

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: COLBEA ENTERPRISES, L.L.C.
J ENTERPRISES, INC.

File No.: OCI-UST-2017-27-00789
AAD No. 17-008/WME

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 COLBEA ENTERPRISES, L.L.C. ("Colbea"). 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 alleged violations set forth in a Notice of Violation ("NOV") issued to Colbea and J ENTEPRISES, INC. ("JE") (collectively, the "Respondents") by the RIDEM on 13 September 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 1020 Narragansett Boulevard, Assessor's Plat 87, Lot 1064 in Providence, Rhode Island (the "Property"). The Property includes a convenience store and a motor fuel storage and dispensing system (the "Facility").
- (2) WHEREAS, Colbea owns the Property.
- (3) WHEREAS, JE operates the Facility.
- (4) WHEREAS, underground storage tanks ("USTs" or "tanks") are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (5) WHEREAS, the Facility is registered with the DEM and is identified as UST Facility No. 00789.
- (6) WHEREAS, on 13 September 2017, the RIDEM issued a NOV to Respondents alleging certain violations of the RIDEM's UST Regulations.
- (7) WHEREAS, Colbea requested an administrative hearing to contest the NOV.

- (8) WHEREAS, Respondents have not complied with the Order section of the NOV; however, documents provided to the RIDEM show that the USTs were being tested as single walled USTs for the applicable time specified in the NOV.
- (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, the RIDEM and Colbea 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, the RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Respondents and adequately protects the public interest in accordance with the RIDEM's UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (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, Colbea and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Colbea in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – **Within 10 days of the receipt of the fully executed Agreement from the RIDEM**, Colbea shall record this Agreement with the City of Providence (“Providence”) and shall provide a copy of the recorded Agreement to the RIDEM. Upon receipt of a copy of the recorded Agreement, the RIDEM shall issue a Release of the NOV to Colbea for recording with Providence. The recordings shall be at the sole expense of Colbea.
- (5) CONDITIONS –
 - (a) **By 22 December 2017**, permanently close the secondary product pipelines for the USTs Pipelines and install new double-walled product pipelines in full compliance with Sections 9.00 and 10.00 of the RIDEM's UST Regulations. Prior written notification to and approval by the RIDEM is required.

- (b) Penalty – Colbea shall pay to the RIDEM **\$500** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Colbea, Colbea shall pay to the RIDEM **\$500** in administrative penalties.
 - (ii) Penalties that Colbea 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.
 - (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 – Colbea 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. Colbea 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. Colbea 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 Colbea’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the Agreement to Colbea for recording with Providence. The recording shall be at the sole expense of Colbea.
- (2) FAILURE TO COMPLY – If Colbea fails to comply with Section C (5)(a) of the Agreement, Colbea shall pay a stipulated penalty of \$500 per month for each 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 Respondents 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 Respondents 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 Respondents 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:

Tracey D’Amadio Tyrrell
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

Christina A. Hoefsmit, Esq.
RIDEM Office of Legal Services
235 Promenade Street 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

John D. Russell, Esq.
Adler Pollock Sheehan, P.C
One Citizens Plaza, 8TH Floor
Providence, RI 02903

- (a) At any time prior to full compliance with the terms of this Agreement, Respondents agree to notify the RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner. 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.

COLBEA ENTERPRISES, L.L.C.

By: _____

Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of COLBEA ENTERPRISES, L.L.C., I hereby aver that I am authorized to enter into this Agreement and thereby bind COLBEA ENTERPRISES, L.L.C. 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 _____, 2017, before me personally appeared _____, the _____ of COLBEA ENTERPRISES, L.L.C., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of COLBEA ENTERPRISES, L.L.C., and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of COLBEA ENTERPRISES, L.L.C.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____