

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

**IN RE: Estate of Michael Vacca
Estate of Luigi Vacca
Lisa Fields
Lynne Worthington
John Vacca**

**File No.: OCI-OWTS-14-258
AAD No.: 22-002/IE**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and the Estate of Luigi Vacca, Lisa Fields, Lynne Worthington, John Vacca, Alisha Vacca Brodeur and GERVASIO FAMILY REAL ESTATE, LLC (collectively, “Parties”). 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 alleged violations set forth in a Notice of Violation (“NOV”) issued to the Estate of Michael Vacca, the Estate of Luigi Vacca, Lisa Fields, Lynne Worthington, and John Vacca by RIDEM on 1 March 2022.

B. STIPULATED FACTS

- (1) WHEREAS the property is located at 1109/1111 Succotash Road, Assessor’s Plat I-J, Lot 47 in Narragansett, Rhode Island (“Property”). The Property includes 2 dwellings.
- (2) WHEREAS the Estate of Michael Vacca was closed out in the Town of North Providence, Rhode Island on 3 April 2009. Alisha Vacca Brodeur is the sole beneficiary.
- (3) WHEREAS the Estate of Luigi Vacca, Lisa Fields, Lynne Worthington, John Vacca, and Alisha Vacca Brodeur own the Property (“Owners”).
- (4) WHEREAS on 1 March 2022, RIDEM issued a NOV to the Estate of Michael Vacca, the Estate of Luigi Vacca, Lisa Fields, Lynne Worthington, and John Vacca alleging certain violations of Rhode Island’s *Cesspool Phase Out Act* and *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (“OWTS Rules”).
- (5) WHEREAS the Estate of Luigi Vacca, John Vacca, Alisha Vacca, Lisa Fields and Lynne Worthington have requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.

- (6) WHEREAS AAD is a division of RIDEM.
- (7) WHEREAS GERVASIO FAMILY REAL ESTATE, LLC (“GFRE”) has entered a purchase and sales agreement with the Owners to purchase the Property.
- (8) WHEREAS the closing on the Property (“Closing”) is scheduled for the week of 27 March 2022.
- (9) 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 and the Parties 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.
- (10) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island’s *Cesspool Phase Out Act* and OWTS Rules.
- (11) WHEREAS Parties find that this Agreement is reasonable and fair and enter into this Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Parties.
- (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 RIDEM, Parties and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Parties in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – RIDEM shall provide the fully executed Agreement and Release of NOV to the Closing attorney for recording with the Town of Narragansett, Rhode Island. **Within 5 days of the Closing**, the Closing attorney shall provide copies of the recorded documents to RIDEM. The recordings shall be at the sole expense of Parties.

(5) CONDITIONS –

(a) GFRE shall complete the following actions to comply with the Order section of the NOV:

(i) **IMMEDIATELY** cease use of the cesspool. No further use of the cesspool is allowed.

(ii) **Within 30 days of receipt of the NOV**, retain a licensed OWTS designer and have the licensed OWTS designer submit a formal application and plan to RIDEM to replace the cesspool in accordance with the OWTS Regulations [effective 4 January 2022 to Current] (the “2022 Application”). The list of licensed OWTS designers can be obtained from RIDEM’s web page at:

www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf.

(iii) The 2022 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 7 days (unless a longer time is specified) of receiving a notification of deficiencies in the 2022 Application**, submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies.

(iv) **Within 120 days of RIDEM’s approval of the 2022 Application**, complete all work in accordance with the approval as evidenced by the issuance of a Certificate of Conformance by RIDEM.

(b) Penalty – Owners shall pay to RIDEM \$7,000 in administrative penalties assessed as follows:

(i) **Within 5 days of the Closing**, the Closing attorney shall provide to RIDEM \$7,000.

(ii) Penalties that Owners agree 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.

