

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the Matter of a Remedial Program for

DEC Site Name: Former Paulsen - Holbrook
DEC Site No.: 401046
Site Address: 50 Railroad Avenue
Colonie, NY

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**

Index No. CO 4-20211018-86

and

54 Railroad Avenue
Guilderland, NY 12205

Hereinafter referred to as "Site"

by: Store Away Warehousing at Guilderland,
LLC

Hereinafter referred to as "Respondent"

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") and the New York State Finance Law ("SFL"), and such laws provide the Department with authority to enter into this Order on Consent and Administrative Settlement (the "Settlement Agreement" or "Order").

2. A. The Department is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue Settlement Agreements consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Settlement Agreement is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

3. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as Site Number 401046 with a Classification of 4 pursuant to ECL 27-1305, reflecting that the Site has been properly closed but requires continued management. Respondent, upon taking title to the 50 and 54 Railroad Avenue portions of the Site, has the right to petition the Department to reclassify its two parcels to a Class 5 properly closed – does not require continued management – status and petition for the removal of a Registry listing for its two parcels.

4. For purposes of this Agreement, all references made to the Site, are limited to the two parcels, 50 and 54 Railroad Avenue.

5. Pursuant to the legal authorities cited herein, the Department has incurred costs, and anticipates the need to incur additional costs, paid from the hazardous waste remedial fund for the implementation of a Remedial Program at the Site. These expenditures are authorized by and in conformance with relevant and applicable State and federal law.

6. The "Respondent" consists of Store Away Warehousing at Guilderland, LLC. and its members, successor or assigns of the LLC, but not any entity with any prior nexus to the contamination conditions on the site. Respondent expects to take title to portions of the Site with the addresses of 50 and 54 Railroad Avenue.

7. Albany Miron Lumber Corp.; Stephen E. Miron; Paulsen and Sons, Inc.; William F. Paulsen; Holbrook Lumber, Co. Inc.; Colonie Wood Treating & Stains Corp.; and Paul R. Krihak resolved their liability with the Department pursuant to an Order on Consent (Index # D4-0500-07-01), dated March 13, 2007. These entities and individuals settled with the Department after paying Nine Hundred and Ten Thousand dollars (\$910,000.00) to satisfy past and future response costs incurred by the Department. Respondent had no involvement with the operation of Miron Lumber or Paulsen or the other entities listed in this paragraph.

8. To facilitate productive reuse of the Site, the County of Albany, who has obtained "in rem" delinquent real property tax lien foreclosure judgments against the prior owner, Albany Miron Lumber Corp., desires to sell portions of the Site to Respondent, with the understanding that the Respondent will be entering into a voluntary agreement with the Department confirming that it has statutory defenses to Superfund liability and, therefore, does not have liability for any past, current or future response costs associated with the Existing Contamination at and migrating from the Site and the implementation of the Remedial Program at the site so long as Respondent complies with the terms and conditions of the voluntary agreement. Existing Contamination

means the contamination that has been detected on and/or migrating from the Site as identified in Site related investigation and remediation reports.

9. A. Respondent represents that it is a prospective purchaser under a contract to acquire title to that portion of the Site consisting of 50 Railroad Avenue, Town of Colonie and 54 Railroad Avenue, Town of Guilderland. Respondent further represents that it is not affiliated in any way with Albany Miron Lumber Corp., the current owner of the Site, that it retained experienced environmental consultants to review the contaminant conditions detected at the Site, has discussed the Site with the Department, along with other appropriate inquiries as to the Site history and prior use, and that it understands that the Department expects, at the Department's sole cost and expense, to implement additional remedial action on the Site, such as monitoring, for which it will provide access.

B. Respondent represents that it is a Bona Fide Prospective Purchaser ("BFPP") as that term is defined in Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(40) and that it has and will continue to comply with the requirements of CERCLA §§ 101(40) and 107(r)(1) during its ownership of those portions of Site to which it will have title; 50 and 54 Railroad Ave. Therefore, Respondent qualifies for the protection from liability under CERCLA set forth in CERCLA § 107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the contamination existing at the Site on the effective date of this Settlement Agreement. Respondent has no obligations whatsoever to do anything or conduct any action of any kind on the portions of the Site to which it is not taking title.

C. Respondent anticipates that no later than April 1, 2022, The County of Albany, which foreclosed on the two parcels, will convey title of the Site to Respondent.

10. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

11. Respondent and the Department agree that the primary goals of this Settlement Agreement are (i) for Respondent to satisfy the terms and conditions set forth herein to establish and maintain BFPP liability protection under CERCLA, (ii) for the Department, at its sole cost and expense, to obtain access to the Site in order to continue its responsibilities as outlined in the Site Management Plan (SMP) or an amendment thereto, (iii) to delineate Respondent's obligations, only on the portions of the Site on which it will hold title, with respect to the Site's remedial program that addresses the past release of hazardous substances by others, and (iv) for the Department to release the Respondent and its members, successors and assigns of the LLC from liability, both state and federal, and furnish Respondent with a covenant not to sue with respect to any past or future response costs incurred by the State related to the Existing Contamination at the Site upon the execution of this Settlement Agreement and Respondent's commitment to comply with the terms and conditions set forth herein.

