

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

**IN RE: RES Real Estate LLC
and Giles Place LLC**

**FILE NOS.: HW 07-003, SW07-023,
and UST 07-3529
AAD FILE NO.: 07-003/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 RES Real Estate LLC and Giles Place LLC (collectively, the "Respondents"). This Agreement is entered into in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I.G.L.") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents by RIDEM on October 19, 2007.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 28 Agnes Street in the City of Providence, Rhode Island (the "Property"). The Property is further identified by the City of Providence Tax Assessor as Plat 105, Lot 481.
- (2) WHEREAS, RES Real Estate LLC owns the Property.
- (3) WHEREAS, the Property is registered with the RIDEM pursuant to the RIDEM Rules and Regulations for Hazardous Waste Management (the "Hazardous Waste Regulations") under the name of "Colonial Knife Co. Inc.", and is identified by the U.S.E.P.A. hazardous waste generator identification number RID 980 732 226.
- (4) WHEREAS, on October 19, 2007 the RIDEM issued the Respondents a NOV alleging violations of the Hazardous Waste Regulations, the RIDEM Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials ("UST Regulations"), and the Rhode Island Refuse Disposal Act.
- (5) WHEREAS, the Respondents timely requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the Respondents complied with the Order portion of the NOV.

- (7) WHEREAS, the Respondents enter into this Consent Agreement for the sole purpose of settling the NOV and without any admission of the factual allegations stated in the NOV or liability for the violations asserted by the NOV.
- (8) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to effect a timely and amicable resolution of the NOV, RIDEM and the Respondents 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.
- (9) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement of all claims against the Respondent and adequately protects the public interest in accordance with Hazardous Waste Regulations, UST Regulations, and Rhode Island Refuse Disposal Act.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §42-17.1-2(21).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondents and their agents, servants, employees, successors and/or assigns and all persons, firms and corporations acting under, through and for the Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) PENALTY – Respondents shall pay a total administrative penalty in the amount of Fifteen Thousand Dollars (\$15,000.00). Said penalty shall be satisfied in the following manner:
 - (a) Upon Respondents' execution of this Consent Agreement, Respondents shall pay to RIDEM the sum of Seven Thousand Five Hundred Dollars (\$7,500.00).
 - (b) The remainder of the penalty, Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to RIDEM in equal quarterly installments in the amount of One Thousand Eight Hundred Seventy Five Dollars (\$1,875.00). The first payment is due by April 1, 2011. The second payment is due by July 1, 2011. The third payment is due by October 1, 2011. The fourth payment is due by January 1, 2012.

- (c) Penalties that the Respondents agree to pay in this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (d) In the event that the Respondents fail 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 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 payment(s) and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

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

- (e) The payment shall be in the form of a check, payable to the R.I. General Treasurer –Environmental Response Fund Account that is drawn from the Respondent’s attorney account. All payments shall be delivered, along with a copy of this Agreement to: Chief, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV dated October 19, 2007. Upon Respondents’ successful completion of the requirements of the Agreement, RIDEM shall issue a Release and Discharge of the NOV to the Respondents for recordation. The recording shall be at the sole expense of the Respondents.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (3) 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 § 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondents may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents from liability arising from future activities, as of the date of execution of this Agreement.
- (5) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:
- (a) Tracey D’Amadio Tyrrell, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 (401) 222-1360, ext. 7407.
 - (b) Gary Powers, Esq., RIDEM Office of Legal Services, 235 Promenade St., Providence, RI 02908. Tel (401) 222-4700, ext. 2308.
 - (c) Joseph DeAngelis, Esq., Adler Pollock & Sheehan P.C., One Citizens Plaza, 8th Floor, Providence, RI 02903 Tel (401) 274-7200
- (6) 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.
- (7) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (8) 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 RES Real Estate LLC

By:

(Print Name)

Its _____ (Title)

Dated: _____

In _____, on the ____ day of _____ 2011, before me personally appeared _____, to me known and known by me to be the party executing the foregoing Consent Agreement, duly authorized on behalf of RES Real Estate LLC., and s/he acknowledged said instrument executed by him/her to be his/her free act and deed.

Notary Public

My Commission expires: _____

For Giles Place LLC

By:

(Print Name)

Its _____ (Title)

Dated: _____

In _____, on the ____ day of _____ 2011, before me personally appeared _____, to me known and known by me to be the party executing the foregoing Consent Agreement, duly authorized on behalf of Giles Place LLC., and s/he acknowledged said instrument executed by him/her 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: _____

In _____, on the ____ day of _____ 2011, before me personally appeared David E. Chopy, to me known and known by me to be the party executing the foregoing Consent Agreement, duly authorized on behalf of the Department of Environmental Management., and he acknowledged said instrument executed by him to be his free act and deed and the free act and deed of the Department of Environmental Management.

Notary Public
My Commission expires: _____