

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Torti Realty, Inc.

File No.: OC&I-SW-07-016

AAD No.: 08-012/WM

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 Torti Realty, Inc. (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 the Respondent by the RIDEM on 10 September 2008.

B. STIPULATED FACTS

- (1) WHEREAS, the property that is the subject of the NOV is located at the northwestern end of West Russe Street, Assessor's Plat 6, Lot 3232 in the city of Cranston, Rhode Island (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on 10 September 2008, the RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's *Refuse Disposal Act*, the RIDEM's *Oil Pollution Control Regulations*, the RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases*, and the RIDEM's *Rules and Regulations for Hazardous Waste Management*.
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on 18 July 2013 the RIDEM issued a Remedial Approval Letter to the Respondent (the "RAL"). Completion of the work on the Property in accordance with the RAL will resolve the Order section of the NOV. The RAL is attached hereto and incorporated herein as Attachment A.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect 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.

- (7) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Refuse Disposal Act*, the RIDEM's *Oil Pollution Control Regulations*, the RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases*, and the RIDEM's *Rules and Regulations for Hazardous Waste Management*.

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 its 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 – Within 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. The recording shall be at the sole expense of the Respondent.
- (5) CONDITIONS –
- (a) **Within 180 days of execution of this Agreement**, the Respondent shall complete all work required in the RAL in accordance with the RAL as evidenced by the issuance of a Letter of Compliance from the RIDEM to the Respondent.
- (b) Penalty – The Respondent shall pay to the RIDEM the sum of Nine Thousand Dollars (\$9,000) in administrative penalties assessed as follows:
- (i) Within 10 days of the transfer of title to the Property, the Respondent shall pay to the RIDEM the sum of Nine Thousand Dollars (\$9,000).
- (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) In the event that the Respondent fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and the Respondent

will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12% per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude the RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (iv) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Environmental Response Fund 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 the 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 the Respondent's successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and the Agreement to the Respondent for recording. The recordings shall be at the sole expense of the Respondent.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with Section C (5)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500) per month for each and every month 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 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 D’Amadio Tyrrell, Supervising Environmental Scientist

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360 ext. 7407

Mary Kay, Esquire

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607

Paul Sassi, Esquire

Gelfuso and Sassi

2220 Plainfield Pike

Cranston, RI 02921

(401) 942-1300

- (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 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 Torti Realty, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Torti Realty, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Torti Realty, Inc. 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 _____, 2014, before me personally appeared _____, the _____ of Torti Realty, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Torti Realty, Inc., 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 Torti Realty, Inc.

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: _____