12. The Parties recognize that implementation of this Settlement Agreement will expedite the remediation of, and commercial redevelopment of, the Site and may avoid prolonged and costly litigation between the Parties. The Parties also recognize that this Settlement Agreement is mutually acceptable, fair, reasonable and in the public interest.

13. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Settlement Agreement and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Settlement Agreement and agrees not to contest the validity of this Settlement Agreement or its terms or, if applicable, the validity of data submitted to the Department by Respondent if required under this Settlement Agreement.

NOW, having considered this matter and being duly advised, **IT IS ORDERED and AGREED THAT:**

I. Real Property

The portion of the Site subject to this Order has been assigned number 401046, consists of approximately 3.26 acres, and is as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")

Tax Map/Parcel No.: 53.5-4-24
Address: 50 Railroad Avenue, Town of Colonie, NY
Owner: Albany Miron Lumber Corp.

Tax Map/Parcel No.: 53.05-1-15
Address: 54 Railroad Avenue, Town of Guilderland, NY
Owner: Albany Miron Lumber Corp.

II. Site Access/Notice to Successors in Interest

A. Respondent agrees to comply with the existing Environmental Easement and Site Management Plan for the Site, but only insofar as it is applicable to the 50 and 54 Railroad Ave. parcels, and to any modifications to either document that are required by the Department and preserve all environmental wells on Site including monitoring wells and former extraction wells for monitoring and/or recovery as required by the Department and to provide access to the Site by the Department, its authorized officers, employees, representatives, and all other persons of the Department, for the purposes of continuing to perform those duties outlined within the SMP, including, but not limited to, access for the purposes of monitoring. Respondent, in addition to the decommissioning of wells described in Paragraph III below, may seek Department permission at the appropriate time to decommission any remaining wells on the 50 and 54 Railroad Ave. parcels upon obtaining title to those parcels. Respondent agrees to provide to the Department, any duly designated officer or employee of the Department

or any State agency having jurisdiction with respect to the remedial program at the Site, and any agent, consultant, contractor, or other person so authorized by the Commissioner, an irrevocable right of access at all reasonable times to the Site with seventy-two (72) hours written notification and subject to authorization of tenants and to any other property Respondent controls to which access is required for the implementation of response actions at and near the Site under applicable federal and state law, including but not limited to all activities authorized under ECL §§ 27-1309(3) – (4) and ECL § 27-1313(8). Notwithstanding any provision of this Settlement Agreement, but without limiting the scope of the releases and covenants set forth in in Section VI below, the Department retains all its authorities and rights, including enforcement authorities thereto, under CERCLA, Article 27, Title 13 of the ECL or pursuant to any other provision of state or federal statutory or common law with respect to such access.

B. Within sixty (60) days after the effective date of this Settlement Agreement, Respondent shall cause to be filed with the Albany County Clerk a Department-approved Notice of Settlement Agreement, which Notice shall be substantially similar to the Notice of Settlement Agreement attached as Exhibit D, to provide all parties who may acquire any interest in the Site with notice of this Settlement Agreement. Within thirty (30) days of such filing (or a longer period of time as may be required to obtain a certified copy provided Respondent advises the Department of the status of its efforts to obtain such certified copy within thirty (30) days), Respondent shall provide the Department with a copy of such instrument certified by the Albany County Clerk to be a true and faithful copy. Such filings only involve those 50 and 54 Railroad Avenue parcels owned by Respondent.

C. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site or becomes aware of such conveyance, Respondent shall, not fewer than forty-five (45) days before the date of conveyance or within forty-five (45) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Settlement Agreement. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security order, lease or any other right accruing to a party not affiliated with Respondent to secure repayment of money or the performance of a duty or obligation.

D. Respondent shall require that assignees, successors in interest, lessees and sublessees of the Site shall provide the same access and cooperation with the Department. Respondent shall not be responsible for any such parties' failure to comply. The Respondent shall ensure that a copy of this Settlement Agreement is provided to any current lessee or sublessee on the Site as of the effective date of this Settlement Agreement and shall ensure that any subsequent leases, assignments or transfers of the Site or an interest in the Site are consistent with this Paragraph and Paragraph X (Parties Bound/Transfer of Covenant) of this Settlement Agreement.

E. Respondent shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site. If Respondent or its successors and assigns propose to change the use of the Site, as defined in ECL 27-1317 and 6 NYCRR Part 375-2.2(a), Respondent must comply with the notice requirements of 6 NYCRR Part 375-1.11(d).

F. Notwithstanding any other provision of this Agreement, any activities on the 50 and 54 Railroad Avenue parcels owned by Respondent that are outside of the 0.5 acre restriction area as depicted in Figure 4, attached hereto, are not subject to any SMP provisions.

