

CONSENT AGREEMENT

WHEREAS, this Consent Agreement ("Agreement") is being entered into by and between the State of New Jersey Department of Environmental Protection ("DEP"), the Administrator, New Jersey Spill Compensation Fund ("the Administrator"), Beachwood Mall, L.L.C., (the "Seller") and, REC Centers, Inc. ("the Purchaser") concerning certain property known as Block 824, Lot 1 located in Berkeley Township, Ocean County, New Jersey ("the Property"); and

WHEREAS, the Property comprises approximately 142 acres of real property; and

WHEREAS, the Property is a mixed use commercial/retail property, at which various entities have conducted asphalt manufacturing and other activities on certain portions of the Property where hazardous substances may have been discharged and/or have become located thereon; and

WHEREAS, DEP has investigated, and continues to investigate the hazardous environmental matters at the Site, for which DEP and the Administrator have incurred, and will continue to incur investigation and other related costs; and

WHEREAS, the Purchaser entered into an Agreement for Purchase and Sale (the "P&S Agreement") with the Seller for the purpose of redevelopment of the Property to include remediation of the Property and to establish on-going environmentally friendly business concerns thereon; and

WHEREAS, the parties hereto have had various prior discussions concerning the costs incurred by the DEP and the Administrator as well as other asserted and unasserted claims and/or assessments, including the remediation of the Property; and

WHEREAS, the Seller is desirous to settle all Claims, as defined below, with the DEP and the Administrator to enable the Purchaser, DEP and the Administrator to enter into one or more separate agreements for the remediation of the Property by the Purchaser; and

WHEREAS, DEP and the Administrator believe that the Purchaser's eventual acquisition of the Property will further the remediation and redevelopment goals of the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31.

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged and for the mutual promises and covenants herein contained, it is hereby stipulated and agreed between DEP, the Administrator, the Purchaser and the Seller that:

1.) The DEP and the Administrator agree to accept Two Million Four Hundred Thousand (\$2,400,000.00) dollars (the "Settlement Amount") as payment in full satisfaction of any and all Claims , as defined below.

2.) Covered Claims.

(a) Claims are defined to include:

- i. All costs and damages the DEP has incurred as of the execution of this Agreement for the Site whether asserted, unasserted, known or unknown and within the meaning of "cleanup and removal costs" at N.J.S.A. 58:10-23.11b.
- ii. Any and all fines, assessments and/or penalties DEP or the Administrator may have in connection with or relating to the Site whether asserted, unasserted, known or unknown.
- iii. "Natural Resource Damages" which is defined in Appendix B appended hereto.

(b) Claims shall not include:

- i. Any oversight costs under the MOA to be executed as contemplated in paragraphs 9 and 10 below.
 - ii. Any and all costs or damages incurred by the DEP relating to any New Discharge as defined below.
 - iii. Any and all fines, assessments and/or penalties relating to any New Discharge as defined below.
 - iv. Any and all fines, assessments and/or penalties relating directly with statutory or regulatory requirements for actions after the Closing.
 - v. For the purposes of this Agreement a New Discharge shall mean a Discharge of a Hazardous Substance (as those terms are defined under N.J.S.A. 58:10-23.11 et seq.) occurring after the Closing Date (as defined below) at the Property and shall not include any continuation or migration of a Discharge of Hazardous Substances from the Property prior to the Closing Date.
- 3.) The Settlement Amount shall be payable from the Seller and Purchaser, without admission of any responsibility on the part of the Seller or the Purchaser, as follows:
- i. Two Million dollars (\$2,000,000.00) shall be due and payable from Seller, which amount the Seller authorizes Purchaser to withhold from the gross sales amount due to Seller at the time of closing and transfer of title to Purchaser (the "Closing Date") and,
 - ii. Four Hundred Thousand (\$400,000.00) dollars shall be due and payable from Purchaser on the Closing Date.
 - iii. Closing shall occur within the timeframe contemplated under the P&S Agreement and the Amendments thereto which is set forth in the Second Amendment as May 1, 2009 subject to automatic extension as provided for in the Third Amendment to the P&S Agreement. Other than as set forth in the P&S Agreement and the amendments thereto up through and including the Third Amendment, the Closing may be extended only with the consent of all parties which shall not be unreasonably withheld.
- 4.) Unless otherwise directed by the DEP or the Administrator, the Settlement Amount shall be disbursed by Purchaser on the Closing Date by cashier or certified check made payable to the "Treasurer, State of New Jersey," and shall be mailed to: Department of Treasury, Division of Revenue, PO Box 417, 160 South Broad Street,

