

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 19 C 7763
)	
JOSEPH J. PERILLO, and GOLD COAST)	Judge Aspen
MOTOR CARS, INC. d/b/a PERILLO)	
BMW, INC.,)	
)	
Defendants.)	
)	

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (“the Corps”), filed a complaint herein against defendants Joseph J. Perillo, Perillo Motor Cars, Inc., and Gold Coast Motor Cars, Inc. d/b/a Perillo Collision Center, alleging that they violated Sections 10 and 14 of the Rivers and Harbors Appropriation Act of 1899 (“RHA”), 33 U.S.C. §§ 403, 406, 408 and 413, Section 10 of the Rivers and Harbors Act of 1890, 33 U.S.C. §403a, and Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the complaint alleges that defendants violated RHA Sections 10 and 14, and CWA Section 301(a), by placing a seawall and obstruction in a navigable water of the United States without authorization from the United States Department of the Army, and by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at property owned by the defendants located at the left descending bank of the North Branch of the Chicago River located at approximately 1388 North North Branch Street in the City of Chicago, Cook County, Illinois (Latitude 41.90691, Longitude -87.65767) Property Index Number 17-05-201-011-0000, legally described as: Lots 1 to 4, both inclusive and

accretions thereto, in block 51 in Elston's Addition to Chicago, in Section 5 Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois (hereinafter referred to as the "Site") as more fully described in the complaint, and as set forth at Appendix A, without authorization by the Corps;

WHEREAS, the complaint seeks (1) to enjoin the discharge of pollutants into the North Branch of the Chicago River without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require defendants, at their own expense and at the direction of the Corps, to restore and/or mitigate the damages caused by their unlawful activities; (3) to enjoin defendants to remove the obstruction in the navigable water of the United States, at the direction of the Corps, (4) to enjoin defendants from causing or creating any obstruction, alteration or modification, without Corps approval, to any water of the United States regulated under Sections 10 and 14 of the RHA, 33 U.S.C. §§ 403, 408, (5) to enjoin defendants to restore the seawall to its pre-violation configuration, at the direction of the Corps, and (6) to require defendants to pay civil penalties under the CWA, as provided in 33 U.S.C. §1319(d);

WHEREAS, defendant Perillo Motor Cars, Inc., shall be voluntarily dismissed from this action;

WHEREAS, defendants' Answer and Affirmative Defenses deny all liability and deny that the United States is entitled to any of the relief requested;

WHEREAS, defendants further contend that they did not discharge any pollutants into the North Branch of the Chicago River, did not engage in any unlawful activities, and that their actions were reasonable under the circumstances;

WHEREAS, defendant Joseph Perillo denies that he is a proper individual defendant in this action and further denies all liability;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the RHA and the CWA set forth in the complaint regarding the Site;

WHEREAS, the United States and defendants agree that settlement of this case is in the public interest and that it is in the parties' interest to resolve the United States' claims under the RHA and CWA against defendant by entry of this Consent Decree without any admission of liability by defendants; and

WHEREAS, the court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the RHA, CWA, and all other applicable federal law.

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction and Venue

1. This court has subject matter jurisdiction over the claims in the complaint and over the parties pursuant to CWA section 309(b), 33 U.S.C. §1319(b), and 28 U.S.C. §§1331, 1345, and 1355, and pursuant to the RHA, 33 U.S.C. §§ 403, 403a, 406, 408, and 413.

2. Venue is proper in the Northern District of Illinois pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the defendants conduct business in this district, the Site is located in this district, and the causes of action alleged herein arose in this district.

