

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

Adi Altmark
MARKLAND 745 LLC
2447 Third Avenue
Bronx, NY 10451

JUL 19 2019

RE: Site Name: 767 East 133rd Street
Site No.: C203123
Location of Site: 767 East 133rd Street, Bronx County, Bronx, NY 10454

Dear Mr. Altmark:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 767 East 133rd Street Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, James Simpson, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 1 Hunter's Point Plaza, 47-40 21st Street, Long Island City, NY 11101-5401 or by email at james.simpson@dec.ny.gov.

Sincerely,



Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

Enclosure

ec: Steven Wu, Project Manager

cc: James Simpson, Esq.
Jennifer Andaloro, Esq./Lisa Kranick



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C203123-06-19**

767 East 133rd Street

DEC Site No: C203123

Located at: 767 East 133rd Street
Bronx County
Bronx, NY 10454

Hereinafter referred to as "Site"

by:

MARKLAND 745 LLC
2447 Third Avenue, Bronx, NY 10451

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on April 4, 2019; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, MARKLAND 745 LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Department has determined that the Site is eligible for tangible property tax credits pursuant to ECL § 27-1407(1-a) because the Site is located in a City having a population of one million or more and at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law. The Applicant acknowledges that the Department made this determination in reliance on information submitted to the Department by the Applicant.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.480 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 2-2562-49
Street Number: 767 East 133rd Street, Bronx
Owner: MARKLAND 745 LLC

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Steven Wu
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
steven.wu@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
christine.vooris@health.ny.gov

James Simpson, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
james.simpson@dec.ny.gov

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

MARKLAND 745 LLC
Attn: Adi Altmark
2447 Third Avenue
Bronx, NY 10451
adi@altmarkgroup.com

B. The Department and Applicant 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 Applicant 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 or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

JUL 19 2019

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and Through the
Department of Environmental Conservation as Designee
of the Commissioner,

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

MARKLAND 745 LLC

By: AB

Title: Authorized Signatory

Date: 7/9/19

STATE OF NEW YORK)
COUNTY OF Bronx) ss:

On the 9 day of July in the year 2019, before me, the undersigned, personally appeared AB, 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.

Jack Gingold
Signature and Office of individual
taking acknowledgment

JACK GINGOLD
NOTARY PUBLIC-STATE OF NEW YORK
No. 01616207823
Qualified in Westchester County
My Commission Expires June 15, 2019

[illegible]

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the Site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the

provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law. All work undertaken as part of a remedial program, including work undertaken pursuant to submittals other than Work Plans, must be approved by the department prior to implementation by the Applicant.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the Site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State
Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply.

Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, 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 Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy

provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local

permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this 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 shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be

eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

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



CONSENT OF MEMBERS

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being all of the Members of **Markland 745 LLC** (the "**LLC**") do hereby consent and agree:

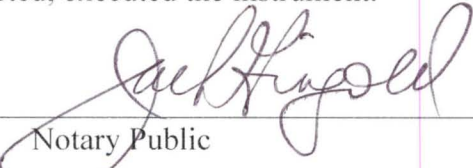
1. to the LLC submitting an application to the New York State Department of Environmental Conservation ("DEC") Brownfield Cleanup Program ("BCP"); and
2. to the execution of the Brownfield Cleanup Agreement ("BCA") attached hereto; and
3. to the granting of a mortgage lien (the "**Mortgage**") encumbering the premises owned by the LLC located at and known as securing the Note; and
4. that Adi Altmark as Managing Member is hereby authorized to execute all documents required by the DEC in connection with the BCP and that the LLC shall be bound in accordance with the terms thereof.

IN WITNESS WHEREOF, we have hereunto signed our names this ^{9th} day of July, 2019.


Acknowledgments on following page

STATE OF NEW YORK }
 } ss:
COUNTY OF Bronx }

On the 9 day of July, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Adi Arum, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JACK GINGOLD
NOTARY PUBLIC-STATE OF NEW YORK
No. 01G16207823
Qualified in Westchester County
My Commission Expires June 15, 2019 

STATE OF NEW YORK }
 } ss:
COUNTY OF }

On the _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

CONSENT OF MEMBERS

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being all of the Members of **Markland 745 LLC** (the "LLC") do hereby consent and agree:

1. to the LLC submitting an application to the New York State Department of Environmental Conservation ("DEC") Brownfield Cleanup Program ("BCP"); and
2. to the execution of the Brownfield Cleanup Agreement ("BCA") attached hereto; and
3. that Adi Altmark as Managing Member is hereby authorized to execute all documents required by the DEC in connection with the BCP and that the LLC shall be bound in accordance with the terms thereof.

IN WITNESS WHEREOF, we have hereunto signed our names this ^{9th} day of July, 2019.



