

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

**IN RE: Wood Street Investors, Inc. and
Mosaico Business and Community
Development Corporation**

FILE NO.: 2009-25-HW

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Consent Agreement (this “Agreement”) is entered by and among the Rhode Island Department of Environmental Management’s Office of Compliance & Inspection (“RIDEM”), Wood Street Investors, Inc. (“Wood Street”) by and through its receiver Diane Finkle (the “Receiver”) appointed in the receivership proceeding of Wood Street pending before the Rhode Island, Providence County Superior Court, Docket No. P.B. 09-2084 (the “Court”) and Mosaico Business and Community Development Corporation, a Rhode Island non-profit corporation (“Mosaico”), as the prospective purchaser of the subject property from the Receiver. This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I.G.L.”) for the purpose of resolving, **with regard only to RIDEM, the Receiver and the receivership estate and Wood Street**, the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to Wood Street,, East Bay Rubber Company and J. Royal Co., Inc., by RIDEM on June 25, 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 500 Wood Street, Bristol, Rhode Island, Assessor’s Plat 29, Lot 1 (the “Property”).
- (2) WHEREAS, Wood Street is the owner of the Property and was placed into a receivership proceeding by Order of the Court dated May 21, 2009.
- (3) WHEREAS, on June 25, 2010, RIDEM issued a NOV to Wood Street, East Bay Rubber Company and J. Royal Co., Inc. (collectively, the “Respondents”), alleging certain violations of the R.I.G.L. and the RIDEM Hazardous Waste Regulations.
- (4) WHEREAS, the hazardous waste described in the NOV was situated on the Property prior to the commencement of the receivership proceeding of Wood Street, and Respondents failed to request an administrative hearing to contest the NOV.

- (5) WHEREAS, the Receiver and Mosaico entered into an *Asset Purchase and Sale Agreement for Bristol Industrial Park Real Estate Complex as Entirety (All Condominium Units)* (the “Purchase and Sales Agreement”) on or about June 9, 2010, as amended, under which Mosaico will acquire at closing all of Wood Street’s and the Receiver’s right, title and interest in and to the Property, along with all personal property of Wood Street located thereon, pursuant to an Order of the Court dated July 1, 2010 (the “Court Order”). Both the Purchase and Sales Agreement, as amended, and the Court Order are incorporated herein and attached hereto as Attachments A and B, respectively.
- (6) WHEREAS, in lieu of proceeding to Superior Court and in order to effect a timely and amicable resolution of the NOV, **as it pertains solely to Wood Street**, RIDEM, the Receiver, and Mosaico 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, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with R.I.G.L. and the RIDEM Hazardous Waste Regulations.

C. **AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Receiver, Wood Street and Mosaico with respect to this Agreement.
- (2) **FORCE and EFFECT** – This Agreement shall have the full force and effect of a final compliance order of the Director issued after a full hearing on the merits 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 R.I.G.L. § 42-17.1-2(21)(v).
- (3) **APPLICATION** – The provisions of this Agreement shall apply to and be binding upon RIDEM, Wood Street, the Receiver and Mosaico, and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Wood Street, the Receiver and/or Mosaico 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 RIDEM, the Receiver, and/or Mosaico shall record this Agreement in the land evidence records for the town of Bristol, Rhode Island (“Bristol”) and shall provide a copy of the recorded Agreement to RIDEM. Upon receipt of a copy of the recorded Agreement, RIDEM shall issue a Release of the NOV to the Receiver and to Mosaico (the “Release”). The Receiver, Wood Street, or Mosaico shall record the Release in the land evidence records for Bristol and provide a copy of the recorded Release to RIDEM, Mosaico and the Receiver. The recordings of the Agreement and Release shall be at the sole expense of the recording party.

(5) CONDITIONS –

- (a) **Within sixty (60) days of the execution of this Agreement**, the Receiver, Wood Street, or Mosaico shall remove all of the hazardous waste from the Property that is identified in the NOV using a permitted hazardous waste transporter and ship the hazardous waste to a licensed treatment, storage and disposal facility (the “Designated Facility”).
 - (b) **Within thirty (30) days of receipt of the uniform hazardous waste manifest signed by the Designated Facility**, the Receiver, Wood Street, or Mosaico shall submit a copy of the manifest to the RIDEM Office of Compliance and Inspection.
- (6) PENALTY – The administrative penalty assessed in the NOV is hereby waived against Wood Street and its receivership estate.
- (7) RIGHT OF ACCESS – Wood Street, the Receiver and/or Mosaico 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 Receiver and/or Mosaico 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 Receiver, Wood Street, or Mosaico 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, with regard to RIDEM, the Receiver and the receivership estate and Wood Street, raised in the NOV dated June 25, 2010. Upon successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of this Agreement to the Receiver and the receivership estate, Wood Street and Mosaico. The Receiver, Wood Street, or Mosaico shall record the Release in the land evidence records of Bristol and provide a copy of the recorded Release and Discharge of this Agreement to RIDEM. The recording of the Release and Discharge of this Agreement shall be at the sole expense of the recording party.
- (2) FAILURE TO COMPLY – In the event that the Receiver or Mosaico fails to comply with the items specified in Section C (5)(a) or (b) of the Agreement, the Receiver or Mosaico shall pay an administrative 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 (i.e., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Receiver, Wood Street or Mosaico 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.G.L. § 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Receiver and the receivership estate and Mosaico 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 Receiver, Wood Street, or Mosaico from liability arising from future activities, as of the date of execution of this Agreement.
 - (6) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:
 - (a) Tracey Tyrrell, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767. Tel. (401) 222-1360, ext. 7407.
 - (b) Susan Forcier, Esq., RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908-5767. Tel. (401) 222- 6607.
 - (c) Robert I. Stolzman, Esq., Adler, Pollock & Sheehan, P.C., One Citizens Plaza, Eighth Floor, Providence, RI 02903. Tel. (401) 274-7200.
 - (d) Diane Finkle, Esq., Winograd, Shine and Zacks, P.C, 123 Dyer Street, Providence, RI 02903. Tel. (401) 273-8300.
 - (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.

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

For Wood Street Investors, Inc.:

Diane Finkle, as and only as
Receiver and not individually

Date: _____

In _____, on the ____ day of _____, 2010, before me personally appeared Diane Finkle to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of the Receiver of Wood Street and she acknowledged said instrument executed by her to be her free act and deed.

Notary Public
My Commission expires: _____

For Mosaico Business and Community Development Corporation:

Merritt Meyer, President
240 Hope Street
Bristol, Rhode Island 02809

Date: _____

In _____, on the ____ day of _____, 2010, before me personally appeared Merritt Meyer, as President of Mosaico Business & Community Development Corporation, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of said corporation and he acknowledged said instrument executed by him 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
Date: _____