

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

**In Re: Emanuel Torti  
Irene Torti  
Itrot Realty Company**

**FILE NO.: FW C02-0067 and C-1208  
and SW 04-056  
AAD NO.: 05-001/MM**

**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 Emanuel Torti and Irene Torti (the "Respondents") and West Russe Realty, LLC. This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws of 1956 for the purpose of resolving the administrative enforcement actions set forth in two (2) Notices of Violation issued to Itrot Realty Company by RIDEM on June 22, 1982 and August 20, 1984 and a Notice of Violation issued to Respondents Emanuel and Irene Torti by RIDEM on January 12, 2005.

**B. STIPULATED FACTS:**

- (1) WHEREAS, the subject property is located immediately north of the terminus of Spectacle Street, approximately 200 feet northwest of the intersection of Spectacle Street and West Russe Street, Assessor's Plat 6, Lot 1286, (aka Assessor's Plat 6/4, Lot 1286), in the City of Cranston, Rhode Island (the "Property").
- (2) WHEREAS, at the time of the issuance of the Notice of Violation on January 12, 2005, the Property was owned by the Respondents.
- (3) WHEREAS, the Property is now owned by West Russe Realty, LLC.
- (4) WHEREAS, on June 22, 1982 and August 20, 1984, RIDEM issued Notices of Violation to Itrot Realty Company alleging certain violations of *Rhode Island General Laws, Section 2-1-21 et seq.* on the Property.
- (5) WHEREAS, the Certificate for the Domestic Profit Corporation known as Itrot Realty Company, was revoked on August 11, 1995.
- (6) WHEREAS, on January 12, 2005, RIDEM issued a Notice of Violation (the "2005 NOV") to the Respondents alleging certain violations of *Rhode Island General Laws, Sections 23-18.9-5, 23-18.9-8, 2-1-18 et seq.* and the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* ("the Freshwater Wetlands Rules").

- (7) WHEREAS, Respondents requested an administrative hearing to contest the 2005 NOV.
- (8) WHEREAS, in lieu of proceeding to an administrative hearing on the 2005 NOV, and in order to effect a timely and amicable settlement, RIDEM, the Respondents, and West Russe Realty, LLC hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the 2005 NOV.
- (9) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island General Laws and the Freshwater Wetlands Rules.

**C. AGREEMENT:**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents and West Russe Realty, LLC.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. §42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with Rhode Island General Law §42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondents, West Russe Realty, LLC and their agents, servants, employees, successors assigns and all persons, firms and corporations acting under, through and for the Respondents and/or West Russe Realty, LLC in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT - The Respondents and West Russe Realty, LLC agree to have the fully executed Consent Agreement recorded in the land evidence records of the City of Cranston, Rhode Island within ten (10) days of the receipt of the fully executed Consent Agreement from RIDEM. The Respondents and/or West Russe Realty, LLC shall ensure that the original Consent Agreement is recorded and returned to RIDEM at the sole expense of the Respondents and/or West Russe Realty, LLC.
- (5) CONDITIONS –
  - (a) Wetland Restoration
    - (1) The wetland restoration shall be conducted as described here in and in the Proposed Wetland Restoration Plan dated April 17, 2009, attached hereto as Attachment A. Where the terms of this Consent Agreement and the terms described in Attachment A may conflict, the terms described herein shall control.

- (2) Prior to the initiation of any restoration activity, the Respondents and/or West Russe Realty, LLC agree to install and maintain a coffer dam, a floating boom with an attached weighted silt curtain, or other sedimentation control device to eliminate the discharge of sediment into Spectacle Pond (the "Pond"). The sedimentation control device must enclose the area of fill to be removed from the Pond and must be placed as close to the work area as possible. At the discretion and direction of representatives of RIDEM, additional sedimentation controls must be installed on-site, as deemed necessary, to protect the Pond.
- (3) Beginning at the existing toe of fill on the bottom of the Pond, the Respondents and/or West Russe Realty, LLC shall remove all fill material over an area ten (10) feet wide by one hundred twenty (120) feet long down to the original bottom of the pond. After the fill is removed, the new embankment shall be graded to a 3:1 or shallower slope.
- (4) Beginning along the new top of slope resulting from the restoration required in part (2) above, the Respondents and/or West Russe Realty, LLC shall remove all unsuitable fill material (that is, solid waste, concrete, asphalt, boulders, rocks and any material unsuitable for planting trees, shrubs and ground cover) within fifty (50) feet of the Pond. All fill material that is removed must be staged in an appropriate upland location, outside of any and all wetlands pending disposal at a licensed disposal facility.
- (5) Following the removal of all fill in the Pond and on the adjacent embankment the Respondents and/or West Russe Realty, LLC shall install a continuous uninterrupted line of staked haybales or silt fence along the top of the restored slope. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of representatives of RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (6) Respondents and/or West Russe Realty, LLC shall plant all restored areas within the fifty (50)-foot Perimeter Wetland with trees and shrubs as follows:

