

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: NEW ENGLAND HOLDING, INC.

File No.: OCI-OWTS-18-8

AAD No.: 18-003/IE

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 New England Holding, Inc. ("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 Respondent by the RIDEM on 17 August 2018.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 1400 Warwick Avenue, Assessor's Plat 307, Lot 369 in the City of Warwick, Rhode Island (the "Property").
- (2) WHEREAS, the Property includes a mixed-use dwelling, wherein there is one apartment and a professional office (the "Dwelling").
- (3) WHEREAS, Respondent owns the Property.
- (4) WHEREAS, on 17 of August 2018, the RIDEM issued a NOV to Respondent alleging certain violations of the RIDEM's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations"). The violations pertain to the failed onsite wastewater treatment system ("OWTS") that serves the Dwelling.
- (5) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the City of Warwick has confirmed with RIDEM that sewers should be available to the Property by the end of 2019.
- (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 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 OWTS Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has 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 the 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 the RIDEM**, Respondent shall record this Agreement with the City of Warwick, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondent.
- (5) CONDITIONS – Respondent shall comply with the following conditions:
- (a) Connect the Property to the City of Warwick sewerage system immediately upon its availability and advise RIDEM upon its connection.
 - (b) Until such time as the property is connected to the City of Warwick sewerage system, retain a licensed septage hauler to pump the OWTS as often as necessary to prevent all sanitary sewage from overflowing to the surface of the ground.
 - (c) IMMEDIATELY disconnect all washing machines from the Dwelling. No washing machines can be used until the Property is connected to the City of Warwick sewerage system.
 - (d) Until such time as the Property is connected to the City of Warwick sewerage system, occupancy of the apartment in the Dwelling is limited to no more than 2 persons and the professional office shall remain unoccupied.
 - (e) Any subsequent transfer of the Property shall include, as a formal condition accurately represented on the HUD Settlement Sheet, an escrow requirement for the cost of the OWTS repair. Prior to transfer, an OWTS designer licensed by the RIDEM shall perform an evaluation of the system to determine the extent of

repair required and the exact costs of the repair. Once determined, the total cost for such work shall be placed in an escrow account, along with a buffer amount of 10% of the estimated costs of repair and shall be held by the escrow agent. The escrow agent shall be authorized to release half of the funds upon the initiation of the required work and the remainder may be released once the repair is completed. The repair may not be certified as complete until a “Certificate of Conformance” is issued by the RIDEM.

- (f) If the RIDEM documents a failure to comply with Section C(5)(a) or (b) above, the Dwelling shall be vacated within 30 days of receipt of written notification from the RIDEM to vacate the Dwelling. The Dwelling shall remain vacant until the OWTS is repaired as evidenced by the issuance of a “Certificate of Conformance” by the RIDEM or documentation that the Property is connected to the City of Warwick sewerage system.
- (g) Penalty – Respondent shall pay to the RIDEM \$2,200 in administrative penalties within thirty (30) days of executing this agreement:
 - (i) Penalties that 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) If Respondent fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 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 the RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (iii) 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 – Respondent provides to the RIDEM, its authorized officers, employees and representatives 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, 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 Respondent’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and 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 items specified in Section C (5)(a) through (f) of the Agreement, Respondent shall pay a stipulated penalty of \$500 per month for 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 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 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 the 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 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

Tricia Quest, Esquire
RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

George Tsang, Manager
New England Holdings, Inc.
1400 Warwick Ave.
Warwick, RI 02888

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify the 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 the 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.

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

New England Holdings, Inc.

Date: _____

By: _____
George Tsang, Manager

In my capacity, as Manager of New England Holdings, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind New England Holdings, 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 _____, 2019, before me personally appeared George Tsang, the Manager of New England Holdings, Inc., to me known and known by me to be the party executing the foregoing instrument on behalf New England Holdings, Inc., 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 New England Holdings, Inc.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____