G. Upon sale or other conveyance of the Site or any part thereof, Respondent shall notify, in writing, any grantee, transferee or other holder of an interest in the Site or any part thereof of the requirement that they must and shall provide access and cooperation to the Department, its authorized officers, employees, representatives, and all other persons implementing the remedial program for the Site under the Department's oversight. Respondent shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall comply with any land use restrictions and institutional controls on the Respondent's portions of the Site in connection with the remedial program for the Site.

H. The Department's representatives shall name Respondent as an additional insured on its insurance coverage for work performed on the Site on behalf of the Department.

III. Respondent's Obligations/Environmental Easement

A. On May 17, 2016 Albany Miron Lumber Corp. granted an Environmental Easement to the Department, which restricts the Site to Commercial use as described in 6 NYCRR 375-1.8(g)(2)(ii) and Industrial use as described in 6 NYCRR 375-1.8(g)(2)(iv). The Department accepted the Environmental Easement on June 7, 2016 and it was duly recorded on July 26, 2016.

B. Respondent shall decommission monitoring wells located on their portion of the property. These wells include: ML-06; ML-07; ML-08; ML-09; ML-11. A map including the locations of these wells can be found attached hereto as Exhibit "C".

C. Respondent shall ensure that all storm water drainage structures are protected and maintained in good working order, as applicable to the 50 and 54 Railroad Ave. parcels. Respondent will provide a Storm Water Management and Erosion Control Plan to the Department as to how storm water will be managed during any construction activities, to ensure that storm water runoff does not damage or otherwise structurally disturbed the soil cover system identified on Figure 4 of the SMP (Exhibit "B").

D. Respondent shall ensure that in the event that any portion of the cover system is damaged, but only as applicable to the cover that is located on the 50 and 54 Railroad Ave. parcels, that it will be repaired and/or replaced, at Respondent's cost, with an approved work plan submitted to the Department and as provided for in Section 2.2 of the SMP

E. Violations and/or failures to comply with the terms of the environmental easement by any other parties not subject to this Agreement, will not impose joint and several liability on the Respondent, thereby not jeopardizing Respondent's status as a BFPP.

IV. Due Care/Cooperation

A. Respondent shall exercise due care and shall comply with all applicable local, state, and federal laws and regulations with respect to the existing contamination at its portions of the Site. Respondent recognizes that the implementation of the response actions at the Site may temporarily interfere with Respondent's use of the Site and may require temporary closure of its operations or a part thereof. Respondent, insofar as it holds an ownership interest, agrees to cooperate fully with the Department in the implementation of response actions at the Site and further agrees not to interfere with such response actions. The Department agrees, consistent with its responsibilities under applicable law, to cooperate and use reasonable efforts to minimize any interference with Respondent's and/or its tenant's construction activities and operations by its entry and implementation of response actions, conditioned upon Respondent's compliance with 6 NYCRR 375-1.11(d). The Department agrees to flush-mount any monitoring wells that may be installed on the Site and to make reasonable efforts to install any such monitoring wells, and/or injection wells, in areas that will not interfere with building construction or site operations. In the event Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous waste, pollutants or contaminants at or from the Site not otherwise known or being addressed by the Department that constitutes an emergency situation or may present an immediate threat to public health or the environment, Respondent, if it owns the property on which such a condition is identified, shall immediately take appropriate action to prevent, abate or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements, or any other law, immediately notify the Department of such release or threatened release so that the Department can respond to the occurrence if arising from the existing contamination.

B. Respondent, as applicable to the 50 and 54 Railroad Avenue parcels, shall take and maintain all steps necessary to continue its status as a "Bona Fide Prospective Purchaser" as that term is defined in § 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Site by continuing to comply with all of the requirements for a Bona Fide Prospective Purchaser as set forth in applicable federal and state law, including but not limited to § 101(40) of CERCLA, including without limitation the exercise of "appropriate care" by taking "reasonable steps" as set forth in § 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), and the implementation and compliance with any land use

restrictions and institutional controls as set forth in § 101(40)(F) of CERCLA, 42 U.S.C. § 9601(40)(F) and ECL § 27-1318 for so long as Respondent retains any ownership interest in the Site. Reasonable steps for purposes of this Settlement Agreement does not encompass an obligation to address contaminated groundwater migration across or from the Site, or vapor migration from the Site to off-property areas due to Existing Contamination.

C. Respondent shall maintain, repair, and replaces any portion of the chain link fence located on Respondent's property located in the South-South-West portion of the property that borders the railroad tracks.

V. Certification

By entering into this Settlement Agreement, Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the Department all information known to Respondent and all information in the possession or control of its officers, directors, employees, contractors, and agents which relates in any way to any existing contamination or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site. Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous waste or pollutants or contaminants at the Site. If the Department determines that the information provided by Respondent is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the State of New York, shall be null and void, and the Department reserves all of its rights.