Specifically, balled and burlapped or transplanted tree species must be planted in a straight line, eight (8) feet on center, six (6) feet tall after planting, along the outer edge of the fifty (50)-foot Perimeter Wetland. Tree species must include one of the following selections:

White pine, *Pinus strobus*;  
Spruce, *Picea* spp;  
Red cedar, *Juniperus virginiana*;

Specifically, balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, five (5) feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*;  
Red Spruce, *Picea rubens*;  
Red cedar, *Juniperus virginiana*;  
Red maple, *Acer rubrum*;  
Northern red oak, *Quercus rubra*;  
Pin oak, *Quercus palustris*;  
White ash, *Fraxinus americana*;  
Black birch, *Betula lenta*;  
Yellow birch, *Betula allegheniensis* and/or  
Gray Birch, *Betula populifolia*;

Specifically, balled and burlapped or transplanted shrub species must be planted in an interspersed fashion six (6) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least four (4) of the following selections:

Mountain laurel, *Kalmia latifolia*;  
Giant rhododendron, *Rhododendron maximum*  
Flowering dogwood, *Cornus florida*;  
Gray (stiff, red-panicle) dogwood, *Cornus foemina racemosa*;  
Arrowwood, *Viburnum dentatum*;  
Wild raisin, *Viburnum cassinoides*;  
American cranberry bush, *Viburnum trilobum*;  
Mapleleaf viburnum, *Viburnum acerifolium*;  
Elderberry, *Sambucus canadensis*;  
Black chokeberry, *Aronia melanocarpa*.

- (7) The Respondents and/or West Russe Realty, LLC shall cover all disturbed surface soils with loam (if necessary), seed with a wildlife conservation grass seed mixture, and mulch with a mat of loose hay. If necessary, steep slopes and/or disturbed surfaces to be left exposed for long periods of time must covered with excelsior matting or jute mesh to provide stabilization.
- (8) The Respondents and/or West Russe Realty, LLC shall ensure the survival of all plants for one (1) full year from time that planting has been verified by RIDEM. In the event that the plants do not survive, the Respondents and/or West Russe Realty, LLC shall replant and ensure the survival of the new plantings for another

year and shall continue this process until such time that the plantings survive at least one full year. The Respondents and/or West Russe Realty, LLC shall notify RIDEM in writing upon completion of the required planting.

- (9) The Respondents and/or West Russe Realty, LLC shall allow all restored Perimeter Wetland, including all replanted areas, to revert to a natural wild condition. No future filling, clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the Property without the Respondents and/or West Russe Realty, LLC first obtaining a permit from RIDEM.
- (10) Upon final stabilization of the all disturbed areas with well-established plant growth, the Respondents and/or West Russe Realty, LLC shall remove all erosion and sedimentation controls from all freshwater wetlands. Prior to the removal of the controls the Respondents and/or West Russe Realty, LLC shall remove all accumulated sediment and place it in a suitable upland area.
- (11) The Respondents and/or West Russe Realty, LLC shall complete the above restoration work prior to **October 15, 2010**.
- (12) The Respondents and/or West Russe Realty, LLC shall contact Mr. Howard Cook at RIDEM (401) 222-4700 Ext. 7161 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that the Respondents and/or West Russe Realty, LLC or their representative has met in the field with a representative of RIDEM.

(b) Removal of Solid Waste

- (1) The Respondents and/or West Russe Realty, LLC shall remove and properly dispose of all solid waste from the Property, to a licensed solid waste management facility before **October 15, 2010**.
- (2) The Respondents and/or West Russe Realty, LLC shall provide documents as to the removal and disposal of all the solid waste from the Property (e.g. receipts, bills, weight slips, etc.) **within ten (10) days** of the disposal date required in part 5 (b)(l) above. All documentation shall be sent to the RIDEM Office of Compliance & Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, ATTN: Daniel Lawton.
- (3) The Respondents and/or West Russe Realty, LLC shall contact Mr. Daniel Lawton at RIDEM (401) 222-4700 Ext. 7262 prior to the commencement of the removal and disposal of the solid waste to ensure proper supervision. No work shall commence until such

time that Respondents and/or West Russe Realty, LLC have met in the field with a representative of RIDEM.