3. The complaint states claims upon which relief can be granted pursuant to Sections 10 and 14 of the Rivers and Harbors Appropriation Act of 1899 (“RHA”), 33 U.S.C. §§ 403, 406, 408, and 413, Section 10 of the Rivers and Harbors Act of 1890, 33 U.S.C. §403a, and Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. Applicability

4. The obligations of this Consent Decree, its appendices, and the approved work plan referenced in the appendices (hereinafter referred to collectively as the “Consent Decree”) shall apply to, and be binding upon defendants, and their successors and assigns, and any person, firm, association or corporation who is, or will be, acting in concert or participation with the defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against the defendants, the defendants shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with any defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other real property interest in the Site, as described in the complaint, and the transfer of ownership or other interest in any other areas that are subject to the restoration requirements of this Consent Decree (the “Restoration Areas”), separately or in combination, shall not alter or relieve defendants of their obligation to comply with all of the terms of this Consent Decree. At least thirty (30) days prior to any transfer of ownership or other real property interest in such property, the defendants shall provide written notice and a copy of this Consent Decree to the successor(s) in interest and shall simultaneously notify the Corps and the United States Department of Justice at the addresses specified in Section XII below that such

notice has been given. As a condition to any such transfer, the defendants shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. Scope of Consent Decree

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the complaint against the defendants under CWA Section 301, and Sections 10 and 14 of the RHA concerning the Site, and the United States covenants not to sue the defendants, on behalf of the Corps of Engineers, for such civil claims alleged in the complaint. This covenant not to sue the defendants is expressly conditioned on the defendants' compliance with the requirements, terms, and conditions of this Consent Decree.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251, and Sections 10 and 14 of the RHA, 33 U.S.C. §403, 406, 408 and 413.

8. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing defendants to achieve and maintain full compliance with, and to further the purposes of, the RHA and CWA.

9. Except as in accordance with this Consent Decree, defendants and defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, in violation of the CWA and its implementing regulations, including (but not limited to) any individual or general permit which may be required under CWA section 404, 33 U.S.C. § 1344.

10. Except as in accordance with this Consent Decree, defendants and defendants' agents, successors and assigns are enjoined from injuring or in any manner impairing the

usefulness of any public works constructed by the United States at or adjacent to the Site for the improvement of navigation, including, without limitation, causing or creating any obstruction, modification, or alteration to any waters of the United States in violation of Section 10 of the RHA, unless such obstruction, modification, or alternation, complies with the provisions of the RHA and its implementing regulations, including (but not limited to) any permit which may be required under the RHA, 33 U.S.C. §§ 403, and 408.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, Sections 10 or 14 of the RHA, 33 U.S.C. §§ 403, and 408, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the U.S. Environmental Protection Agency's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c). Any discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Consent Decree.

12. The Parties acknowledge that, upon entry of this Consent Decree, the Chicago District Regional Permit 6 and the General Conditions of the Chicago District Regional Permit Program, ("RPP," as revised on January 10, 2020; accessed at <https://www.lrc.usace.army.mil/Portals/36/docs/regulatory/pdf/RPP/2017RPP-Modified.pdf>), under authority of the CWA and RHA (33 U.S.C. §§ 403, 408, 1344), will authorize, subject to the terms and conditions of Regional Permit 6, the RPP General Conditions, this Consent Decree, and the Restoration Plan at Appendix A: (a) work required to remove the alleged obstruction to navigation in the North Branch of the Chicago River, (b) construction of a steel sheet pile bulkhead

wall along and landward of the previous alignment of the bank of the North Branch of the Chicago River, (c) removal of the failed sheet piles, (d) such dredging or excavation as may be reasonably required to prevent erosion of the soil, sediment, and any other material currently located between the hazard to navigation and the proposed bulkhead alignment, along with the discharge of any return water generated by dewatering such dredged or excavated materials, (e) the discharge of dredged and fill material to the North Branch of the Chicago River from approximately October 2018 to the present, and (f) the discharge of fill material as backfill behind the proposed replacement bulkhead wall.

13. This Consent Decree in no way affects or relieves defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

14. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

15. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

16. Except as set forth in Paragraphs 1, 2 and 3, nothing in this Consent Decree shall constitute an admission of fact or law by any party. Defendants shall not contest the terms of this Consent Decree in any action to enforce its terms.

IV. Civil Penalties

17. Defendants shall pay a civil penalty to the United States in the amount of eighty thousand dollars (\$80,000), within 60 days after entry of this Consent Decree.

18. Defendants shall make the above-referenced payment by FedWire Electronic Funds Transfer (“EFT”) or wire transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2020V00299.

Payment shall be made in accordance with instructions provided to the defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

19. Upon submission of the civil penalty required by this Consent Decree, defendants shall provide written notice, at the addresses specified in Section XII of this Consent Decree, that such payment was made in accordance with Paragraph 18.

20. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section XI) are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law, under 26 U.S.C. § 162(f)(2).

V. Restoration

21. Defendants shall perform restoration under the terms and conditions stated in the "Site Plan: 1388 N. North Branch St, Chicago, Lots 1-4 Block 51 Elston's Addition to Chicago, PIN 17-05-201-011," dated 2/8/19 (as revised 1/30/20, and any subsequent revisions as required, and sealed by Joseph A. Meyer, Illinois Licensed Structural Engineer No. 081-002641), prepared by Lambert & Associates and Land Technology," hereinafter referred to as the "Restoration Plan" at Appendix A appended hereto, all of which are incorporated by reference herein. The parties acknowledge and agree that the objective of such restoration is to restore and replace the navigational and ecological functions and values of the North Branch of the Chicago River and associated areas described in the complaint and in a manner consistent with the Restoration Plan.

22. Upon completion of the terms and conditions of Appendix A, and except for activities conducted in accordance with Appendix A, defendants shall not obstruct, alter, modify,

clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any portion of the rivers or adjacent areas that defendants have created or restored at the restoration areas identified in Appendix A, except as authorized by the Corps. This injunction shall be binding on the defendant and the defendants' successors and assigns, but it shall not be construed as a deed restriction or conservation easement, and shall not run with the land or bind future owners of the property.

23. Defendant shall submit a report to the Corps documenting the progress of the development and implementation of the Restoration Plan, in accordance with the requirements and schedules specified in Appendix A.

24. To ensure that all parcels of land identified in Appendix A remain undisturbed, to the extent required under this Consent Decree, defendants shall, within fifteen (15) days after entry of this Consent Decree, record a certified copy of this Consent Decree with the Recorder of Deeds Office in Cook County Illinois. Thereafter, each deed, title, or other instrument conveying an interest in the Site prior to the termination of this Consent Decree (including but not limited to the areas subject to the Restoration Plan described in Appendix A), shall contain a notice stating that the property is subject to this Consent Decree. Defendants shall also provide the United States with copies of such recordation. Defendants may record a document reflecting the termination of this Consent Decree with the Record of Deeds Office in Cook County Illinois after it has been terminated by the Court.

25. Where any compliance obligation under this Section requires defendants to obtain a federal, state, or local permit or approval, defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX of this Consent Decree (Force

Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if defendants have submitted timely and complete applications and have taken all other reasonable actions necessary to obtain all such permits or approvals.

VI. Notices and Other Submissions

26. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the defendants shall sign and certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. Retention of Records and Right of Entry

27. Until five (5) years after entry of this Consent Decree, defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate to the performance of the tasks in Appendix A, regardless of any corporate retention policy to the contrary. Defendants shall also instruct their contractors, consultants and engineers engaged to perform the tasks in Appendix A to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix A for a period of five (5) years after entry of this Consent Decree. The defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the United States requests

delivery of defendants' records or documents and the defendants assert a privilege over such documents, they shall provide the United States with the following information concerning the privileged documents: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the defendants. Disclosure of any of the information described above shall not be construed as a waiver of any privilege. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

28.a. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times and upon prior notice to enter the Site (including the areas subject to the Restoration Plan) to:

- 1) Monitor the Site (including the areas subject to the Restoration Plan) and measure compliance with the terms and conditions of this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;
- 4) Inspect and evaluate defendant's implementation of the Restoration Plan; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree, the RHA, and the CWA.

b. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring, and to obtain information from the defendant as authorized by law.

VIII. Dispute Resolution

29.a. This Section shall govern all disputes arising with respect to the meaning or

requirements of this Consent Decree, with the exception of disputes concerning the Corps' comments on, modification of, approval of, or disapproval of the implementation of the Restoration Plan (or other item required to be submitted under Appendix A), which are governed by the dispute resolution procedures in Appendix A.

b. Any dispute that arises with respect to the meaning or the requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and the defendants to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and the defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the thirty (30) day informal negotiations period, the defendants file a motion with the court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, the RHA, and the CWA, and that the defendants' position will achieve compliance with the terms and conditions of this Consent Decree, the RHA, and the CWA.

30. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of material harm to the public or the environment, it may move the court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The defendants shall have fourteen (14) days to respond to the motion and propose

an alternate resolution. In resolving any such dispute, the defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the defendants' position will achieve compliance with the terms and conditions of this Consent Decree, the RHA, and the CWA.

31. The filing of a motion asking the court to resolve a dispute shall not extend or postpone any obligation of the defendant under this Consent Decree, except as provided in Paragraph 39 below regarding payment of stipulated penalties.

IX. Force Majeure

32. Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, except to the extent that the performance is prevented or delayed by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of the defendants, including their employees, agents, consultants and contractors, which could not reasonably be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of the Site (including the areas subject to the Restoration Plan), or failure to obtain necessary federal, state or local permits unless, as described in Paragraph 25, defendants have submitted timely and complete applications and have taken all other reasonable actions necessary to obtain all such permits or approvals. A Force Majeure event specifically includes any reasonable delay resulting from a directive or order from the Centers for Disease Control and Prevention, or other federal, state, or local government agency,

regarding public response to a pandemic, including the COVID-19 outbreak, that is issued after entry of this Consent Decree and before March 15, 2021, and that reasonably prevents or delays performance of the actions required under this Consent Decree. If defendants believe that a Force Majeure event has affected defendants' ability to perform any action required under this Consent Decree, defendants shall notify the United States in writing within seven (7) calendar days after receiving notice of the event at the addresses listed in Section XI.

Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

33. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with the Corps to determine when to begin or resume the operations that had been affected by any Force Majeure event.

34. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

35. Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances beyond the reasonable control of the defendants and, as applicable, any entity retained by defendants, including their contractors and consultants; (2) that defendants or any entity controlled by defendants could not have reasonably foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

X. Stipulated Penalties

36. After entry of this Consent Decree and prior to its termination, if defendants fail to timely fulfill any requirement of the Consent Decree (including Appendix A and the Restoration Plan incorporated therein), with the exception of Section VII, the defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

A. For day 1 up to and including day 30 of non-compliance	\$800 per day
B. For day 31 up to and including 60 of non-compliance	\$1,200 per day
C. For day 61 and beyond of non-compliance	\$1,600 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued. The method of payment shall be in accordance with the provisions of Paragraph 41 below.

37. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant

to the Dispute Resolution provisions in Section VIII or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Section VIII.

38. The filing of a motion requesting that the court resolve a dispute shall stay defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that defendants do not prevail on the disputed issue, stipulated penalties shall be paid by the defendants as provided in this Section.

39. To the extent defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 32 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

40. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

41. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO file number file number 2020V00299. Payment shall be made in accordance with instructions provided to the defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, defendants

shall provide written notice of the payment to the United States and the Corps, at the addresses specified in Section XI of this Consent Decree.

42. The United States may, in its sole and unreviewable discretion, suspend, mitigate, or waive any stipulated penalty owed under this Section.

43. Nothing in this Consent Decree, including but not limited to the provisions of this Section, shall be construed to preclude or limit the right of the United States to seek sanctions for contempt of this Consent Decree or any order to enforce this Consent Decree.

XI. Addresses

44. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. To the Corps:

- (1) Carin J. Frank
United States Army Corps of Engineers
Assistant District Counsel, Chicago District
231 S. LaSalle St., Suite 1500
Chicago, Illinois 60604
carin.j.frank@usace.army.mil
- (2) Colin Smalley
Enforcement Officer
U.S. Army Corps of Engineers
231 S. LaSalle St., Suite 1500
Chicago, Illinois 60604
colin.c.smalley@usace.army.mil

B. To the United States Department of Justice:

Kurt N. Lindland
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-4163
kurt.lindland@usdoj.gov

D. To Defendants:

Bryan Keyt
Bryan, Cave, Leighton, Paisner LLP
161 N Clark St #4300
Chicago, Illinois 60601
bryan.keyt@bclplaw.com

Joseph J. Perillo
Gold Coast Motor Cars, Inc.
1035 North Clark Street
Chicago, Illinois 60610

XII. Cost of Suit

45. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should defendants subsequently be determined by the court to have violated the terms or conditions of this Consent Decree, defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against defendants for noncompliance with or enforcement of this Consent Decree.

