendants with statutory notice of Plaintiffs' claims against those Defendants.

### **REQUEST FOR RELIEF**

Plaintiffs respectfully request this Court to issue an Order as follows:

- A. Entering judgment against the Defendants, jointly and severally, for negligence.
- B. Entering judgment against the Defendants, jointly and severally, for nuisance;
- C. Entering judgment against the Public Defendants, jointly and severally, for inverse condemnation;
- D. Entering an Order temporarily enjoining Defendants from allowing or causing the transportation of the landfill leachate into the Park and the dumping of it or any other noxious substance into the Sewer Line, or otherwise committing acts constituting a nuisance or inverse condemnation;
- E. Entering an Order permanently enjoining Defendants from such actions;
- F. Awarding compensatory damages to Plaintiffs in an amount exceeding \$25,000, the precise amount to be proved at trial, including interest thereon;
- G. Awarding punitive damages to Plaintiffs in the amount of \$350,000, as a result of the nuisance they have created;
- H. Awarding Plaintiffs their costs; and
- I. Granting such other relief as the Court deems appropriate.

Dated: March 8, 2012

GS VIRGINIA LAND, LLC and  
AMERICAN INDUSTRIAL HEAT  
TRANSFER, INC.

By:   
Counsel

Daniel A. Carrell (VSB No. 12406)  
Michael G. Montgomery (VSB No. 40204)  
CARRELL BLANTON GARRETT & VAN HORN, PLC  
7275 Glen Forest Drive, Suite 310  
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Tel: 804-285-7900  
Fax: 804-285-8925

John W. Albee (To Be Admitted *Pro Hac Vice*)  
ANTHONY J. MADONIA & ASSOCIATES, LTD.  
233 South Wacker Drive  
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*Counsel to Plaintiffs*

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF MECKLENBURG**

**GS VIRGINIA LAND LLC** )  
**and** )  
**AMERICAN INDUSTRIAL HEAT** )  
**TRANSFER, INC.,** )  
 )  
**Plaintiffs,** )  
**v.** )  
**TOWN OF SOUTH HILL, VIRGINIA,** )  
 )  
**MECKLENBURG COUNTY** )  
**INDUSTRIAL DEVELOPMENT** )  
**AUTHORITY,** )  
 )  
**BRUNSWICK COUNTY INDUSTRIAL** )  
**DEVELOPMENT AUTHORITY,** )  
 )  
**BRUNSWICK COUNTY,** )  
 )  
**REPUBLIC SERVICES, INC.,** )  
 )  
**and** )  
 )  
**EDMUNDS TRANSPORT, INC.,** )  
 )  
**Defendants.** )

Case No. \_\_\_\_\_

**EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

Plaintiffs, GS Virginia Land LLC (“GSVL”) and American Industrial Heat Transfer, Inc. (“AIHT”), by counsel, hereby move this Court to grant a temporary injunction to enjoin the Defendants, the Town of South Hill, Virginia (“South Hill”), Mecklenburg County Industrial Development Authority (“Mecklenburg IDA”), Brunswick County Industrial Development Authority (“Brunswick IDA”), Brunswick County, Virginia (“Brunswick County”), Republic Services, Inc. (“Republic”), and Edmunds Transport, Inc. (“Edmunds Transport”) from dumping

landfill leachate into the sewer line near the Plaintiffs' property, and in support of this Motion, Plaintiffs state as follows:

1. Plaintiffs hereby reference the allegations contained in their Complaint filed herewith, and incorporate such allegations and defined terms as if fully set forth herein.

2. Unless Defendants are enjoined from dumping landfill leachate into the Sewer Line near the AIHT Plant, Defendants will continue to unreasonably impose a nuisance and hindrance upon the Plaintiffs' rights and their quiet enjoyment of the Property and AIHT Plant, and the actions of the Public Defendants constituting inverse condemnation will continue unabated.

3. Unless the Defendants are enjoined from dumping landfill leachate into the Sewer Line near the AIHT Plant, the livelihood of the 65 AIHT employees that rely on AIHT being able to operate the AIHT Plant nuisance-free will be placed in jeopardy.

4. As a direct consequence of the Defendants' ongoing wrongful activities, there is reasonable cause to believe that the Plaintiffs may suffer irreparable injury from the loss of use and enjoyment of the AIHT Plant, for which monetary damages will not adequately compensate Plaintiffs.

5. The irreparable harm that Plaintiffs may suffer if the Defendants are not enjoined is substantially greater than any harm any of the Defendants would suffer if such an injunction were entered, for there are numerous suitable alternative sites for the dumping of the leachate. Therefore, the balancing of equities tips decidedly in favor of Plaintiffs.

6. Based upon the evidence to be presented and the applicable law, there is a substantial likelihood that the Plaintiffs will prevail on their negligence, nuisance and inverse condemnation claims.

7. The granting of a temporary injunction will prevent Defendants from unreasonably imposing a nuisance on the Plaintiffs and the AIHT Plant, and will prevent the Public Defendants from continuing their acts constituting inverse condemnation, thereby returning the parties to their positions prior to the Defendants' unwarranted and damaging conduct.

8. The Plaintiffs do not have an adequate remedy at law for full redress against the Defendants' actions.

**WHEREFORE**, for the reasons stated herein and in the Complaint, Plaintiffs respectfully request that this Court enjoin each of the aforementioned Defendants, their agents, and those persons who act in concert with them and receive actual notice of the injunction, from continuing to engage in the disposal of landfill leachate into the Sewer Line in such proximity to the AIHT Plant.

GS LAND VIRGINIA, LLC and  
AMERICAN INDUSTRIAL HEAT  
TRANSFER, INC.

By:   
Counsel

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Michael G. Montgomery (VSB No. 40204)  
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