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

RE: GARDNER, BRUCE AND
CHARLES SWEET REVOCABLE TRUST
APPLICATION NO. 9905-3244, MAP 9, LOT 387

AAD NO. 08-007/ISA

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Consent Agreement is entered into by and between the Department of Environmental Management, Office of Water Resources, Onsite Wastewater Treatment Systems Permitting Program (hereinafter referred to as the "Department") and Bruce Gardner and the Charles Sweet Revocable Trust (hereinafter collectively referred to as the "Applicant"). This Agreement is entered in accordance with Section 42-17.1-1-2 et seq. of the Rhode Island General Laws (hereinafter referred to as "R.I.G.L.") for the purpose of resolving the Applicant's appeal of the Department's March 7, 2008 denial of their application to construct an Onsite Wastewater Treatment System (hereinafter referred to as "OWTS") on the Applicant's property in Charlestown, Rhode Island.

B. STIPULATED FACTS

1. WHEREAS, the subject property is an unimproved lot located on Sea Lea Avenue in the Town of Charlestown, Rhode Island, identified as Assessor's Plat 9, Lot 387 (hereinafter referred to as the "Property").
2. WHEREAS, the Property is owned by the Applicant, Bruce Gardner and the Charles Sweet Revocable Trust.
3. WHEREAS, on or about September 25, 2007, the Applicant filed an application with the RIDEM (#9905-3244) for permission to construct an OWTS on the Property (hereinafter referred to as the "Application") pursuant to the Department's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (hereinafter referred to as the "OWTS Regulations").
4. WHEREAS, the Application included several requests for variances from the OWTS Regulations.
5. WHEREAS, by letter dated March 7, 2008, the Department denied the Application.

6. WHEREAS, the Applicant timely appealed the Department's denial of the Application to the Department's Administrative Adjudication Division, and after hearing thereon, the Chief Hearing Officer recommended that the denial be overturned but the Director upheld the Department's denial of the Application pursuant to a Decision and Order in AAD No. 08-007 ISA dated April 13, 2010.
7. The Applicant then took a timely appeal to the Superior Court, and after full briefing on the merits, the matter was remanded to the Department's Director for further consideration and action pursuant an Order in C.A. No.: 10-3979 dated June 2, 2014.
8. WHEREAS, in lieu of such additional consideration and action, and in order to effect a timely and amicable resolution of the appeal, the Department and the Applicant hereby agree that it is in the best interest of the parties and in the public interest to resolve the disputed issues by the terms of the Agreement set forth herein.
9. WHEREAS, the Department finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with R.I.G.L. § 42-17.1-1, et seq. and the OWTS Regulations.
10. WHEREAS, the signing of this Agreement is for settlement purposes only.

C. AGREEMENT

1. JURISDICTION—the Department has regulatory jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Applicant with respect to the Application.
2. FORCE and EFFECT—This Agreement shall have the full force and effect of a final administrative order issued after a full hearing on the merits of the Applicant's appeal pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-14 from which no timely appeal was taken. In accordance with R.I.G.L. § 42-17.1-2(21)(v), the Superior Court for Providence County has jurisdiction to enforce the provisions of this Consent Agreement.
3. APPLICATION—The provisions of this Agreement shall apply to and be binding upon the Department, the Applicant and its agents, servants, employees, successors assigns and all persons, firms and corporations action under, through and for the Applicant this Consent Agreement shall apply only as to the limited circumstances presented in the above-referenced matter and is not to be construed as a determination of the Department's actions in any future matters.
4. TERMS & CONDITIONS—Based upon the Application and the information of record submitted in support thereof, including but not limited to information submitted during the course of this appeal, the Department shall approve the Application for the construction of an OWTS on the Property subject to the following conditions:

- (a) The Applicant shall sign and submit a new OWTS Application form with (4) new stamped copies of the revised plans, drawn to scale, to the Department for approval.
- (b) The Department acknowledges that it has reviewed the revised application and plans and its approval shall be limited to confirming that the revised application complies with the terms and conditions referenced in this Agreement. By this Agreement the Applicant agrees that the OWTS design will be constructed and installed in accordance with the revised plans submitted and attached hereto as Exhibit 'A'.
- (c) The Applicant shall ensure that the OWTS Alteration Application #1505-1385, for Michael Smith at 166 Ram Island Road, Charlestown, RI, Plat 11, Lot 522, is installed and conformed prior to the start of construction for the system on the Property.
- (d) The Department shall issue to the Applicants a permit consistent with the revised application and plans, which shall expire five (5) years from the date of issuance, pursuant to Rule 42 of the OWTS Regulations.