VI. Release and Covenant Not to Sue

Subject to the Reservation of Rights in Paragraph VII of this Settlement Agreement, based upon the Respondent's continued cooperation with the Department as set forth herein, the Department hereby releases and covenants not to sue, and shall forbear from bringing any action, proceeding or suit against Respondent under federal or state statutory or common law, including (without limitation) under New York's Environmental Conservation Law, New York's State Finance Law, and under the Comprehensive Environmental Response, Compensation and Recovery Act ("CERCLA"), 42 U.S.C. § 9601 et seq., involving or relating to the release or threatened release of contamination existing on, at, or emanating from the Site, including the 50 and 54 Railroad Avenue parcels, as of the effective date of this Settlement Agreement (the "Existing Contamination"), and from referring the New York Attorney General any claim for recovery of costs incurred by the Department against Respondent and Respondent's members, parent entities, subsidiaries, managers, officers, directors, shareholders, lessees and sublessees, grantees, successors and assigns and their respective secured creditors (collectively, the "Respondent Parties") for the further investigation and remediation of the Site based upon the Existing Contamination as well as any past costs incurred in association with the Existing Contamination.

The Department, as to Respondent, reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to, any post-closing investigation or remedial action the Department deems necessary:

- Due to environmental conditions or information related to the 50 and 54 Railroad Avenue parcels that are unrelated to Existing Contamination (whether onsite or offsite) and unknown at the time of this Release and Covenant Not to Sue was issued and which indicate this Order cannot be implemented with sufficient protection of human health and the environment;
- Due to Respondent's failure to comply with this Settlement Agreement; or
- Due to fraud committed by Respondent in, entering into or implementing this Settlement Agreement.

Additionally, the Department hereby reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to Respondent or any of Respondent's lessees, sublessees, successors or assigns or successors-in-title who, cause or allow a release or threat of release at the 50 and 54 Railroad Avenue parcels of any hazardous waste or petroleum, other than the Existing Contamination; nor to any of Respondent's lessees, sublessees, successors or assigns who are otherwise responsible under state or federal law for the remediation of the Existing Contamination independent of any obligation that party may have respecting the same resulting solely from the Settlement Agreement's execution.

Notwithstanding the above, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of this Release and Covenant Not to Sue shall bear the burden of proving any defense that the claim or cause of action, or any part thereof, is attributable solely to the Existing Contamination.

Notwithstanding any other provision in this Release and Covenant Not to Sue:

- If with respect to the 50 and 54 Railroad Avenue parcels there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Settlement Agreement shall be construed or deemed to preclude the State of New York from recovering such claim;
- Except as provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any entity that caused or contributed to the contamination at the Site;
- Nothing contained in this Settlement Agreement shall prejudice any rights of the Department to take investigatory or remedial action it deems necessary if

Respondent fails to comply with the Settlement Agreement or if contamination other than Existing Contamination is encountered at the Site; and

- Nothing contained in this Settlement Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal rights or claims, actions, suits, causes of action or demands whatsoever that (i) Respondent may have against any party other than the Department, and (ii) the Department may have against any party other than Respondent, its directors, officers, employees, agents and servants, and those successors and assigns of Respondent that were not responsible under applicable law for the development and implementation of a remedial program at the Site prior to the effective date of this Settlement Agreement, and their respective secured creditors.

VII. Reservation of Rights

A. The Department, insofar as the 50 and 54 Railroad Avenue parcels hereby reserves its rights as noted in Paragraph VI above. The Release and Covenant Not to Sue set forth in Paragraph V does not pertain to any matters other than those expressly specified in Paragraph V. The Department reserves and this Settlement Agreement is without prejudice to all rights against Respondent with respect to all other matters, including but not limited to claims based on a failure by Respondent to meet requirements of this Settlement Agreement, including but not limited to Paragraph II (Access/Notice to Successors in Interest), and Paragraph III (Due Care/Cooperation).

B. Except as provided in the Release and Covenant Not to Sue in Paragraph VI after its issuance, and except as otherwise provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights or authorities, including but not limited to the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Respondent if unrelated to Existing Contamination.

C. Except as otherwise provided in this Settlement Agreement, Respondent expressly reserves all rights and defenses under applicable law to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions or determinations of the Department, including any assertion of remedial liability by the Department against Respondent, and further reserves all rights including the rights to notice, to be heard, to appeal and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Settlement Agreement. The existence of this Settlement Agreement or Respondent's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

D. Except as provided in this Settlement Agreement, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers, for past or future response and/or cleanup costs or other such costs or damages arising from contamination at the Site as provided under applicable law.

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York and their employees and representatives harmless for all third-party claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Settlement Agreement by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York and/or their employees and representatives during the course of any activities conducted pursuant to this Settlement Agreement. The Department shall provide Respondent with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Site, or any other property as a consequence of the response actions, the Department shall immediately satisfy, defend, or obtain the release of such lien, all at the Department's expense, and the Department shall indemnify and defend Respondent against any claims arising out of or connected with such lien. The Department represents that it does not have a lien on the 50 and 54 Railroad Avenue parcels.