(c) Penalty

Respondents and/or West Russe Realty, LLC agree to pay to RIDEM the sum of **Seven Thousand Seven Hundred and Forty-nine Dollars (\$7,749.00)** in administrative penalties.

- (1) Upon execution of the Consent Agreement by the Respondents and West Russe Realty, LLC, the Respondents and West Russe Realty shall pay to RIDEM the sum of **Seven Thousand Seven Hundred and Forty-nine Dollars (\$7,749.00)**.
- (2) Penalties that the Respondents and West Russe Realty, LLC agree to pay in this Consent 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 two certified checks. One check for the amount of **Three Thousand Eight Hundred and Seventy-four and Fifty Hundreds Dollars (\$3,874.50)** shall be made payable to the *R.I. General Treasurer – (Water and Air Protection)*. A second check for the amount of **Three Thousand Eight Hundred and Seventy-four and Fifty Hundreds Dollars (\$3,874.50)** shall be made payable to the *R.I. General Treasurer–(Environmental Response Fund)*. All payments shall be delivered, along with a copy of this Agreement to:

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

- (6) RIGHT OF ACCESS – The Respondents and West Russe Realty, LLC shall provide 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 Respondents and West Russe Realty, LLC 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 Respondents and/or West Russe Realty, LLC 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 Respondents and West Russe Realty, LLCs’ successful completion of all requirements set forth in this Agreement and payment of any noncompliance penalties resulting from the failure to comply, RIDEM shall issue a Release and Discharge of the Notices of Violation and the Consent Agreement to the Respondents and West Russe Realty, LLC for recording in the Land Evidence Records of the City of Cranston. Within ten (10) days of recordation, the Respondents and/or West Russe Realty, LLC shall provide a copy of the recorded Releases to RIDEM.
- (2) FAILURE TO COMPLY – In the event that the Respondents or West Russe Realty, LLC fail to comply with items specified in Section C(5)(a) and (b) of the Agreement the Respondents and/or West Russe Realty, LLC shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) 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 paragraph shall not preclude RIDEM from seeking any other appropriate remedy against Respondents and/or West Russe Realty, LLC (i.e., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents or West Russe Realty, LLC of any obligation to comply with any other applicable laws or regulations administered by, through or for 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, 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 § 42-17.1-2(21)*. This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondents or West Russe Realty, LLC may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents or West Russe Realty, LLC from liability arising from future violations or activities, as of the date of execution of this Agreement.

- (6) 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. Tel. (401) 222-4700, ext. 7407.
  - Susan Forcier, Esq. RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-6607.
  - Harold K. Ellis, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-4700 ext. 7401.
  - Paul A. Sassi, Esq., Gelfuso and Sassi, 1567 Plainfield Pike, Johnston, RI 02919. Tel. (401) 942-1300.
  - Micheal P. Donegan, Esq., 125 Juniper Drive, East Greenwich, RI 02818. Tel. (401) 641-2800.
- (a) At any time prior to full compliance with the terms of this Agreement, West Russe Realty LLC agrees to notify 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, return receipt requested.
- (b) Communications forwarded to the above-referenced address by certified mail, return receipt requested, shall be deemed received.
- (7) 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 RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (8) AMENDMENT - The Agreement may be amended by mutual agreement of the parties in writing.
- (9) EFFECTIVE DATE - This Agreement shall be deemed entered as of the date of execution by all parties.

RE: Torti  
Itrot Realty

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

*For the Respondents*

\_\_\_\_\_ Date: \_\_\_\_\_  
Emanuel Torti

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared Emanuel Torti, to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of himself, he acknowledged said instrument, executed by him, to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_  
Irene Torti

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared Irene Torti, to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of herself, she acknowledged said instrument, executed by her, to be her free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

RE: Torti  
Itrot Realty

*For West Russe Realty LLC*

\_\_\_\_\_  
David Weisberg, Manager

Date: \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared David Weisberg of West Russe Realty, LLC, to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of West Russe Realty LLC, he acknowledged said instrument, executed by him, to be his free act and deed and the free act and deed of West Russe Realty, LLC.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

*For the State of Rhode Island Department of  
Environmental Management*

\_\_\_\_\_  
David E. Chopy, Chief  
Department of Environmental Management  
Office of Compliance and Inspection

Date: \_\_\_\_\_