

**RESOLUTION NO. 2016-84**

**RESOLUTION AUTHORIZING THE TOWNSHIP OF ABERDEEN TO EXECUTE THE TOWNSHIP'S CONSENT OF THE ASSIGNMENT OF REMEDIATION AGREEMENT BETWEEN ABERDEEN ENVIRO, LLC AND WELLS FARGO BANK, NATIONAL ASSOCIATION**

**WHEREAS**, On September 11, 2015, the Township of Aberdeen ("Township") adopted Resolution No. 2015-107 authorizing the execution of a Remediation Agreement between the Township and Aberdeen Enviro, LLC ("Aberdeen Enviro"), a subsidiary of RPM Development, LLC, for the remediation of a certain redevelopment area (the "Redevelopment Area") as set forth in the parties' Redevelopment Agreement; and

**WHEREAS**, the Parties have determined that it is in the best interest of the Redevelopment Project and in their best interests to work cooperatively in an effort to coordinate and expedite the environmental investigation and remediation activities within the Redevelopment Area; and

**WHEREAS**, Aberdeen Enviro has executed an Assignment of Remediation Agreement assigning to Wells Fargo Bank, National Association, its rights under the Remediation Agreement dated March 18, 2016; and

**WHEREAS**, the Township has determined that it is in the best interest of the Redevelopment Project and in its best interests to grant its consent of the Assignment of Remediation Agreement, attached hereto in form and substance acceptable to the Township Attorneys as **Exhibit A**, for purposes of coordinating the performance of environmental investigation and remediation of the property owned by the Township within the Redevelopment Area and for undertaking the other activities as set forth in the Agreement;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Aberdeen that the Mayor is authorized to execute and Municipal Clerk is authorized to witness the Township's Consent of the Assignment of Remediation Agreement, attached hereto in form and substance acceptable to the Township Attorneys, as **Exhibit A**.

## ASSIGNMENT OF REMEDIATION AGREEMENT

FOR VALUE RECEIVED, the undersigned ABERDEEN ENVIRO, L.L.C., a New Jersey limited liability company ("Borrower"), assigns to WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender"), its rights under that certain Remediation Agreement dated March 18, 2016, as amended, between the Township of Aberdeen ("Township") and Borrower ("Remediation Agreement") relating to the environmental remediation of the Property described in Exhibit A attached hereto.

This ASSIGNMENT OF REMEDIATION AGREEMENT ("Assignment") constitutes a present and absolute assignment to Lender as of the Effective Date; provided, however, Lender confers on Borrower the right to enforce the terms of the Remediation Agreement so long as no Default or event which would constitute a Default after notice or the passage of time, or both, has occurred and is continuing under any of the Loan Documents. Upon the occurrence of a Default or event which would constitute a Default after notice or the passage of time, or both, under any of the Loan Documents, Lender may, in its sole discretion, give notice to the Township of its intent to enforce the rights of Borrower under the Remediation Agreement and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, Lender does not assume any of Borrower's obligations under the Remediation Agreement.

Borrower represents and warrants to Lender, as of the Effective Date, that (a) the Remediation Agreement is in full force and effect and is enforceable in accordance with its terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Remediation Agreement, (b) the copy of the Remediation Agreement delivered to Lender is complete and correct and (c) Borrower has not assigned any of its rights under the Remediation Agreement.

Borrower agrees (a) to pay and perform all obligations of Borrower under the Remediation Agreement, (b) to enforce the payment and performance of all obligations of any other person or entity under the Remediation Agreement, (c) not to modify the Remediation Agreement without Lender's prior written approval except as otherwise may be permitted in the Loan Documents and (d) not to further assign, for security or any other purposes, its rights under the Remediation Agreement without Lender's prior written consent.

This Assignment is one of the Loan Documents and secures payment and performance by Borrower of all obligations of Borrower under the Loan Documents. This Assignment is supplemented by those provisions of the Loan Agreement which apply to the Loan Documents and said provisions are incorporated herein by reference.

The term "Loan Agreement" as used herein shall mean the loan agreement or loan agreement, as applicable, of even date herewith between Borrower and Lender, as well as any future loan agreements or loan agreements between Borrower and Lender which refer to this Assignment. Capitalized terms not otherwise defined herein shall each have the meaning set forth in the Loan Agreement.

The attached Township's Consent and Exhibit A are incorporated by reference.

Dated as of: April 27, 2016

"BORROWER"

ABERDEEN ENVIRO, L.L.C.,  
a New Jersey limited liability company

By: \_\_\_\_\_  
Edward G. Martoglio, Sole Member

## TOWNSHIP'S CONSENT

The undersigned ("Township") hereby consents to the foregoing Assignment of Remediation Agreement ("Assignment"), of which this Township's Consent ("Consent") is a part.

1. The Township agrees that if, at any time, Lender elects to undertake or cause the completion of the environmental remediation of the Property pursuant to its rights under the Loan Documents, and gives the Township written notice of such election; THEN, so long as the Lender performs Borrower's obligations under the Remediation Agreement, the Township shall continue to perform its obligations under the Remediation Agreement in accordance with the terms thereof, including, but not limited to making the payments for remediation of the Property to Lender on a draw basis.
2. The Township further agrees that, in the event of a breach by Borrower of the Remediation Agreement, so long as Borrower's interest in the Remediation Agreement is assigned to Lender, the Township will give written notice to Lender at the address shown below of such breach. Lender shall have thirty (30) days from the receipt of such written notice of default to remedy or cure said default provided, if such default is of a nature that it cannot be cured within thirty (30) days, Lender shall have thirty (30) days within which to commence the cure and shall thereafter have such reasonable period of time to complete such cure as is necessary. Nothing herein shall require Lender to cure said default or to undertake completion of environmental remediation of the Property.

The Township warrants and represents that it/he has no knowledge of any prior assignment(s) of any interest in the Remediation Agreement. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed by the Township on April 27, 2016.

Lender's Address:

Wells Fargo Bank, National Association  
Community Lending and Investment (AU# 69884)  
123 South Broad Street, 9th Floor  
MAC #Y1379-095  
Philadelphia, Pennsylvania 19109  
Attn: Loan Administration Manager  
Loan No. 1015895

With a copy to:

Wells Fargo Bank, National Association  
Winston-Salem Loan Center  
One West Fourth Street, 3<sup>rd</sup> Floor  
MAC D4000-030  
Winston-Salem, North Carolina 27101  
Attention: Disbursement Administrator  
Loan No. 1015895

Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
Attention: Christopher N. Swank, Esq

Loan No. 1015895

"TOWNSHIP"

TOWNSHIP OF ABERDEEN

By: \_\_\_\_\_  
Fred Tagliarini, Mayor

Township's Address:  
1 Aberdeen Square  
Aberdeen, New Jersey 07747

**PROPERTY DESCRIPTION**

Exhibit A to Assignment of Remediation Agreement dated as of April 27, 2016, between ABERDEEN ENVIRO, L.L.C., a New Jersey limited liability company, as Borrower, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Lender.

All that certain real property located in the Township of Aberdeen, County of Monmouth, State of New Jersey, described as follows:

Lot 1 in Block 39 of the Township of Aberdeen, Monmouth County, New Jersey.