

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

**IN RE: Carl C. Ferrucci  
Frances S. Ferrucci  
FORTINI ENTERPRISES, LTD.**

**FILE NO.: OCI-UST-2018-8-01139  
AAD No.: 19-002/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 **Carl C. Ferrucci, Frances S. Ferrucci and FORTINI ENTERPRISES, LTD** ("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 resolving the alleged violations set forth in a Notice of Violation ("NOV") issued to Respondents by the RIDEM on January 4, 2019.

***B. STIPULATED FACTS***

- (1) WHEREAS, the property is located at 1282 Elmwood Avenue, Assessor's Plat 3, Lot 951 in the City of Cranston, Rhode Island and includes a motor fuel filling station and underground storage tanks ("USTs" or "tanks") that are used for storage of petroleum products (the "Facility").
- (2) WHEREAS, Carl C. Ferrucci and Frances S. Ferrucci own the Facility.
- (3) WHEREAS, FORTINI ENTERPRISES, LTD. operates the Facility.
- (4) WHEREAS, the Facility is registered with the DEM and is identified as UST Facility No. 01139.
- (3) WHEREAS, on January 4, 2019, the RIDEM issued a NOV to Respondents alleging certain violations of Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the "UST Regulations").
- (4) WHEREAS, Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, Respondents complied with the Order section of the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, the RIDEM and

Respondents 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 of all claims against Respondents and adequately protects the public interest in accordance with the UST Regulations.

### **C. AGREEMENT**

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (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, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS – Penalty – Respondents shall pay to the RIDEM the sum of **\$10,000** in administrative penalties assessed as follows:
- (a) Upon execution of this Agreement by Respondents, Respondents shall pay to the RIDEM the sum of **\$4,000**.
- (b) The remainder of the penalty, **\$6,000**, shall be paid to the RIDEM in 12 equal and consecutive monthly installments of **\$500**. The remaining payments shall be made starting on December 1, 2019 and continue to be paid on the first of every consecutive month until the entire amount shall be paid in full. The entire penalty shall be paid in full by November 1, 2020. No prepayment penalty will apply shall the Respondent choose to pay the full balance prior to November 2, 2020.
- (c) Penalties that Respondents agree 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.
- (d) In the event that Respondents fail to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Respondents 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 percent 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:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

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.

- (i) 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

#### ***D. COMPLIANCE***

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues, regarding the RIDEM and Respondents, raised in the NOV. Upon Respondents successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV for recording. The recordings shall be at the sole expense of Respondents.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (3) 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(s) may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondents from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.

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

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

Tricia Quest, Esq.  
Senior Legal Counsel  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607

Christopher Orton, Esq.  
Daley Orton Law Office  
1383 Warwick Avenue  
Warwick, RI 02888

- (a) At any time prior to full compliance with the terms of this Agreement, Respondents agree to notify the RIDEM in writing of any change in ownership of the Facility, and provide the name and address of the new owner. 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.
- (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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by 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.**

Fortini Enterprises, LTD

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

In my capacity, as \_\_\_\_\_ of Fortini Enterprises, LTD, I hereby aver that I am authorized to enter into this Agreement and thereby bind Fortini Enterprises, LTD 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 \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Fortini Enterprises, LTD, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of \_\_\_\_\_, 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: \_\_\_\_\_

Carl C. Ferrucci

\_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Carl C. Ferrucci, to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument and the execution thereof, to be his/her free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Frances S. Ferrucci

\_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Frances S. Ferrucci, to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument and the execution thereof, to be his/her free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

State of Rhode Island, Department of Environmental Management

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

Dated: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In Providence, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared David E. Chopy the Chief of the Office of Compliance and Inspection of the RIDEM, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the RIDEM and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the RIDEM.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_