XIII. Public Comment

46. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the defendants in writing that it no longer supports entry of the Consent Decree in its agreed upon form.

XIV. Continuing Jurisdiction of the Court

47. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. Nothing in this Consent Decree shall be construed to preclude a remedy to cure a contempt found by the Court.

XV. Modification

48. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing. With the exception of modifications to the Restoration Plan prepared in accordance with Appendix A, any modification of this Consent Decree shall not take effect unless signed by both the United States and the defendants and approved by the Court.

XVI. Termination

49. Except for the permanent injunction required by Paragraph 22, this Consent Decree may be terminated by either of the following:

A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Consent Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Consent Decree after each of the following has occurred:

1. Defendants has attained and maintained compliance with all provisions of this Consent Decree, including Appendix A and the Restoration Plan incorporated therein, and the CWA for twelve (12) consecutive months;
2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed

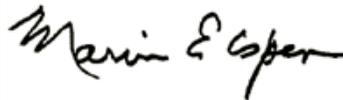
to the United States;

3. Defendants have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. within forty-five (45) days after receiving such certification from the defendants, the Corps has not contested in writing that such compliance has been achieved. If the Corps disputes defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

IT IS SO ORDERED.

Dated this 18th day of September, 2020.



United States District Judge

FOR THE UNITED STATES

JOHN R. LAUSCH, Jr.
United States Attorney

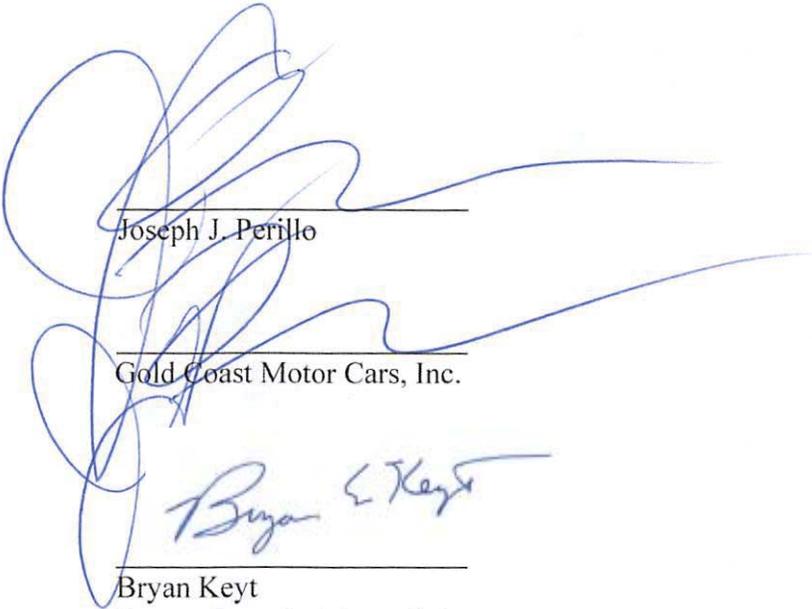
By: KURT LINDLAND Digitally signed by KURT LINDLAND
Date: 2020.09.16 13:11:58 -05'00'

KURT N. LINDLAND
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-4163
kurt.lindland@usdoj.gov

Dated: _____

FOR THE DEFENDANTS

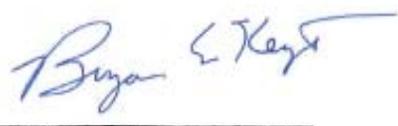
Dated: 7-23-2020



Joseph J. Perillo

Gold Coast Motor Cars, Inc.