Trenton, New Jersey 08646. A copy of the remittance shall also be sent within ten [10] business days to the Administrator of the Spill Compensation Fund, New Jersey Department of Environmental Protection, 401 East State Street, P.O. Box 413, Trenton, New Jersey 08625-0413 and to Deputy Attorney General Mary Ellen Halloran, 25 Market Street, P.O. Box 93, Trenton, New Jersey 08625-0093.

- 5.) Notwithstanding anything else in this Agreement to the contrary, the DEP and the Administrator agree, upon receipt of the Settlement Amount, to unconditionally release the Seller, Priscilla Oughton and John Oughton, Managing Members the Purchaser and predecessors in title from any and all obligations for claims arising under Paragraph 2(a)(iii) and covenant not to sue or take administrative action against the Seller or Purchaser and predecessors in title for claims arising under Paragraphs 2(a)(i) or 2(a)(ii).
- 6.) In the event that the Purchaser fails to acquire the Property and to close title thereon, then this Agreement shall automatically become null and void and have no further force or effect on any of the parties hereto, and shall be inadmissible in any subsequent proceedings between or among the parties hereto, or any of them.
- 7.) Purchaser's rights and obligations under this Agreement may be assigned by Purchaser to any Qualified Successor in Interest which is defined as any party that meets the requirements as set forth in Appendix A and with the consent of the DEP which shall not be unreasonably withheld. Any objection to such assignment must be made by DEP within twenty (20) business days of a written request for consent transmitted to the DEP and the Administrator.
- 8.) In the event that the Seller or the Purchaser shall fail to make payment of the Settlement Amount as set forth in Paragraph 3 above, then DEP and the Administrator may, in their sole discretion, declare this Agreement and any other agreement contemplated or entered into in connection herewith null and void. Seller and Purchaser further stipulate that failure to make payment of the Settlement Amount on the date of closing or within twenty [20] days after the date of the Closing as set forth in Paragraph 3 above would be a material breach of terms of this Agreement and stipulate to the entering of an enforceable judgment against them in the Superior Court by DEP and the Administrator for all remaining moneys owed by then under the terms of this Agreement and any other relief deemed appropriate by the court.
- 9.) As a material inducement for the Purchaser to enter into this Agreement and to make payment of a portion of the Settlement Amount as hereinabove described, the DEP shall, within sixty (60) days from the date of execution of this Agreement:
 - i. Negotiate in good faith to enter into a mutually acceptable Memorandum of Agreement ("MOA") with the Purchaser under which Purchaser shall conduct such remediation under the supervision and review of DEP to address the presence of contaminants and hazardous substances on or under the Property and the necessary remediation processes under such timeframes as mutually agreed by Purchaser and DEP including a provision for a groundwater monitoring program on the Property until such times as drums buried on the Property are removed; and

ii. Purchaser expressly consents to the posting and maintenance of financial assurance in an amount and under terms agreeable to Purchaser and DEP as part of the MOA.