IX. Communications

A. All written communications required by this Consent Order shall be transmitted by electronic means, whenever possible. Paper copies should be provided upon request.

1. Communication from Respondent shall be sent to:

Brianna Scharf, Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, N.Y. 12233
brianna.scharf@dec.ny.gov

Kieran McCarthy, Esq.
New York State Department of Environmental Conservation

Office of General Counsel
625 Broadway
Albany, N.Y. 12233-1500
Kieran.mccarthy@dec.ny.gov

2. Communication from the Department to Respondent shall be sent to:

Jeffrey Gordon and John McGuiness
Store Away Warehousing at Guilderland, LLC
50 State Street
6th Floor
Albany, NY 12207
johnmcguiness@outlook.com
Jeffreygordon@gordondevelopment.net

Dean S. Sommer and Rob Panasci
Young Sommer LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205
dsommer@youngsommer.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph IX.

X. Parties Bound/Transfer of Covenant Not to Sue

A. This Settlement Agreement shall apply to and be binding upon the Department and shall apply to and be binding on the Respondent, its members, officers, directors, employees, successors, assigns and agents. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

B. In the event of an assignment or transfer of the Site or an assignment or transfer of an interest in the Site, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Settlement Agreement except as the Department and the assignor or transferor agree otherwise and modify this Settlement Agreement, in writing, accordingly. Moreover, prior to or simultaneously with any assignment or transfer of the Site, the assignee or transferee must consent in writing to be bound by the terms of this Settlement Agreement, including but not limited to the certification requirement in Paragraph V of this

Settlement Agreement in order for the Release and Covenant Not to Sue in Paragraph VI to be available to that party. The Release and Covenant Not to Sue in Paragraph VI shall not be effective with respect to any assignees or transferees who fails to provide such written consent to the Department.

XI. Disclaimer

This Settlement Agreement in no way constitutes a finding by the Department as to any risks to human health and the environment which may be posed by the Existing Contamination at the Site nor constitutes any representation by the Department that the Site is fit for any particular purpose.

XII. Payment of Costs

Respondent is not liable for any past or future remedial action program costs relating to the Existing Contamination. If Respondent fails to comply with the terms of this Settlement Agreement as determined by a court of appropriate and proper jurisdiction, Respondent shall be liable for all litigation and other enforcement costs incurred by the Department to enforce this Settlement Agreement or otherwise obtain compliance.

XIII. Termination

A. Should the Release and Covenant Not to Sue set forth in Paragraph VI herein become null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Settlement Agreement or in the event of Respondent's failure to materially comply with any provision of this Settlement Agreement, then neither this Settlement Agreement nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA because Respondent did not cause or contribute to the Existing Contamination. Nothing in this Settlement Agreement shall be construed to require Respondent to implement the ROD or any amendments thereto or pay any past costs.

B. If any Party to this Settlement Agreement believes that any or all of the obligations under Paragraph II (Site Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provisions establishing such obligations; provided that the provisions in question shall continue in full force unless and until the Party requesting such termination receives written confirmation from the other Party to terminate such provisions.

XIV. Miscellaneous

A. Respondent and Respondent's officers, directors, agents, servants, employees, successors and assigns shall be bound by this Settlement Agreement. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Settlement Agreement. Respondent's officers, directors, employees, servants and agents shall be obliged to comply with the relevant provisions of this Settlement Agreement in the performance of their designated duties on behalf of Respondent. In the event that Respondent transfers ownership of the property to an unrelated 3rd Party, Respondent shall provide a copy of this Agreement to said 3rd Party and shall also notify the Department of such transfer and the 3rd Party may seek a new or amended Order with the Department. Notwithstanding anything to the contrary, above, in the event that Respondent sells or transfers title to such unrelated 3rd party, and notice is provided to the Department of such sale/transfer, the obligations of Store Away Warehousing at Guilderland, LLC under this Agreement shall terminate, unless otherwise agreed to by Store Away and the Department.

B. All references to "days" in this Settlement Agreement are to calendar days unless otherwise specified.

C. The paragraph headings set forth in this Settlement Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Settlement Agreement.

D. 1. No term, condition, understanding or agreement purporting to modify or vary any term of this Settlement Agreement shall be binding unless made in writing and subscribed by the Party to be bound. No informal advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Settlement Agreement

2. If Respondent seeks to change any provision of this Settlement Agreement, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Department's contacts provided in Paragraph IX.

E. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-106, 6 NYCRR § 375-1.5(b)(5)(i) and other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2), for "matters addressed" pursuant to and in accordance with this Settlement Agreement. "Matters addressed" in this Order shall mean all response actions, as this term is defined at 42 U.S.C. § 9601(25), taken by Miron Lumber and the other entities listed in Paragraph 6 of this Settlement Agreement, the Department and including those actions of the Respondent in accordance or as contemplated by this Settlement Agreement for the portions of the Site owned by the Respondent, including (without

limitation) all response costs incurred and to be incurred by any person or party in connection with work performed to investigate the Site and to implement the ROD, or any amendments thereto, and any other actions taken under this Settlement Agreement. To the extent authorized under 42 U.S.C. § 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of a response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. § 9613(f)(2).

