

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

IN RE: Edgar Almeida

FILE NO.: UST 2012-03818

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Domenic Simone, II (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Edgar Almeida by RIDEM on April 17, 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 397 Dyer Avenue in the city of Cranston, Assessor's Plat 8, Lot 2647 (the "Property").
- (2) WHEREAS, the Respondent owns the Property. The Respondent acquired ownership of the Property through a foreclosure deed dated September 21, 2012 that was recorded on the Cranston Land Evidence Records on September 24, 2012.
- (3) WHEREAS, New Property Solutions was the owner of the Property at the time of the issuance of the NOV.
- (4) WHEREAS, New Property Solutions was listed as an inactive corporation in Rhode Island's Secretary of State corporation database. Edgar Almeida was the sole member of the corporation.
- (5) WHEREAS, three underground storage tanks ("USTs" or "tanks") are located on the Property, which tanks are/were used for storage of petroleum products and which are subject to the RIDEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*, as amended (the "UST Regulations").
- (6) WHEREAS, the USTs are registered with the RIDEM in accordance with Section 6.00 of the RIDEM's UST Regulations as UST Facility No. 03818 (the "Facility").
- (7) WHEREAS, on April 17, 2012, the RIDEM issued a NOV to Edgar Almeida alleging

certain violations of the RIDEM's UST Regulations.

- (8) WHEREAS, Edgar Almeida did not request an administrative hearing to contest the NOV.
- (9) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV and in order to affect a timely and amicable resolution of the NOV, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (10) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and his agents, servants, employees, successors assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – Within ten (10) days of the receipt of the fully executed Agreement from the RIDEM, the Respondent shall record this Agreement with the city of Cranston, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. Upon receipt of a copy of the recorded Agreement, the RIDEM shall issue a Release of the NOV to the Respondent for recording. The recordings shall be at the sole expense of the Respondent.
- (5) CONDITIONS –
 - (a) **Within one hundred eighty (180) days of the execution of this Agreement**, the Respondent shall bring the Facility into compliance with the RIDEM's UST Regulations to the satisfaction of RIDEM's Office of Waste Management ("OWM").
 - (b) **Within ten (10) days of the completion of the requirements in Section C(4)(a) above**, the Respondent shall submit all applicable documents as required in the RIDEM's UST Regulations sections 6.00, 7.00, 8.00, 9.00, 10.00 and 11.00.

- (c) The Respondent and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent shall not open the Facility without written approval from the RIDEM's OWM. Written approval from the RIDEM's OWM will only be granted upon the execution of this Agreement, completion of the requirements as described in Section C(4)(a) and (b) above and payment of the penalty as described in Section C(5) below.
- (d) **If within one hundred eighty (180) days of the execution of this Agreement** the Facility is not in compliance with the RIDEM's UST Regulations to the satisfaction of the RIDEM's OWM, the following actions must be taken:
- (i) **Within thirty (30) days of the notification by the RIDEM that the Facility must be permanently closed**, submit a permanent closure application to the RIDEM's OWM and complete the removal of the USTs in full compliance with Section 13.00 of the RIDEM's UST Regulations and Section 13.00 of the RIDEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
 - (ii) **Within thirty (30) days of the removal of the USTs**, submit to the RIDEM's OWM a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Section 13.11 of the RIDEM's UST Regulations, the RIDEM's *UST Closure Assessment Guidelines* and Section 13.00 of the RIDEM's OPC Regulations.
 - (iii) **Within thirty (30) days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within ten (10) days of the soil disposal, submit documentation of disposal to the RIDEM's OWM, in accordance with Section 13 of the RIDEM's OPC Regulations.
 - (iv) **Within sixty (60) days of receipt of written notification from the RIDEM to conduct a site investigation ("SI") of the Property**, retain a qualified consultant to perform the SI and submit a *Site Investigation Report* ("SIR") to the RIDEM within the time frame specified by the RIDEM in accordance with Rules 12.08, 12.09 and 12.10 of the RIDEM's UST Regulations.
 - (v) **Within sixty (60) days of receipt of written notification from the RIDEM to submit a corrective action plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the RIDEM in accordance with Rules 12.12 through 12.18 of the RIDEM's UST Regulations. The CAP must be implemented in accordance with an order of approval issued by the RIDEM.
- (e) Penalty – Respondent shall pay to the RIDEM the sum of **Ten Thousand Dollars (\$10,000.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of **Ten Thousand Dollars (\$10,000.00)**.

- (ii) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (iii) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

- (6) **RIGHT OF ACCESS** – The Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. The Respondent shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) **EFFECT OF COMPLIANCE** – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV. Upon Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the Agreement to the Respondent for recording. The recording shall be at the sole expense of the Respondent.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with the items specified in Section C(5) of the Agreement, the Respondent shall pay a stipulated penalty of One Hundred Dollars (\$100.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) **COMPLIANCE WITH OTHER APPLICABLE LAWS** – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (4) **ADDITIONAL ENFORCEMENT ACTIONS** – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any

new information, the RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.

- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey Tyrrell, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

Domenic Simone, II
116 Bateman Avenue
Cranston, RI 02920

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify the RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner/s. Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
 - (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to the RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
 - (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
 - (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Domenic Simone, II:

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2012, before me personally appeared Domenic Simeone, II to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

Notary Public
My Commission Expires: _____

For the State of Rhode Island Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____