

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: KSL-SK, Inc.

File Nos.: OWTS-12-53
x-ref. CI12-42
& AAD No. 13-001/MM

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") and KSL-SK, Inc. (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 ("NOV") issued to KSL-SK, Inc. by RIDEM on March 29, 2013.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 3033 & 3045 Tower Hill Road in the Town of South Kingstown, Assessor's Plat 18-2, Lots 11 & 12 and Plat 18-3, Lots 13 & 14 (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on August 3, 2012, the Respondent submitted application no. 1232-0866 to the RIDEM to repair the OWTS (the "Repair Application").
- (4) WHEREAS, on August 23, 2012, the RIDEM returned the Repair Application to the Respondent as unacceptable. The RIDEM cited specific deficiencies in the Repair Application that the Respondent was required to correct (the "Repair Application Deficiencies").
- (5) WHEREAS, on March 29, 2013, RIDEM issued an NOV to the Respondent alleging certain violations of the Rhode Island *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations").
- (6) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.

- (7) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV or Superior Court to enforce the NOV and to affect a timely and amicable resolution of the NOV, 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 Respondent neither admits nor denies liability in regards to the NOV.
- (9) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems*.

C. **AGREEMENT**

- (1) **JURISDICTION** – 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 RIDEM, the Respondents and it's 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 days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the Town of South 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 shall complete the following actions to comply with the Order section of the NOV:
 - (i) **IMMEDIATELY** take steps to have the OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the OWTS from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting the RIDEM's Office of Waste Management at 222-4700 or from the RIDEM's web page at: www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf.
 - (ii) Within seven (7) days of execution of this Agreement, re-submit the Repair Application to RIDEM (the "Resubmitted Repair Application") in

accordance with the RIDEM's OWTS Regulations for a complete repair of the system.

- (iii) The Resubmitted Repair Application shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the Resubmitted Repair Application, the Respondent shall submit to RIDEM a modified proposal or additional information necessary to address the alleged deficiencies.
 - (iv) Complete such work by April 30, 2014.
- (b) Penalty – Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of **Two Thousand Eight Hundred Dollars (\$2,800.00)** in satisfaction of Section E of the NOV (the “Penalty” section).
- (i) 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.
 - (ii) 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 Respondent provides to 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 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 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. 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 Respondent for recording. The recordings shall be at the sole expense of the Respondent.

- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Section C(5)(a) of the Agreement, the Respondent shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) 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 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 the 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 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 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:

Patrick J. Hogan, P.E.
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7119

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

Bret W. Jedele

Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
(401) 453-6400 ext. 27

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify RIDEM in writing of any change in ownership of the Facility/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 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 **KSL-SK, Inc.:**

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of _____, I hereby aver that I am authorized to enter into this Agreement and thereby bind _____ 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 _____ to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument and the execution thereof, to be his/her 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

Dated: _____