

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Clarence M. Huling
Winifred Ann Constanza

File Nos.: SW-89-28 and FW C08-0037

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and GDUBON PROPERTIES LLC (“GDUBON”). 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 Clarence Huling (“Huling”) by RIDEM on 18 September 1989 under file number SW-89-28 and a Notice of Violation issued to Huling and Winifred Ann Constanza (“Constanza”) by RIDEM on 18 May 2010 under file OCI-FW-18-62.

B. STIPULATED FACTS

- (1) WHEREAS, the properties are located at 35 Forest Lane, Assessor’s Plat 19, Lot 2 (“Lot 2”) and 55 Forest Lane, Assessor’s Plat 19, Lot 1 (“Lot 1”) in the Town of East Greenwich, Rhode Island.
- (2) WHEREAS, as of 18 September 1989, Huling owned Lot 1 and Lot 2.
- (3) WHEREAS, as of 18 May 2010, Huling and Constanza jointly owned Lot 1.
- (4) WHEREAS, on 18 September 1989, RIDEM issued a NOV (the “1989 NOV”) to Huling alleging certain violations of Rhode Island’s *Refuse Disposal Act* and the *Rules and Regulations for Solid Waste Management Facilities* on Lot 1 and Lot 2. The 1989 NOV included ordered actions to resolve the alleged violations and assessed an administrative penalty of \$5,000.
- (5) WHEREAS, on 18 May 2010, RIDEM issued a NOV (the “2010 NOV”) to Huling and Constanza alleging certain violations of Rhode Island’s *Freshwater Wetlands Act* and the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* on Lot 1. The 2010 NOV included ordered actions to resolve the alleged violations and assessed an administrative penalty of \$8,000.
- (6) WHEREAS, Huling and Constanza failed to comply with the 1989 NOV or the 2010 NOV.

- (7) WHEREAS, on 20 June 2018, GDUBON acquired Lot 1 and Lot 2.
- (8) WHEREAS, on 17 July 2020, RIDEM received a plan prepared by Mason & Associates, Inc. on behalf of GDUBON to restore the freshwater wetlands to comply with the ordered actions in the 2010 NOV (the “Restoration Plan”). The Restoration Plan is attached hereto and incorporated herein as Attachment A.
- (9) WHEREAS, on 15 October 2020, RIDEM inspected Lot 1 and Lot 2 and confirmed that GDUBON complied with the ordered actions in the 1989 NOV.
- (10) WHEREAS, on 28 October 2020, GDUBON submitted documents to RIDEM that demonstrated to RIDEM’s satisfaction that GDUBON restored the freshwater wetlands in accordance with the Restoration Plan.
- (11) WHEREAS, on 4 November 2020, RIDEM approved the Restoration Plan.
- (12) WHEREAS, RIDEM and GDUBON hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the 1989 NOV and the 2010 NOV.
- (13) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Refuse Disposal Act* and *Freshwater Wetlands Act*, the *Rules and Regulations for Solid Waste Management Facilities*, and the *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act* (the “Wetland Regulations”).

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over GDUBON.
- (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 RIDEM, GDUBON and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for GDUBON 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 RIDEM**, GDUBON shall record this Agreement with the Town of East Greenwich, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of GDUBON.

(5) CONDITIONS – GDUBON shall comply with the following conditions:

- (a) If any of the trees and shrubs planted in accordance with subsection B (10) of the Agreement fail to survive 1 full growing season from the date of planting, replant with the same plant species and maintain the trees and shrubs until such time that the plants survive over 1 full growing season.
- (b) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on Lot 1 or Lot 2, without first obtaining a permit from RIDEM unless the activity is exempt under Part 1.6 of the Wetland Regulations.
- (c) Penalty – GDUBON shall pay to RIDEM **\$11,500** in administrative penalties assessed as follows:
 - (i) **Upon execution of this Agreement by GDUBON**, GDUBON shall pay to RIDEM \$11,500.
 - (ii) Penalties that GDUBON agrees 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, cashier's check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Program***. All payments shall be delivered to:

RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

- (6) RIGHT OF ACCESS – GDUBON provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to Lot 1 and Lot 2 at all reasonable times to monitor compliance with this Agreement. GDUBON shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of Lot 1 or Lot 2 shall provide the same access and cooperation if they control Lot 1 or Lot 2. GDUBON shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of Lot 1 or Lot 2 as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of Lot 1 or Lot 2 or an interest in Lot 1 or Lot 2 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 1989 NOV and the 2010 NOV. Upon successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the 1989 NOV, the 2010 NOV and the Consent Agreement to GDUBON for recording. The recordings shall be at the sole expense of GDUBON.
- (2) FAILURE TO COMPLY – If GDUBON fails to comply with subsections C (5)(a) or (b) of the Agreement, GDUBON shall pay a stipulated penalty of \$500 per month for each month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude 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 GDUBON 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 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 GDUBON 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 GDUBON 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 limited to violations alleged in the NOV.

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

David E. Chopy, Administrator

RIDEM Office of Compliance and Inspection
235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360 ext. 7400

david.chopy@dem.ri.gov

Joseph LoBianco, Esquire

RIDEM Office of Legal Services
235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607

joseph.lobianco@dem.ri.gov

Christopher Reynolds

GDUBON PROPERTIES, LLC

197 Pinecrest Drive

North Kingstown, RI 02852

(401) 433-6900

creynolds@stonestreetcorp.com

- (a) At any time prior to full compliance with the terms of this Agreement, GDUBON agrees to notify RIDEM in writing of any change in ownership of Lot 1 or Lot 2 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 RIDEM in writing at least 15 days prior to the prescribed deadline.

- (9) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

GDUBON PROPERTIES LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of GDUBON PROPERTIES LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind GDUBON PROPERTIES 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 _____, 2020, before me personally appeared _____, the _____ of GDUBON PROPERTIES LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of GDUBON PROPERTIES 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 GDUBON PROPERTIES LLC.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____