

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Mathew Realty Corp. and
3760 QUAKER LANE, LLC

File No.: COMPLAINT NO. 1360

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and 3760 QUAKER LANE, LLC (“Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I. Gen. Laws”) to resolve the alleged violations set forth in a Notice of Violation (“NOV”) issued to Mathew Realty Corp. (“MRC”) by RIDEM on 15 May 1984 and a NOV issued to Respondent by RIDEM on 5 September 2019.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located north of Stony Lane, east of Rhode Island Route 2 (Quaker Lane), Assessor’s Plat 130, Lot 65 in the Town of North Kingstown, Rhode Island (the “Property”).
- (2) WHEREAS, MRC is the former owner of the Property.
- (3) WHEREAS, on 15 May 1984, RIDEM issued a NOV to MRC alleging certain violations of Rhode Island’s *Freshwater Wetlands Act* (the “1984 NOV”).
- (4) WHEREAS, on 17 May 1984, the 1984 NOV was recorded in the land evidence records of the Town of North Kingstown, Rhode Island.
- (5) WHEREAS, MRC filed an appeal of the 1984 NOV.
- (6) WHEREAS, on 21 November 1984, RIDEM and MRC executed a Consent Agreement to resolve the 1984 NOV. The Consent Agreement required MRC to restore the freshwater wetlands on the Property in accordance with the 1984 NOV unless MRC obtained a permit from RIDEM.
- (7) WHEREAS, MRC failed to apply for a permit from RIDEM and failed to comply with the 1984 NOV.
- (8) WHEREAS, on or about 17 November 2015, RIDEM was notified that MRC had gone into receivership.

- (9) WHEREAS, on 14 July 2017, RIDEM was notified by Natural Resources Services, Inc. (“NRS”) that NRS had been retained by Respondent’s attorney, Michael Donegan (“Donegan”), to review the 1984 NOV and prepare a possible restoration plan.
- (10) WHEREAS, on 26 July 2017, RIDEM inspected the Property at the request of NRS. The inspection and review of aerial photographs revealed that additional unauthorized activity within freshwater wetlands occurred on the Property between 2012 and 2014, which affected approximately 1/3 acre of Riverbank Wetland (the “New Alterations”).
- (11) WHEREAS, on or about 21 August 2017, RIDEM received a letter from Joseph M. DiOrio (“DiOrio”), the attorney handling the receivership. DiOrio stated that he was appointed by the Court as the Permanent Receiver of MRC and that Respondent occupies the entire Property as a tenant. The letter further stated that DiOrio authorized Donegan and NRS to address all issues related to the 1984 NOV, as well as other issues necessary to bring the Property into compliance.
- (12) WHEREAS, RIDEM believes that Respondent caused the New Alterations, which Respondent denies.
- (13) WHEREAS, on 19 September 2017, RIDEM received a plan titled *Proposed Perimeter Wetland Restoration Plan DEM Notice of Violation C-1360 Prepared for Attorney Michael Donegan Orson & Brusini, Ltd. 3760 Quaker Lane A.P. 130, Lot 65 North Kingstown, RI* that was prepared by NRS on 5 September 2017 (the “Restoration Plan”).
- (14) WHEREAS, on 22 September 2017, RIDEM approved the Restoration Plan with the understanding that the restoration would occur in Fall 2017 or Spring 2018.
- (15) WHEREAS, the Restoration Plan required Respondent to:
- (a) Spread 6-8 inches of plantable top soil over the restoration area;
 - (b) Seed the area with a wildlife conservation mix;
 - (c) Plant white pine trees spaced 15 feet on center and pepperbush or arrowwood shrubs 5 feet on center; and
 - (d) Replace any tree or shrub that does not survive through 2 full growing seasons.
- (16) WHEREAS, on 14 March 2018, the Permanent Receiver sold the Property to Respondent.
- (17) WHEREAS, on 13 March 2019, Respondent applied to RIDEM to alter freshwater wetlands on the Property associated with the construction of a new office building.
- (18) WHEREAS, on 22 March 2019, RIDEM issued a letter to Respondent. The letter stated that the plan submitted with the application was not consistent with the Restoration Plan and that RIDEM was not going to process the application until the compliance issues were resolved.
- (19) WHEREAS, on 6 May 2019, RIDEM received a letter from NRS that described the work completed to comply with the Restoration Plan.