D. COMPLIANCE

1. EFFECT OF COMPLIANCE—Compliance with and fulfillment of this Agreement shall be deemed to resolve all disputed issues related to the Application, the Department's denial letter dated March 7, 2008, and the administrative appeal.
2. COMPLIANCE WITH OTHER APPLICABLE LAWS—Compliance with the terms of this Agreement does not relieve the Applicants or their agents, servants, employees, successors and assigns of any obligation to comply with other applicable laws or regulations administered by, through or for the Department or any other governmental entity.
3. ADDITIONAL ENFORCEMENT ACTION—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 Department reserves the right to take enforcement actions as provided by law or regulations, including, but not limited to, the issuance of "Immediate Compliance Orders" as authorized by R.I.G.L. § 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Applicant may have regarding any enforcement action commenced by the Department after the execution of this Agreement.
4. NOTICE AND COMMUNICATION—Communications regarding this Agreement shall be directed to:

(a) RIDEM via:

Mohamed J. Freij, PE, PLS
RIDEM – OWTS Permitting
235 Promenade St., 2nd Floor
Providence, Rhode Island, 02908

Tel: 401-222-4700 ext. 7707

Susan Forcier, Esq.
RIDEM – Office of Legal Services
235 Promenade St., 4th Floor
Providence, Rhode Island, 02908

Tel: 401-222-6607 ext. 2305

(b) Applicants via:

Joseph DeAngelis, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903

Tel: 401-274-7200

(c) At any time prior to full compliance with the terms of this Agreement, Applicants agree to notify the Department in writing of any change in ownership of the Property and/or site, 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, return receipt requested.

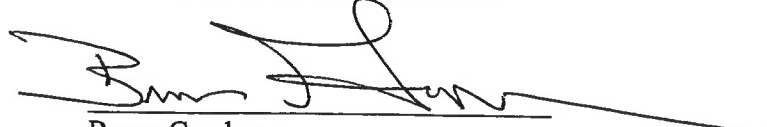
(d) Communications forwarded to the above-referenced address by certified mail, return receipt requested, shall be deemed received.

5. AMENDMENT—The Agreement may be amended only by mutual agreement of the parties in writing.

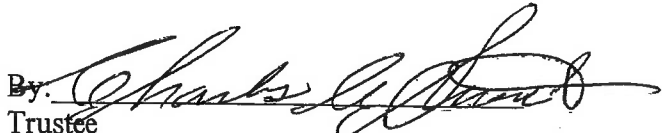
6. EFFECTIVE DATE—This Agreement shall be deemed entered as of the date of execution by all parties.

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

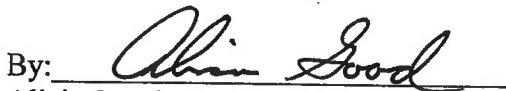
BY THE APPLICANT/APELLANT:


Bruce Gardner

CHARLES SWEET REVOCABLE TRUST


By: 
Trustee

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

By: 
Alicia Good, Assistant Director
Office of Water Resources
Groundwater & Wetlands Protections Program

STATE OF Rhode Island
COUNTY OF Washington

In Washington County, on the 28 day of November, 2016, before me personally appeared BRUCE GARDNER, to me known and known by me to be the persons executing the foregoing Consent Agreement and he acknowledged said instrument executed by him to be his free act and deed.


Notary Public
My Commission Expires: 4/1/18
~~FP~~ # 756425

STATE OF Rhode Island
COUNTY OF Washington

In Washington County, on the 28 day of November, 2016, before me personally appeared _____, the TRUSTEE OF THE CHARLES SWEET REVOCABLE TRUST, to me known and known by me to be the person executing the foregoing Consent Agreement for and on behalf of the CHARLES SWEET REVOCABLE TRUST and he acknowledged said instrument executed by him to be his free act and deed and the free act and deed of the CHARLES SWEET REVOCABLE TRUST.

[Signature]
Notary Public
My Commission Expires: 4/1/18
ID # 756425

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In the City of Providence, on the 20th day of December, 2016, before me personally appeared ALICIA GOOD, the Assistant Director of the STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, to me known and known by me to be the persons executing the foregoing Consent Agreement and she acknowledged said instrument executed by her to be her free act and deed and the free act and deed of the STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

[Signature]
Notary Public
My Commission Expires: June 9, 2017