

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

In Re: Omni 1C, LLC
Omni Combined W.E., LLC
The CJF Group, Ltd.

File No.: SR-13-02

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 Omni 1C, LLC and Omni Combined W.E., LLC (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 resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents and The CJF Group, Ltd. by the RIDEM on 17 February 2014.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 1 Cedar Street (formerly known as 2 Fox Place), Assessor's Plat 26, Lots 52, 53, 57 and 157 in the city of Providence, Rhode Island (the "Property").
- (2) WHEREAS, Omni 1C, LLC ("Omni 1C") owns the Property. Omni 1C acquired the Property on 14 February 2013.
- (3) WHEREAS, Omni Combined W.E., LLC ("Omni Combined") owned the Property from 5 February 2013 until 14 February 2013.
- (4) WHEREAS, the CJF Group, Ltd. ("CJF") owned the Property prior to 5 February 2013 at all times relevant to the NOV.
- (5) WHEREAS, on 17 February 2014 the RIDEM issued a NOV to the Respondents and CJF alleging certain violations of the RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* ("Site Remediation Regulations").
- (6) WHEREAS, the Respondents and CJF failed to request an administrative hearing to contest the NOV.
- (7) WHEREAS, on 1 April 1 2014 CJF fully complied with the NOV as it pertained solely to CJF.

- (8) WHEREAS, on 21 May 2014 the RIDEM received a Remedial Encapsulation Plan (the “REP”) submitted on behalf of the Respondents by Hoffman Engineering, Inc.
- (9) WHEREAS, on 4 June 2014 the RIDEM issued a remedial approval letter for the REP (the “Approval”). The Approval is attached hereto and incorporated herein as Attachment A.
- (10) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV and to affect a timely and amicable resolution of the NOV, the RIDEM and the Respondents hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues in the NOV.
- (11) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM’s Site Remediation Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the 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. 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 RIDEM, the Respondents and its 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 10 days of the receipt of the fully executed Agreement from the RIDEM, Omni 1C shall record this Agreement with the city of Providence, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording of the Agreement shall be at Omni 1C’s sole expense.
- (5) CONDITIONS – Omni 1C shall complete the following actions to comply with the Order section of the NOV:
 - (a) **Within 120 days of execution of this Agreement**, complete the remedial work (the “Work”) in accordance with the Approval. In the event that the western most area of the Property (known as Plat 26, Lot 157) is not ready for paving in the proscribed 120 days, Plat 26, Lot 157 may, in the alternative, be temporarily marked with demarcation barrier (that is, orange snow fence or similar) and covered with 1 foot of gravel. By 15 May 2015, Plat 26, Lot 157 shall be encapsulated with a permanent suitable cover in accordance with the Approval.

- (b) **Within 30 days of the execution of this Agreement** and continuing every month until the Work is completed to the satisfaction of the OWM, submit monthly inspection reports with photographs.
- (c) **Within 60 days** of full compliance with Section C (5)(a) above, submit a Closure Report to the OWM detailing the Work and documenting the final site conditions and include any disposal documentation.
- (d) The reports and other documents that are required to be submitted to the OWM under the Agreement are subject to the OWM's review and approval. Upon review, the OWM shall provide written notification either granting formal approval or stating the deficiencies therein. **Within 14 days** (unless a longer time is specified) of receiving a notification of deficiencies from the OWM, submit to the OWM a modified report or additional information necessary to correct the deficiencies.
- (e) Penalty – The Respondents shall pay to the RIDEM the sum of **Seven Thousand Five Hundred Dollars (\$7,500)** in administrative penalties assessed as follows:
 - (i) Upon execution of the Agreement by the Respondents, the Respondents shall pay to the RIDEM the sum of Seven Thousand Five Hundred Dollars (\$7,500).
 - (ii) Penalties that the 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.
 - (iii) 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** – Omni 1C 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. Omni 1C 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. Omni 1C 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 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 Omni 1C for recording. The recording shall be at Omni 1C’s sole expense.
- (2) FAILURE TO COMPLY – In the event that Omni 1C fails to comply with the items specified in Section C (5) (a) through (d) of the Agreement, Omni 1C shall pay a stipulated penalty of One Thousand Dollars (\$1,000) 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 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 Respondents 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 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
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

Richard Bianculli, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Sherry Giarrusso Mulhearn, Esq.
55 Indian Rock Road
Warwick, Rhode Island 02886

- (a) At any time prior to full compliance with the terms of this Agreement, Omni 1C agrees to notify the RIDEM in writing of any change in ownership of the Property and provide the name and address of the new owners. 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 Omni1C, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Omni 1C, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Omni 1C, LLC 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 Omni 1C, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Omni 1C, LLC 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 Omni 1C, LLC.

Notary Public
My Commission Expires: _____

For Omni Combined W.E., LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Omni Combined W.E., LLC I hereby aver that I am authorized to enter into this Agreement and thereby bind Omni Combined W.E., LLC 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 Omni Combined W.E., LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Omni Combined W.E., LLC, 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 Omni Combined W.E., LLC.

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: _____