- (20) WHEREAS, on 14 May 2019, RIDEM received a check for \$1,000 that satisfied the administrative penalty assessed in the 1984 NOV.
- (21) WHEREAS, on 17 May 2019, RIDEM received electronic correspondence from NRS. The correspondence was written in response to concerns raised by RIDEM regarding the suitability of the soil to ensure the survival of the plantings installed in accordance with the Restoration Plan. NRS stated that in its opinion the soil was suitable to ensure the survival of the plantings.
- (22) WHEREAS, on 23 May 2019, RIDEM inspected the Property. The inspection revealed that Respondent seeded the area and installed plantings; however, RIDEM believes that Respondent failed to fully comply with the Restoration Plan based on the following observations:
- (a) 6-8 inches of plantable top soil was not spread over the restoration area;
 - (b) Northern white cedar trees, which are susceptible to browsing by deer, were planted in place of white pine trees;
 - (c) No mix of species indicative of a wildlife conservation mix was present;
 - (d) Many of the trees and shrubs were improperly installed, as evidenced by exposed root balls; and
 - (e) A uniform unscreened sandy material including rocks and gravel with a very low ratio of organic material was present and the material was compact and concrete-like.
- (23) WHEREAS, for the reasons described in subsection B(22) above, RIDEM is concerned that most or all the trees and shrubs will not survive 2 full growing seasons as required by the Restoration Plan.
- (24) WHEREAS, on 16 August 2019, RIDEM inspected the Property. The inspection revealed that, within the area identified on the Restoration Plan as *200' Riverbank Wetland to be Restored*, the trees and shrubs are being watered and are alive except for 1 white pine, and the grass cover where poor soil material was used is struggling and patchy.
- (25) WHEREAS, on 29 August 2019, Respondent submitted to RIDEM a guarantee from Central Nurseries, Inc. to replace any plantings that fail to survive through 23 April 2021. The guarantee is attached hereto and incorporated herein as Attachment A.
- (26) WHEREAS, on 5 September 2019, RIDEM issued a NOV (the "2019 NOV") to Respondent alleging certain violations of Rhode Island's *Freshwater Wetlands Act* and the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (250-RICR-150-15-1)*(the "Wetland Regulations").

- (27) WHEREAS, the Administrative Adjudication Division is a division within RIDEM.
- (28) WHEREAS, in lieu of RIDEM proceeding to Superior Court to enforce the 1984 NOV and in lieu of Respondent requesting an administrative adjudicatory hearing on the 2019 NOV and to effect a timely and amicable resolution of the 1984 NOV and the 2019 NOV, RIDEM and Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the 1984 NOV and the 2019 NOV.
- (29) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Freshwater Wetlands Act* and the Wetland Regulations.

C. **AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and personal jurisdiction over Respondent.
- (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, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent 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**, Respondent shall record this Agreement in the land evidence records of the Town of North Kingstown, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM.
- (5) **CONDITIONS** – Respondent agrees to comply with the following:
- (a) If grass cover in any portions of the area identified on the Restoration Plan as *200' Riverbank Wetland to be Restored* fails to get established or survive for 2 full growing seasons from the date of execution of this Agreement, spread 6-8 inches of plantable top soil over those areas and seed with a wildlife conservation mix and maintain the grass cover until such time that the grass cover survives over 2 full growing seasons.
 - (b) If any of the trees within the area identified on the Restoration Plan as *200' Riverbank Wetland to be Restored* fail to survive 2 full growing seasons from the date of execution of this Agreement, replant those trees with Northern white pines 4-5 feet tall after planting and maintain the trees until such time that the trees survive over 2 full growing seasons.

- (c) If any of the shrubs within the area identified on the Restoration Plan as *200' Riverbank Wetland to be Restored* fail to survive 2 full growing seasons from the date of execution of this Agreement, replant with the same plant species and maintain the shrubs until such time that the shrubs survive over 2 full growing seasons.
 - (d) 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 the Property, without first obtaining a permit from RIDEM unless the activity is exempt under Part 1.6 of the Freshwater Wetland Regulations.
- (6) RIGHT OF ACCESS – Respondent provides to RIDEM, its authorized officers, employees and representatives during the term of this Agreement an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. Respondent 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 if they control the Property. Respondent 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, assignment 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 raised in the 1984 NOV and the 2019 NOV. Upon Respondent's successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the 1984 NOV and Consent Agreement to Respondent for recording. The recordings shall be at the sole expense of Respondent.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with subsections C (5)(a), (b), (c) or (d) of the Agreement, Respondent shall pay a stipulated penalty of \$1,000 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 Respondent 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 Respondent 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 Respondent 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 1984 NOV and 2019 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

Tricia Quest, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607
tricia.quest@dem.ri.gov

Michael P. Donegan, Esquire
Orson and Brusini Ltd.
144 Wayland Avenue
Providence, RI 02906
(401) 331-2126
MDonegan@orsonandbrusini.com

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify RIDEM in writing of any change in ownership of the Property 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 PAGE]

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

3760 QUAKER LANE, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity as _____ of 3760 QUAKER LANE, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind 3760 QUAKER LANE, 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 _____, 2019, before me personally appeared _____, the _____ of 3760 QUAKER LANE, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of 3760 QUAKER LANE, 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 3760 QUAKER LANE, 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: _____