

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

IN RE: METROPOLITAN OIL CO., INC.

FILE NO.: OCI-UST 2017-43-00105

AAD NO.: 17-009/WME

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 BRI Realty Corp ("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") to resolve, **with regard only to the RIDEM and Respondent**, the alleged violations set forth in a Notice of Violation ("NOV") issued to METROPOLITAN OIL CO., INC. ("MOC") by the RIDEM on 18 October 2017. This Agreement does not affect any rights or causes of action that the RIDEM may possess against MOC arising from or related to the NOV.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 1086 Main Street, Assessor's Plat 17, Lot 41 in the Town of West Warwick, Rhode Island (the "Property"). The Property includes an office, a garage and a petroleum product storage and dispensing system (the "Facility").
- (2) WHEREAS, MOC owned the Property and operated the Facility at the time the NOV was issued.
- (3) WHEREAS, 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* (the "UST Regulations").
- (4) WHEREAS, the Facility is registered with the RIDEM and is identified as UST Facility No. 00105.
- (5) WHEREAS, on 18 October 2017, the RIDEM issued a NOV to MOC alleging certain violations of the RIDEM's UST Regulations.
- (6) WHEREAS, MOC requested an administrative hearing to contest the NOV.

- (7) WHEREAS, on or about 18 May 2018, Respondent acquired the deed to the Property from MOC in lieu of foreclosure.
- (8) WHEREAS, this Agreement does not release or dismiss the NOV as it pertains to MOC.

C. **AGREEMENT**

- (1) **JURISDICTION** – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) **APPLICATION** – The provisions of this Agreement shall apply to and be binding upon the RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **RECORDING OF AGREEMENT** – **Within 10 days of the receipt of the fully executed Agreement from the RIDEM**, Respondent shall record this Agreement with the Town of West Warwick, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondent.
- (5) **CONDITIONS** –
 - (a) **Within 90 days of the execution of this Consent Agreement**, submit a completed *Permanent Closure Application for Underground Storage Tanks* to the RIDEM – Office of Waste Management ("OWM") at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 and, with the OWM's consent and approval, 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").
 - (b) **Within 30 days of the removal of the USTs**, submit to the 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.

- (c) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13.00 of the RIDEM's OPC Regulations.
- (d) Based on the information and findings presented in the Closure Assessment Report, the RIDEM may require that a site investigation ("SI") be performed by an environmental consultant and that a Site Investigation Report ("SIR") be submitted in accordance with Rules 12.08, 12.09, and 12.10 of the RIDEM's UST Regulations and within a time frame specified by the RIDEM. If the RIDEM requires a SI, Respondent shall complete the SI. Based on the information presented in the SIR, the RIDEM may require submittal of a Corrective Action Plan ("CAP") within a time frame specified by the RIDEM and in accordance with Rules 12.12 through 12.18 of the RIDEM's UST Regulations. The CAP shall be implemented in accordance with an Order of Approval issued by the RIDEM and the deadline for completion shall be enforceable as part of this Consent Agreement.
- (e) **Within 180 days of the execution of this Consent Agreement**, all remedial work as described in Section C (5)(a) through (d) above of this Consent Agreement shall be completed in accordance with the RIDEM's UST Regulations and any Order or Approval issued by the RIDEM.
- (f) Penalty – Respondent shall pay to the RIDEM \$1,110 in administrative penalties assessed as follows:
 - (1) **Upon execution of this Agreement by Respondent**, Respondent shall pay to the RIDEM \$1,110.
 - (2) Penalties that 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.
 - (3) 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** – Respondent provides to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. 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 if they control the Property. 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, regarding the RIDEM and Respondent, raised in the NOV. Upon Respondent’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Partial Release and Discharge of the NOV and Agreement to Respondent for recording. The Partial Release will release the NOV and Agreement from the Property but expressly reserves RIDEM’s rights to the collection of the administrative penalty from MOC. The recordings shall be at the sole expense of Respondent.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with the items specified in Section C (5)(a) through (e) of the Agreement, Respondent shall pay a stipulated penalty of \$100 per day for each day during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the 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 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 statute 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 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 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 limited to violations alleged in the NOV.
- (7) RESERVATION OF RIGHTS – Nothing contained herein is intended nor shall be construed as a release or waiver of any current or pending proceedings or future legal actions against MOC. DEM expressly reserves any and all of its rights, whether at law or in equity, to enforce the administrative penalty against MOC.

- (8) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

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

Attorney Christina A. Hoefsmit
RIDEM Office Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Attorney Lindsay C. Sullivan
Wieck DeLuca & Gemma Incorporated
56 Pine Street, Suite 700
Providence, RI 02903
(401) 454-8703

- (a) At any time prior to full compliance with the terms of this Agreement, 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 owners. 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.
- (9) 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 15 days prior to the prescribed deadline.
- (10) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (11) 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.

BRI Realty Corp

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of BRI Realty Corp, I hereby aver that I am authorized to enter into this Agreement and thereby bind BRI Realty Corp to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2018, before me personally appeared _____, the _____ of BRI Realty Corp, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of BRI Realty Corp, and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of _____.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____