Dated: July 31, 2020



Bryan Keyt
Bryan, Cave, Leighton, Paisner
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APPENDIX A

RESTORATION PLAN

1388 N. NORTH BRANCH ST., CHICAGO, ILLINOIS

1. Defendants shall undertake and complete the project as described in the plans titled, “Site Plan: 1388 N. North Branch St, Chicago, Lots 1-4 Block 51 Elston’s Addition to Chicago, PIN 17-05-201-011,” dated 2/8/19 (as revised 1/30/20, and any subsequent revisions as required by any federal, state, or local government agency, and sealed by Joseph A. Meyer, Illinois Licensed Structural Engineer No. 081-002641), prepared by Lambert & Associates and Land Technology, attached hereto as Attachment A. Defendants shall complete the indicated work (with the exception of dewatering and temporary on-shore storage of any dredged material, and stabilization of the shore behind the new wall) within 45 days of the later of entry of this Consent Decree or receipt of all required federal, state and local governmental approvals .

2. Defendants shall implement and maintain soil erosion and sediment controls in a serviceable condition throughout the duration of the project. Defendants shall comply with the North Cook County Soil and Water Conservation District's (“SWCD”) written and verbal recommendations regarding the soil erosion and sediment control (“SESC”) plan and the installation and maintenance requirements of the SESC practices on-site. Defendants shall not commence work of any kind until the SESC plan for the work has been reviewed by SWCD and SWCD has provided written approval of the plan’s adequacy.

a. Defendants shall schedule a preconstruction meeting with SWCD to discuss the SESC plan and the installation and maintenance requirements of the SESC practices on the site. Defendants shall contact the SWCD at least 10 calendar days prior to the preconstruction meeting so that a representative may attend.

b. Defendants shall notify the SWCD of any changes or modifications to the approved plan set. The Parties acknowledge that field conditions during project construction may require the implementation of additional SESC measures. If Defendants fail to implement corrective measures, the Corps may require more frequent site inspections to ensure the installed SESC measures are acceptable.

3. In the event of discovery of any human remains, Native American cultural items or archaeological evidence, Defendants shall contact Mr. Colin C. Smalley, PG, by telephone at 312-846-5538, or email at colin.c.smalley@usace.army.mil, for consultation with appropriate parties. Such a discovery may constitute a Force Majeure event for purposes of enforcement of this Consent Decree.

4. Defendants shall be responsible for all work performed under the Consent Decree and for ensuring that all contractors are aware of the terms and conditions of the Consent Decree.

5. Defendants shall ensure that a copy of this Consent Decree, together with the Regional Permit 6 verification letter from the Corps, is present at the project site during all phases of construction.

6. Defendants shall notify the Corps of any proposed modifications to the project, including revisions to any of the plans or documents cited in this agreement. If the Defendants contend that such modifications or revisions are necessary due to a Force Majeure event as defined in this Consent Decree, Defendants will make such assertion as part of this notice, and if the modifications are determined to be a Force Majeure event, the length of time the modifications are under review by the Corps shall be considered part of the Force Majeure event. Defendants shall not perform any work affected by any proposed modification without having received written approval from the Corps.

7. Defendants shall contact the United States Coast Guard (“USCG”), Marine Safety Unit Chicago, Waterways Management Division, (630-986-2155 or D09-DG-MSUChicago-Waterways@uscg.mil), within 3 business days of entry of this Consent Decree, to determine whether a Notice to Mariners is advisable for any construction period(s) and/or to notify mariners of the new completed structure. Defendants shall retain documentation of any such discussions, and to provide such information to the USCG as they may require to prepare the Notice(s) to Mariners prior to commencing construction of the structure.

8. Within 21 days of completion of construction, in order to facilitate updating federal navigation charts, Defendants shall file a “Permit/Public Notice Report” form with the National Oceanic and Atmospheric Administration (“NOAA”) National Ocean Service, Office of the Coast Survey, including as-built drawings and geo-referenced CADD or GIS files in electronic format. Defendants agree to submit the form, drawings, and files to ocs.ndb@noaa.gov, CEMVR-Charts-WEB@usace.army.mil, and Colin.C.Smalley@usace.army.mil.

9. Concurrently with the report required in paragraph 8 of this plan, Defendants shall submit to the Corps a monitoring report with photographs showing the finished structures and fills on the Site, along with details of any revegetation and site stabilization.

10. Defendants shall fully comply with the requirements of the City of Chicago’s Harbor Ordinance (MCC Ch. 10-40) and the State of Illinois’ Rivers, Lakes and Streams Act (615 ILCS).

