

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Kevin T. Malloy
United States Investment and Development Corporation

File No.: SR 2001-031
AAD No.: 08-002/SRE

AMENDED 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 Kevin T. Malloy and United States Investment and Development Corporation (the "Respondents"). 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 amending the Consent Agreement entered into by the parties on June 7, 2012 (the "Original Agreement").

B. STIPULATED FACTS

- (1) WHEREAS, the Stipulated Facts described in Section B. of the Original Agreement are restated and incorporated by reference herein.
- (2) WHEREAS, the Respondents' intent in executing the Original Agreement was to incorporate the implementation of the Remedial Action Work Plan ("RAWP") with the sale and redevelopment of the subject property.
- (3) WHEREAS, RIDEM is willing to allow the Respondents additional time to market and develop the subject property before requiring a final RAWP to be implemented on the raw, undeveloped land.
- (4) WHEREAS, RIDEM finds that this Amended Agreement is reasonable and fair and adequately protects the public interest in accordance with the RIDEM's *Remediation Regulations*.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Amended Agreement and has personal jurisdiction over the Respondents.

- (2) FORCE and EFFECT – This Amended Agreement shall be deemed to be a continuation of the Original Agreement having the same 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 Amended Agreement shall apply to and be binding upon RIDEM, the Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – Within ten (10) days of the receipt of the fully executed Agreement from the RIDEM, the Respondents shall record this Agreement with the Office of Land Evidence Records in the city of Providence, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) CONDITIONS –
- (a) On or before the date of DEM’s execution of this Agreement, the Respondents shall submit a revised RAWP to the RIDEM Office of Compliance and Inspection in accordance with the RIDEM’s *Remediation Regulations* that satisfactorily addresses RIDEM’s Deficiency Letter and its comments of August 24, 2012. If any deficiencies still remain in the revised RAWP, the Respondents shall address all subsequent comments until the RAWP is approvable. The Respondents shall submit the Remedial Action Approval Application Fee of One Thousand Dollars (\$1,000.00) along with the revised RAWP.
 - (b) The Respondent or their successor shall complete the final DEM-approved RAWP on or before August 1, 2017.
 - (c) The Respondents shall submit quarterly status reports to DEM and the Office of the Attorney General describing their efforts to market and sell or develop the subject property on or before the following dates: November 1, 2016, February 1, 2017 and May 1, 2017. The Respondents shall undertake and complete all work in accordance with the approved RAWP.
 - (d) The Respondents must maintain all engineered controls at the Property, including fencing at all times. Respondent shall comply with the ELUR, including the annual reporting and maintenance of any engineered controls during and after the work described in C. 5. (c).
- (6) RIGHT OF ACCESS – The Respondents provide 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 Respondents 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 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 Respondents 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 Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with items specified in Section C(5)(a), C(5)(b), C(5)(c) and C(5)(d) of the Agreement, the Respondents 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 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 Respondents 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 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 Respondents 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 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
(401) 222-1360, ext. 7407

Matthew I. Shaw
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400 ext. 22

Brian A. Wagner, Esq.
Tower Hill Law Center
4879 Tower Hill Rd.
Wakefield, RI 02879
(401) 788-0600

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree 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 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.

Kevin T. Malloy

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2016, before me personally appeared Kevin T. Malloy 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 United States Investment and Development Corporation

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of United States Investment and Development Corporation, I hereby aver that I am authorized to enter into this Agreement and thereby bind United States Investment and Development Corporation 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 _____, 2016, before me personally appeared _____, the _____ of United States Investment and Development Corporation, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of United States Investment and Development Corporation, 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 United States Investment and Development Corporation.

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: _____