

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Bakeford Properties LLC

File No.: Dam State I.D. 615
AAD No.: 09-001/DE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection (the "RIDEM") and Bakeford Properties LLC (the "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") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation (the "NOV") issued to the Respondent by the RIDEM on May 27, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 660 Ten Road Road, Assessor's Plat 27, Lot 46 in the town of North Kingstown, Rhode Island (the "Property"). The Property includes a dam identified as Rodman Mill Dam, State Identification Number 615, located on the southeast end of the pond immediately southeast of Lafayette Road, southwest of Ten Rod Road opposite the intersection of Advent Street and Ten Rod Road, in the town of North Kingstown, Rhode Island ("Dam 615").
- (2) WHEREAS, the Respondent owns the Property and Dam 615.
- (3) WHEREAS, May 27, 2011, the RIDEM issued a NOV to the Respondent for Dam 615, alleging certain violations of the RIDEM's *Rules and Regulations for Dam Safety* (the "Dam Safety Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondent complied with paragraphs D.1, D.2 and D.3 of the Order Section of the NOV.
- (6) WHEREAS, in lieu of repairing the low level outlet for Dam 615 in accordance with paragraph D.4 of the Order Section of the NOV, the Respondent shall comply with the requirements of this Consent Agreement

- (7) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the 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 NOV.
- (8) 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 Dam Safety Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the 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. 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 the RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the town of North Kingstown, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondent.
- (5) CONDITIONS –
 - (a) The Respondent hereby agrees to the following requirements regarding emergencies that may arise at Dam 615:
 - (i) The Respondent will immediately notify the current Lessee(s) of the building that abuts Dam 615 (the “Abutting Building”), any future Lessees of the Abutting Building and the RIDEM of conditions at Dam 615 that require evacuation of the Abutting Building to avoid injuries or loss of life to the Lessee’s employees;
 - (ii) The Lessee(s) will immediately notify the Respondent of any changed conditions observed in the basement wall of the Abutting Building that faces Dam 615;
 - (iii) The Respondent will not allow the Lessee’s employees to occupy the Abutting Building if the Abutting Building is evacuated until such time as

the condition that led to the evacuation is corrected to the satisfaction of the RIDEM as evidenced by the issuance of a letter to the Respondent by the RIDEM. RIDEM shall allow reoccupation of the Abutting Building within twenty-four (24) hours of receiving a letter from a registered professional engineer which certifies that the Abutting Building can be safely occupied; and

- (iv) The Respondent will provide a copy of this Agreement to the current Lessee(s) and all future Lessees.
 - (v) The Respondent will provide a copy of this Agreement to the subsequent owner of Dam 615.
- (b) **By July 15, 2013** the Respondent shall remove the fencing around the playground area and all the playground equipment that is located below Dam 615 as evidenced by the submission of a letter and photographs to the RIDEM showing that the work was completed.
- (6) **RIGHT OF ACCESS** – The Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property and Dam 615 at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of Property shall provide the same access and cooperation as long as they control the Property. The 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, 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 raised in the NOV.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with any of the items specified in Sections C(4) and C(5) of the Agreement, the Respondent shall pay a stipulated penalty of One Hundred Dollars (\$100.00) 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 Respondent 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 Respondent 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 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 only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Richard M. Bianculli, Jr., Esquire
RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-4700 ext. 2023

Michael L. Baker, Manager
Bakeford Properties LLC
640 Ten Rod Road
North Kingstown, RI 02852
(401) 255-7413

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The RIDEM 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 fifteen (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 Bakeford Properties LLC

By: Michael L. Baker
Its: Manager

Dated: _____

In my capacity as Manager of Bakeford Properties LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Bakeford 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 _____, 2013, before me personally appeared Michael L. Baker, the Manager of Bakeford Properties LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Bakeford Properties LLC, and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of Bakeford Properties 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: _____