(iii) Penalty payments shall be by one of two methods:

1. By attorney check made payable to the **General Treasury – *Water and Air Protection Program*** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

2. By wire transfer in accordance with instructions provided by RIDEM.

- (iv) Notwithstanding any other language contained in this Agreement, upon payment of the administrative penalties set forth above in subsection C (5)(b), the Owners are hereby forever released and discharged of (a) the NOV and (b) any other conditions or obligations created or imposed by this Agreement or otherwise arising under Rhode Island law due to the Owners' prior ownership of the Property. The release of the Owners is final upon payment of the \$7,000 and is not contingent upon GFRE's compliance with the conditions imposed upon GFRE in subsection C (5)(a).

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) FAILURE TO COMPLY – If GFRE fails to comply with items specified in subsection C (5)(a) of the Agreement, GFRE shall pay a stipulated penalty of \$1,000 per month for each 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 Parties 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 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 Parties 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 Parties 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 Section C (5)(a) of the 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. 2777400

david.chopy@dem.ri.gov

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

tricia.quest@dem.ri.gov

Joseph J. DeAngelis, Esquire
DeAngelis, McNamara & Cofone, PC
1177 Greenwich Avenue
Warwick, RI 02886
(401) 737-6877

www.jdeangelislaw.com

Thomas Gervasio
15 Center of New England Boulevard
Coventry, RI 02816
(401) 439-8022

Tom@dailc.com

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

GERVASIO FAMILY REAL ESTATE, LLC

By: _____
Thomas Gervasio, Member

Dated: _____

In my capacity, as Member of GERVASIO FAMILY REAL ESTATE, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind GERVASIO FAMILY REAL ESTATE, LLC, 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 _____, 2022, before me personally appeared Thomas Gervasio, a member of GERVASIO FAMILY REAL ESTATE, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of GERVASIO FAMILY REAL ESTATE, LLC, 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 GERVASIO FAMILY REAL ESTATE, LLC .

Notary Public
My Commission Expires: _____

Estate of Luigi Vacca

By: John Vacca
Title: Co-Administrator

Dated: _____

In my capacity, as co-administrator of the Estate of Luigi Vacca, I hereby aver that I am authorized to enter into this Agreement and thereby bind the Estate of Luigi Vacca to satisfy any obligation imposed upon it pursuant to said Agreement.

IN WITNESS WHEREOF, I, John Vacca, on behalf of the Estate of Luigi Vacca have caused my presents to be executed this _____ day of _____, 2022.

John Vacca

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence online notarization, this ____ day of _____, 2022, by John Vacca.

(Seal)

Signature of Notary Public

Print, Type or Stamp Name of Notary

Personally Known: _____
OR Produced Identification: _____
Type of Identification Produced: _____

Alisha Vacca Brodeur

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2022, before me personally appeared Alisha Vacca Brodeur to me known and known by me to be the party executing the foregoing instrument and he/she/they acknowledged said instrument and the execution thereof, to be his/her/their free act and deed.

Notary Public
My Commission Expires: _____

John Vacca

IN WITNESS WHEREOF, I, John Vacca, have caused my presents to be executed
this _____ day of _____, 2022.

John Vacca

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence
online notarization, this ____ day of _____, 2022, by John Vacca.

(Seal)

Signature of Notary Public

Print, Type or Stamp Name of Notary

Personally Known: _____
OR Produced Identification: _____
Type of Identification Produced: _____

Lisa Fields

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2022, before me personally appeared Lisa Fields to me known and known by me to be the party executing the foregoing instrument and he/she/they acknowledged said instrument and the execution thereof, to be his/her/their free act and deed.

Notary Public
My Commission Expires: _____

Lynne Worthington

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2022, before me personally appeared Lynne Worthington to me known and known by me to be the party executing the foregoing instrument and he/she/they acknowledged said instrument and the execution thereof, to be his/her/their free act and deed.

Notary Public
My Commission Expires: _____

**State of Rhode Island, Department of Environmental
Management**

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

Dated: _____