- 10.) The MOA shall include, among other items, the following: a) the form of the "No Further Action Letter and Covenant Not To Sue" as defined in N.J.S.A. 58:10B-1 and N.J.A.C. 7:26C-1.3 ("NFA") to be issued upon completion of the remediation of the Property; (b) Seller and Purchaser shall not have any responsibility for off-site contamination resulting from Discharges (as that term is defined under N.J.S.A. 58:10-23.11 et seq.) at the Property prior to the Closing Date; (c) Purchaser will be issued Area of Concern ("AOC") NFA's or lot by lot NFA's as DEP makes determinations that those AOCs or lots have been remediated; and the DEP determines separate NFA's could be issued as the remediation of portions of the Property are completed, and (d) the NFA or NFAs shall inure to the benefit of any and all persons provided such benefit by statute. By entering into the MOA, Purchaser understands that all remedial activity to be conducted at the Property is governed by the Technical Rules for Site Remediation, N.J.A.C. 7:26E.
- 11.) Nothing in this Agreement shall prohibit the Purchaser from applying for or qualifying for Brownfield Site Reimbursement from the State. Seller shall not be a party to any Brownfield Site Reimbursement Agreement entered into between the State and Purchaser and shall not be asked to contribute additional monies to the Settlement terms of this Agreement based upon any Brownfield Site Reimbursement Agreement entered into between Purchaser and the State.
- 12.) The Seller hereby specifically authorizes the Purchaser, the DEP and the Administrator the unfettered right to negotiate any and all additional agreements amongst Purchaser, the DEP and/or the Administrator as contemplated by this Agreement.
- 13.) In the event that this Agreement is terminated by any party for any reason prior to the Closing Date or the Purchaser fails to acquire the Property and close title thereon, DEP, the Administrator and the Seller each covenant, warrant and represent to the Purchaser that the Purchaser shall have no liability or responsibility whatsoever pursuant to this Agreement. The provision of this Paragraph shall survive the termination of this Agreement.
- 14.) In the event this Agreement is terminated by any party for any reason prior to the Closing Date, DEP and the Administrator reserve the right to initiate legal action to recover any and all past, present, and future costs, expenses, interest, assessments, fines and/or penalties of any source, kind or nature whatsoever, whether asserted, unasserted, known or unknown and natural resource damages from the Seller.
- 15.) Seller warrants, covenants and represents to each of the other parties to this Agreement that it will deliver title to the Property in accordance with the requirements of the P&S Agreement, and that there is currently and shall be on the Closing Date sufficient funds available to fully satisfy Seller's portion of the Settlement Amount and

that Seller shall permit Purchaser to withhold such amount from the gross sales price on a first priority basis.

- 16.) Purchaser warrants, covenants and represents to each of the other parties to this Agreement that it has and shall have on the Closing Date sufficient financial resources to fully satisfy Purchaser's portion of the Settlement Amount and to pay the purchase price for the Property.
- 17.) In addition to any protections afforded by the Brownfield and Contaminated Site Remediation Act, the parties hereto intend that by entering into this Agreement, the Seller and Purchaser shall be protected from contribution claims by third parties to the extent permitted by statute. Further, DEP and the Administrator agree to not oppose any motion or application by the Purchaser (or Purchaser's assignee) or by Seller in any subsequent action in which Purchaser (or Purchaser's assignee) or Seller seeks contribution protection contemplated under this Agreement.
- 18.) This Agreement is not, and shall not be construed to be, a permit issued pursuant to a federal or state statute or regulation.
- 19.) This Agreement shall be governed and construed in accordance with the law of the State of New Jersey.
- 20.) Nothing in this Agreement shall be construed to settle or limit the ability of the DEP or the Administrator to seek reimbursement of their past, present, or future costs, expenses, interest, assessments, fines and/or penalties of any source, kind or nature whatsoever, whether asserted, unasserted, known or unknown and natural resource damages from any Third Party other than (a) subsequent purchasers that would meet the requirements of being a Qualified Successor In Interest as set forth in Appendix A and (b) tenants that would meet the requirements of being a Qualified Successor In Interest as set forth in Appendix A.
- 21.) This Agreement, with the exception of the MOA the Purchaser will enter into with DEP, represents the entire integrated agreement between DEP, the Administrator, the Purchaser and the Seller concerning the Property, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.
- 22.) DEP, the Administrator, the Seller, and the Purchaser each understands and agrees to the terms of this Agreement. As DEP and the Spill Fund are bodies corporate and politic of the State of New Jersey, the signatures of their authorized representatives are affixed below. Seller and Purchaser as private parties, affix the signatures of their authorized representatives below. All signatories warrant and represent that they have read this Agreement after consultation with their respective counsel and have full authority to bind the entity for which they are executing this Agreement.
- 23.) The parties may execute this Agreement in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute one and the same Agreement.