F. Respondent agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify the Department in writing no later than sixty (60) days prior to the initiation of such suit or claim.

G. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify the Department in writing within ten (10) days of service of the complaint on them.

H. All activities undertaken by Respondent pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.

I. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute have the meaning assigned to them under said statute or regulations. Whenever terms defined in this Settlement Agreement are used in this Settlement Agreement, the definitions in this Settlement Agreement shall apply. In the event of a conflict, the definition set forth in this Settlement Agreement shall control.

J. Respondent's obligations under this Settlement Agreement represent payment for or reimbursement of response costs and shall not be deemed to constitute any type of fine or penalty.

K. This order may be executed for the convenience of the Parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original, and all of which shall together constitute one and the same.

L. In the event of a conflict between language in the Environmental Easement and this Settlement Agreement, the terms of this Settlement agreement shall be considered controlling and binding.

L. The Recital paragraphs of this Agreement are incorporated herein as if they were part of the So Ordered and Agreed provisions.

M. The effective date of this Settlement Agreement is the date of the closing for the completion of the sale/purchase of the Site between Respondent and the current Owner of the property. This Settlement Agreement shall be null and void if closing of the sale/purchase of the Site between Respondent and Albany County does not occur.

DATED: 3/11/2022

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: Susan Edwards
Susan Edwards, Acting Division Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

[INDEX No.]

Respondent, **[RESPONDENT]**, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

[RESPONDENT]


By [Signature]:

Name [Print]:

Title:

Date:

Email:


Jeffrey Gordon
Member
2/24/22
j.gordon@gordonddevelopment.net
accounting@gordonddevelopment.net


Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF Albany)

On the 24th day of February, in the year 2022, before me, the undersigned, personally appeared Jeffrey Gordon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

MELISSA JOCHUM
NOTARY PUBLIC-STATE OF NEW YORK
No. 01JO6312903
Qualified in Saratoga County
My Commission Expires 11/11/2022

If you are unable to secure notarization, you must sign the statement below

In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

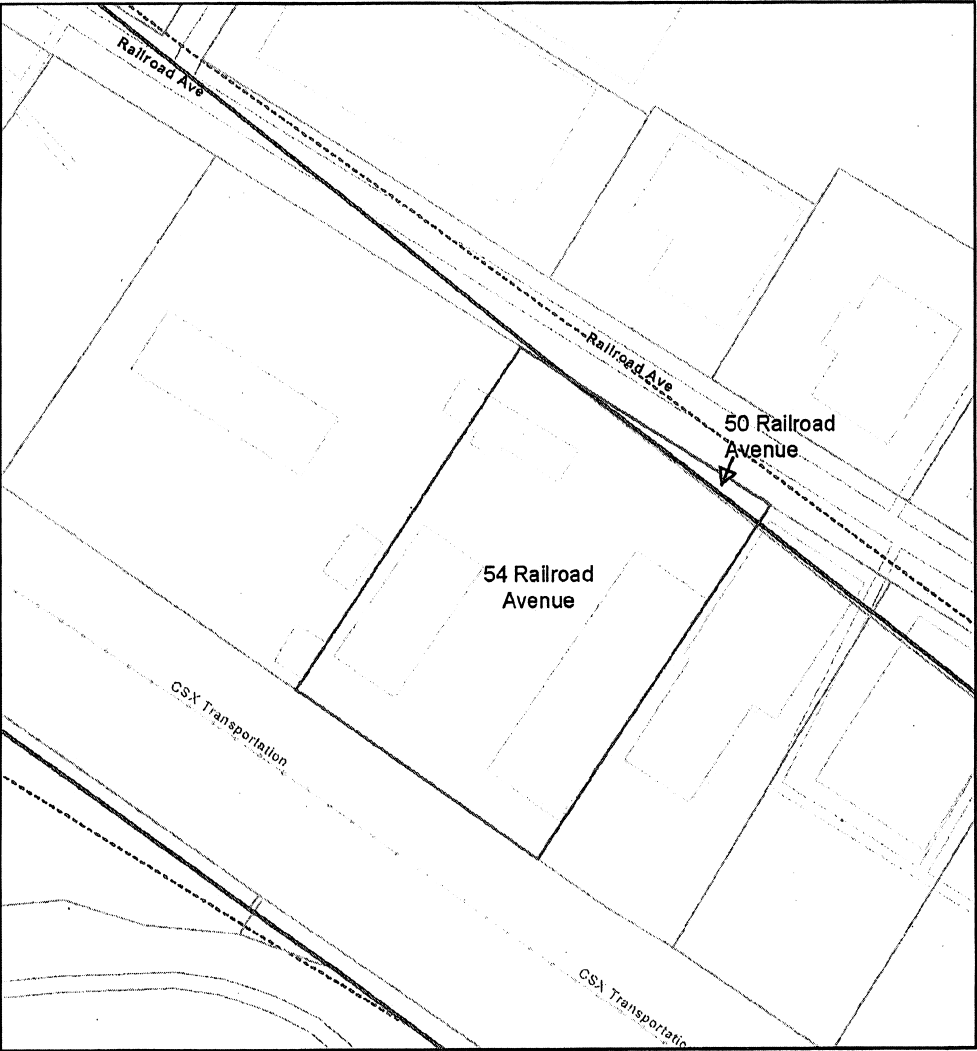
Signature

Printed name



EXHIBIT "A"

