

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

**IN RE: Rhode Island Mall, LLC,  
Boston KDM, LLC, and  
Brian J. Kelly, III**

**FILE NO.: WP10-010  
x-ref. RI0001546 and  
RI0023299  
AAD No. 10-002/WRE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“RIDEM”) and GLL Rhode Island Mall, L.P. (the “Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws (“R.I.G.L.”) for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to Rhode Island Mall LLC, Brian J. Kelly, III, and Boston KDM, LLC by RIDEM on February 26, 2010.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is the Rhode Island Mall located at 650 Bald Hill Road, Warwick, Rhode Island.
- (2) WHEREAS, Rhode Island Mall, LLC was the holder of Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit Nos. RI0001546 and RI0023299 (the “Permits”) from October 1, 2006 to July 14, 2010. The Permits authorized the discharge of cooling tower blow-down water associated with an air conditioning system and stormwater runoff associated with the parking lot (as well as certain allowable non-stormwater runoff) that serve the Rhode Island Mall to the Pawtuxet River.
- (3) WHEREAS, on February 26, 2010, RIDEM issued an NOV to Rhode Island Mall, LLC, Brian J. Kelly, III, and Boston KDM, LLC alleging certain violations of the Rhode Island Water Pollution Act, RIDEM Water Quality Regulations and RIDEM RIPDES Regulations.
- (4) WHEREAS, on March 11, 2010, the Respondent requested an administrative hearing to contest the NOV on behalf of Boston KDM, LLC.

- (5) WHEREAS, on March 12, 2010, the Respondent requested an administrative hearing to contest the NOV on the behalf of Rhode Island Mall, LLC and Brian J. Kelly, III.
- (6) WHEREAS, on July 14, 2010, the Permits were transferred from Rhode Island Mall, LLC to the Respondent.
- (7) WHEREAS, the Respondent is now the sole permit holder and the only party with obligations relating to the Permits.
- (8) WHEREAS, the Respondent has accepted responsibility for compliance with the Permits held by Rhode Island Mall, LLC and for the violations cited in the NOV.
- (9) WHEREAS, the Respondent has complied with the Order portion of the NOV.
- (10) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect a timely and amicable resolution of the NOV, RIDEM and the 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.
- (11) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island Water Pollution Act, RIDEM Water Quality Regulations and the RIDEM RIPDES Regulations.

**C. AGREEMENT**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. §42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS

- (a) Penalty - In satisfaction of the administrative penalty assessed in the NOV, the Respondent shall pay Fifteen Thousand Dollars (\$15,000.00).
- (b) Payment Schedule – The Respondent’s total penalty, Fifteen Thousand Dollars (\$15,000.00), shall be paid as follows:
  - (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of Fifteen Thousand Dollars (\$15,000.00).
  - (ii) Penalties that the Respondent agrees to pay in this Consent 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, payable to the **R.I. General Treasurer – Water and Air Protection Account**. All payments shall be delivered, along with a copy of this Agreement, to:

David E. Chopy, Chief  
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 dated February 26, 2010.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the 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 law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws §42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the 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 the Respondent from liability arising from future activities, as of the date of execution of this Agreement.

- (5) 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.**

*For the Respondent*

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James H. Cunningham, Jr., Vice President  
of GLL Rhode Island Mall GP, Inc.,  
General Partner of GLL Rhode Island Mall, L.P.

\_\_\_\_\_  
Date

*For the State of Rhode Island Department of  
Environmental Management*

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

\_\_\_\_\_  
Date