24.) Seller and the Purchaser shall sign, date and return this Agreement to DEP. This Agreement shall take effect as of the date on which the last DEP and Spill Fund signatory sign and date it.

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SIGNATURE PAGE

REC CENTERS, INC.

Donato D'Onofrio, President

Dated: _____, 2008

BEACHWOOD MALL, L.L.C.

Priscilla Oughton, Managing Member

Dated: _____, 2008

John Oughton, Managing Member

Dated: _____, 2008

**THE NEW JERSEY SPILL
COMPENSATION FUND**

Anthony J. Farro, Administrator

Dated: _____, 2009

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Irene Kropp, Assistant Commissioner
Site Remediation

Dated: _____, 2009

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Amy Cradic, Assistant Commissioner
Natural and Historic Resources

Dated: _____, 2009

Appendix A

Qualified Successor In Interest Requirements

Any party that:

- a. Has not discharged at the Property any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, nor pollutant defined pursuant to N.J.S.A. 58:10A-3;
- b. Has not been in any way responsible, pursuant to any law, for any contaminant at or emanating from the Property, nor for contamination that has emanated from the Property;
- c. Has not aggravated or contributed to contamination at or emanating from the Property, nor contamination that has emanated from the Property;
- d. Has not, as a holder of a security interest in a facility or underground storage tank facility, actively participated in the management of a facility or underground storage tank facility at the Property, as those terms are defined in N.J.S.A. 58:10-23.11a et seq.;
- e. Has not negligently caused a new discharge at the Property, after the date of any foreclosure on a security interest in the Property, pursuant to N.J.S.A. 58:10-23-11g.6.e(1); and
- f. Has not triggered responsibility, as an owner or operator of an industrial establishment at the Property, for remediation of any portion of the Property pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq.

and is not a corporate successor to, affiliated with or otherwise related to any person defined in paragraphs a. through f: above.

Appendix B – Definitions

"Administrator" shall mean the Administrator of the New Jersey Spill Compensation Fund, who is appointed pursuant to N.J.S.A. 58:10-23.11j.

"DEP" shall mean the New Jersey Department of Environmental Protection and any successor department or agency of the State.

"Natural Resource Damages" shall mean all claims arising from discharges at the Property that occurred prior to the Closing and that are recoverable by DEP and the Administrator as natural resource damages for injuries to Natural Resources under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Oil Pollution Act, 33 U.S.C.A. " 2701 et seq., the Clean Water Act, 33 U.S.C.A. §§ 1251 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 et seq., or any other state or federal common law, statute, or regulation, and includes, but not by way of limitation, the following:

- a. The costs of assessing injury to natural resources, the Department's Office of Natural Resource Restoration's oversight costs determined pursuant to N.J.A.C. 7:26C-9.3, attorney's fees, consultants' and experts' fees, other litigation costs, and interest, incurred prior to the Closing;
- b. The payment of compensation for restoration of, the lost value of, injury to, or destruction of ground water and ground water services;

"Property" shall mean the approximately 142 acres of real property located in Berkeley Township, Ocean County, New Jersey designated as Block 824 Lot 1 on the Tax Map of Berkeley Township.

"Purchaser" shall mean REC Centers, Inc.

"Seller" shall mean Beachwood Mall, LLC.

"Site" shall mean the Property and all other areas where any hazardous substances discharged at the Property have become located.

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