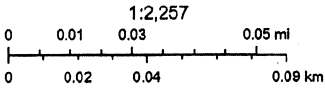
Map

Albany County



11/15/2021, 2:16:22 PM

-  Municipal Boundaries
-  Tax Parcels (2021)

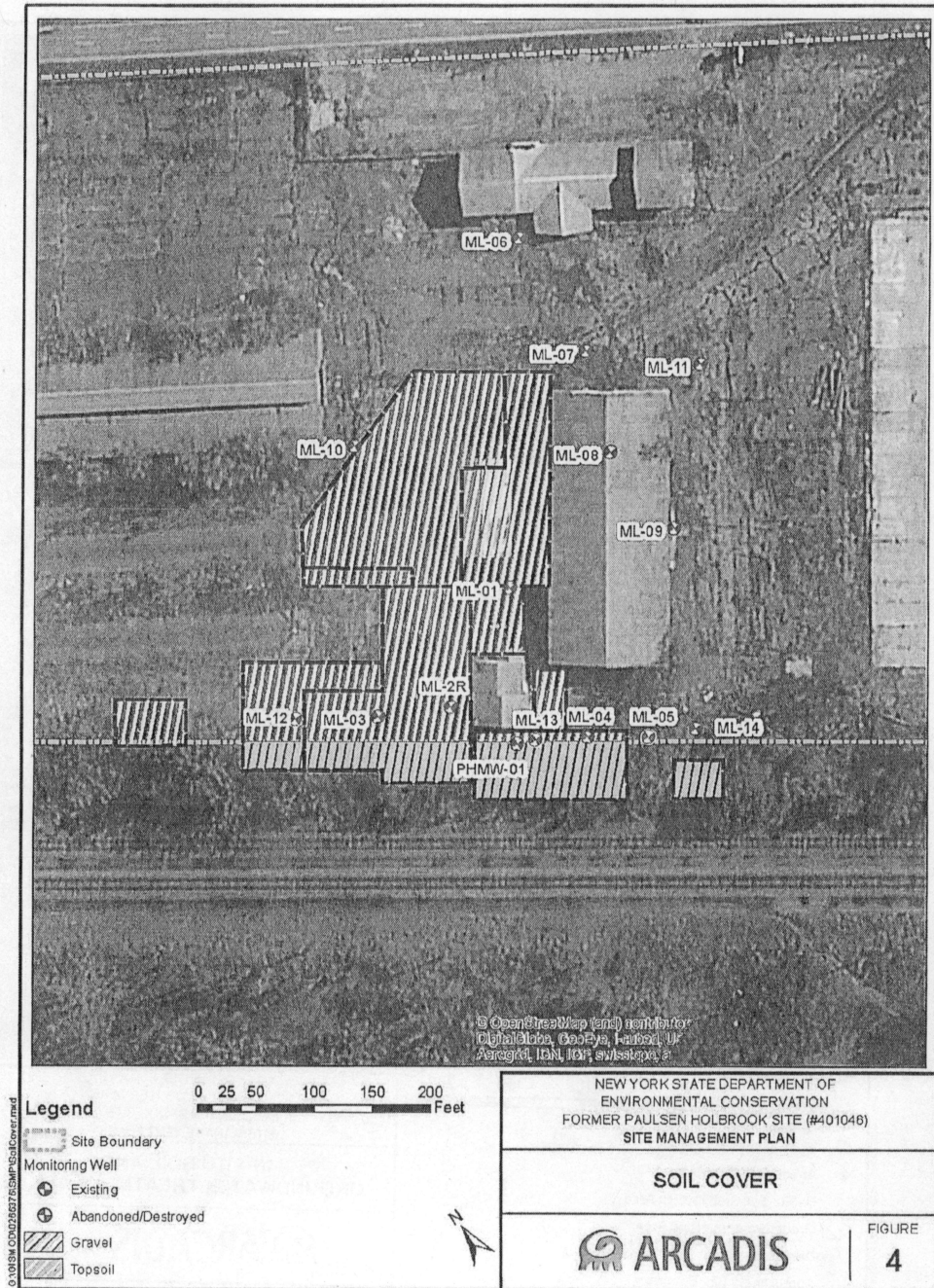


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EXHIBIT "B"

