

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Keach Framing, Inc.

FILE No. C06-0004
AAD No. 06-003/FWE

CONSENT AGREEMENT

A. *INTENT & PURPOSE*

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM"), Keach Framing, Inc. (the "Respondent"), and Devin J. McLaughlin (the "Owner"). 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 ("NOV") issued to the Respondent by RIDEM on September 5, 2006.

B. *STIPULATED FACTS*

- (1) WHEREAS, the subject property is located approximately 50 feet west of Old Widow Sweets Road, and approximately 350 feet south of the intersection of Widow Sweets Road and Chapel Place Lane, Assessor's Plat 22, Block 4, Lot 7 in the town of Exeter, Rhode Island(the "Property").
- (2) WHEREAS, Devin J. McLaughlin owns the Property.
- (3) WHEREAS, on September 5, 2006 RIDEM issued a NOV to the Respondent alleging certain violations of the Rhode Island's *Freshwater Wetlands Act* and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, an inspection by the RIDEM on March 14, 2013 revealed that plantings were installed within a portion of the altered Riverbank Wetland to comply with the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM, the Respondent and the Owner 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.

- (7) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island *Freshwater Wetlands Act* and RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.

C. **AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent and the Owner.
- (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 RIDEM, the Respondent, the Owner and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent and the Owner 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 Owner shall record this Agreement with the town of Exeter, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Owner.
- (5) **CONDITIONS** –
- (a) Except as noted below, the propane tank and the rock retaining wall are hereby authorized to remain within the Riverbank Wetland.
- (b) **By July 1, 2013**, the Respondent shall complete all wetland restoration work as described below within those areas outlined in red and marked as Area 1 and Area 2 on a plan entitled “Keach Framing, Inc. C06-0004 Wetland Restoration Areas 3/27/13”, attached hereto and incorporated herein as Attachment A.
- (i) Remove all fill (in the form of the boulder steps and any associated soil material) from Area 1 depicted on Attachment A. All fill must be removed down to the original forest soil. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (ii) Plant two (2) shrubs in the area where the boulder steps were removed (Area 1) and four (4) shrubs in the area between the firepit and the top of the slope (Area 2) as set forth below:

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 3-4 feet on center, three (3) feet tall after planting, in the areas indicated above. Shrub species must include an equal distribution of at least two (2) of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*

- (iii) If any or all of the required plantings fail to survive at least one (1) year from the time planting has been verified by the RIDEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least one (1) year.
 - (iv) A wildlife conservation seed mix shall be applied to any disturbed soils within the restoration area. If necessary, a mat of spread hay mulch shall be applied over all disturbed surface areas.
 - (v) The restored freshwater wetland areas, including replanted areas, south of the fire pit in the rear yard of the Property must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized without first obtaining a valid permit from the RIDEM.
 - (vi) With the exception of any work required by this Agreement or as allowed as an exempt activity under the RIDEM's *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*, Rule 6.00, the Respondent and the Owner shall not alter the character of any freshwater wetland by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of RIDEM.
- (c) Penalty – The Respondent shall pay to RIDEM the sum of **Four-Thousand Five Hundred Dollars (\$4,500.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of **Five Hundred Dollars (\$500.00)**.
 - (ii) The remainder of the penalty, **Four-Thousand Dollars (\$4,000.00)**, shall be paid to RIDEM in ten (10) equal and consecutive monthly installments of **Four-Hundred Dollars (\$400.00)**. The remaining payments shall be made on the first of the month.

- (iii) Penalties that the Respondent 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.
- (iv) In the event that the Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of twelve percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (v) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

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

- (6) **RIGHT OF ACCESS** – The Owner shall provide to the Respondent an irrevocable right of access to the Property at all reasonable times for the purpose of complying with this Agreement. The Owner shall provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Owner 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 as long as they control the Property. The Owner 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.
- (7) **WITHDRAWAL OF SUPREME COURT APPEAL** – The Respondent shall withdraw the Supreme Court appeal of the Superior Court matter (WC 2008-0105), with prejudice, within seven (7) days of the execution of the within 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. Upon the Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Owner for recording. The recording of the Releases shall be at the sole expense of the Owner.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Sections C(5)(b) of the Agreement or the Owner fails to grant access to the Property as specified in Section C(6) of the Agreement, the Respondent or the Owner shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every 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 paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent or the Owner 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 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 or the Owner 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 the Respondent or the Owner 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:

Harold K. Ellis, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7401

Richard M. Bianculli Jr., Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2023

- (a) At any time prior to full compliance with the terms of this Agreement, the Owner 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 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 Keach Framing, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Keach Framing, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Keach Framing, Inc. 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 _____, the _____ of Keach Framing, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Keach Framing, Inc., 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 Keach Framing, Inc.

Notary Public
My Commission Expires: _____

For the Owner

Devin J. McLaughlin

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared Devin J. McLaughlin, to me known and known by me to be the party executing the foregoing instrument on behalf of himself, and he acknowledged said instrument by him executed, to be his free act and deed.

Notary Public
My Commission Expires: _____

*For the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Date: _____