

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Kearney Realty, LLC

File No.: OCI-UST-18-01488

AAD No.: 19-005/WME

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Kearney Realty, LLC (“Respondent”). 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 Respondent by RIDEM on February 21, 2019.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 5682 Post Road, Assessor's Plat 4, Lot 67-1 in the Town of Charlestown, Rhode Island (the “Property”) and includes a motor fuel filling station, a convenience store and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products or hazardous materials (the “Facility”) and are subject to the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (2) WHEREAS, Respondent owns the Property.
- (3) WHEREAS, Respondent operates the Facility, doing business as Michael’s Food Mart.
- (4) WHEREAS, the Facility is registered with RIDEM and is identified as UST Facility No. 01488.
- (5) WHEREAS, on February 21, 2019, RIDEM issued a NOV to Respondent alleging certain violations of the UST Regulations.
- (6) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (7) WHEREAS, Respondent complied with the Order section of the NOV.
- (8) WHEREAS, the Administrative Adjudication Division is a division of RIDEM.

- (9) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, RIDEM and Respondent 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 of all claims against Respondent and adequately protects the public interest in accordance with the UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent.
- (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, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
- (a) Penalty – Respondent shall pay to RIDEM the sum of **\$10,000** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondent, Respondent shall pay to RIDEM the sum of **\$375.00**.
- (ii) The remainder of the penalty, **\$9,625**, shall be paid to RIDEM in 35 equal and consecutive monthly installments of **\$275.00**. The remaining payments shall be made starting on March 1, 2020 and continuing the 1st of each consecutive month until the entire penalty is paid in full. The entire penalty shall be paid on or before January 1, 2023.
- (iii) Penalties that Respondent 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.

- (iv) If Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late, and Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 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 payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

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

- (v) Penalty payments may be submitted by electronic payment, in accordance with the April 9, 2019 Wire/ACH Instructions for the State of RI General Fund Account issued by the Rhode Island Office of the General Treasurer provided that Respondent ensures that RIDEM receives notice of said payment by the financial institution, or penalty payments may be submitted in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Program*** and delivered to:

Administrator, 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. Upon Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV to Respondent for recording. The recording shall be at the sole expense of Respondent.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent 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 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 Respondent 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 Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (6) 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

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

John Stockwell Payne, Resident Agent
46 Granite Street
Westerly, Rhode Island 02891
(401) 596-0391

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify 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.
- (7) AMENDMENT – The Agreement may be amended by 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.

Kearney Realty, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of Kearney Realty, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Kearney Realty, 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 _____, 2020, before me personally appeared _____, the _____ of Kearney Realty, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Kearney Realty, LLC, 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 Kearney Realty, LLC.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____