Soil Cover Map



Monitoring Well Map

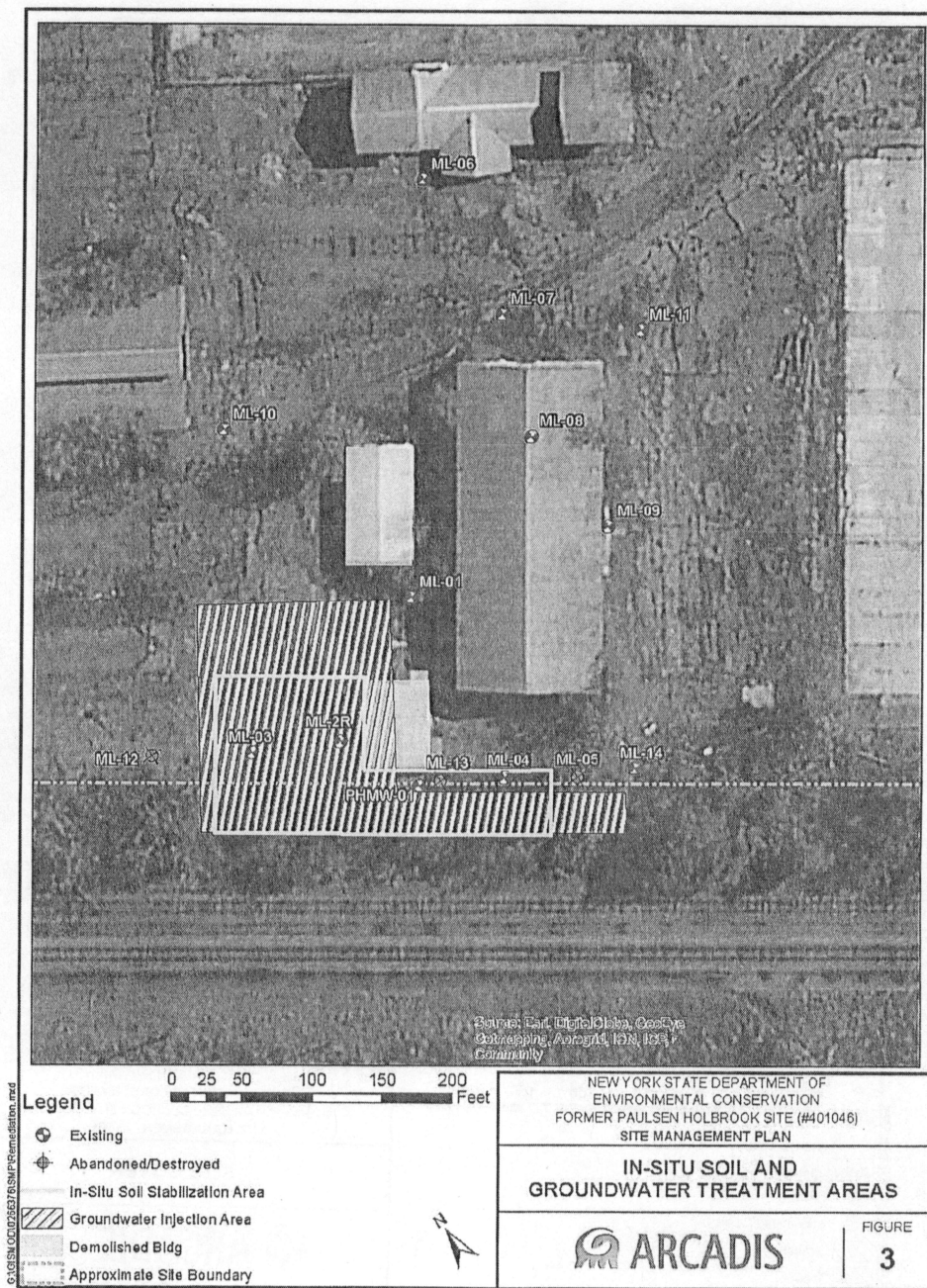


EXHIBIT "D"

NOTICE OF SETTLEMENT AGREEMENT

_____ ("Respondent") is subject to a Settlement Agreement (Index No. _____) (the "Settlement Agreement") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL")) for a site located at _____ (the "Site").

The Department designated the Site as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and listed the Site on the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site # _____. The Department classified the Site as a Class "2" site pursuant to ECL Section 27-1305(4)(b). This classification indicates that the Department determined that the Site presents a significant threat to the public health or environment. The Site is more particularly described in the legal description attached hereto as Schedule "A."

The purpose of the Settlement Agreement is to facilitate the development and implementation of an inactive hazardous waste disposal site remedial program for the Site. The effective date of the Settlement Agreement was _____. A copy of the Settlement Agreement, as well as any and all Department-approved Work Plans and Reports under this Settlement Agreement may be reviewed at the Department's Central Office located at 625 Broadway, Albany, New York.

This Notice of Settlement Agreement is being filed with the Nassau County recording officer in accordance with Paragraph III of the Settlement Agreement to give all parties who may acquire any interest in the Site notice of the Settlement Agreement.

WHEREFORE, the undersigned has signed this Notice of Settlement Agreement in compliance with the terms of the Settlement Agreement.