Acknowledgments on following page

STATE OF NEW YORK }
 } ss:
COUNTY OF Bronx }

On the 9 day of July, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared ADI AYMARK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JACK GINGOLD
NOTARY PUBLIC-STATE OF NEW YORK
No. 01616207823
Qualified in Westchester County
My Commission Expires June 15, 2021 21

STATE OF NEW YORK }
 } ss:
COUNTY OF }

On the _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MARKLAND 745 LLC
MEMBER CONSENT TO ENTER THE NEW YORK STATE
BROWNFIELD CLEANUP PROGRAM AND COMPLETE
REMEDIAL PROGRAM REQUIREMENTS

The undersigned, being all the members of Markland 745 LLC, a New York limited liability company (the “Company”) hereby certify as of March , 2019, as follows and adopt the following resolutions and authorize the company to authorize and direct Adi Altmark (the “Authorized Signatory”) to take the following actions on behalf of the Company:

WHEREAS, the Company was formed pursuant to the Articles of Organization dated June 16, 2011;

WHEREAS, the Company desires to authorize the Authorized Signatory to undertake actions necessary to redevelop 761 East 133rd Street, 763 East 133rd Street, 767 East 133rd Street, and 750 East 134th Street, Bronx, New York 10454, Block 2562 Lots 49, 56, 58, 60 (the “Property” or the “Site”);

WHEREAS, in connection with the redevelopment of the Property, the Company has or will prepare and submit an application to participate in the New York State Brownfield Cleanup Program (“BCP”) and, if accepted into the BCP, enter into a Brownfield Cleanup Agreement (“BCA”); file related documents with the New York State Department of environmental Conservation (“DEC”) to participate in the BCP; and undertake certain environmental remediation work related thereto consistent with applicable laws, regulations and guidance under the BCP (collectively referred to as the “Remedial Program Requirements”);


NOW THEREFORE, BE IT

RESOLVED, that the Authorized Signatory be, and hereby is, authorized and directed, in the name of and on behalf of the Company, to execute and to deliver all Applications, documents and instruments required to apply to participate in the BCP, Effectuate the BCA (including execution of the BCA), grant an environmental easement and make any filings required to comply with the BCA consistent with the Remedial Program Requirements; and be it further

RESOLVED, that this Member Consent may be signed in any number of counterparts, including but not limited to electronic, and shall become effective as of the date herein below written when each person named below shall have signed a copy hereof; and be it further

*[Remainder of Page Intentionally Blank – Member Consent for
BCP Remedial Program Requirements]*

RESOLVED, that the Authorized Signatory is authorized to bind the Company as an Authorized Signatory for the purposes set forth in this Member Consent, the signature set forth opposite his name below is his actual signature:

Authorized Signatory	Signature
Adi Altmark	

IN WITNESS WHEREOF, the undersigned have signed sealed this Member Consent on March 29, 2019.

MEMBERS:

Adi Altmark

Aileen Altmark

SYOBA Partners, LP

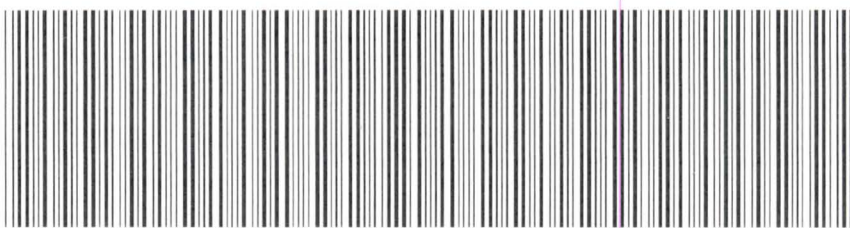
By: Moshe Altmark, General Partner

Altmark Capital LLC

By: Adi Altmark, Managing Member

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2019062600756002001E2B07

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 5

Document ID: 2019062600756002

Document Date: 06-25-2019

Preparation Date: 06-26-2019

Document Type: ZONING LOT DESCRIPTION

Document Page Count: 3

PRESENTER:

ULTIMATE ABSTRACT OF NEW YORK PICKUP-GAIL
51 ALLEN BOULEVARD
UNYC4418B
FARMINGDALE, NY 11735
914-469-3870
JOANNA.SEIMER@ULTIMATEABSTRACT.COM

RETURN TO:

ULTIMATE ABSTRACT OF NEW YORK PICKUP-GAIL
51 ALLEN BOULEVARD
UNYC4418B
FARMINGDALE, NY 11735
914-469-3870
JOANNA.SEIMER@ULTIMATEABSTRACT.COM

PROPERTY DATA				
Borough	Block	Lot	Unit	Address
BRONX	2562	49	Entire Lot	750 E 134 ST
Property Type: COMMERCIAL REAL ESTATE				
Borough	Block	Lot	Unit	Address
BRONX	2562	56	Entire Lot	767 EAST 133 STREET
Property Type: COMMERCIAL REAL ESTATE				

☒ Additional Properties on Continuation Page

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

PARTY ONE:

MARKLAND 745 LLC
C/O: ADI ALTMARK, 2447 THIRD AVENUE
BRONX, NY 10451

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 61.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE**

CITY OF NEW YORK

Recorded/Filed 06-28-2019 10:16

City Register File No.(CRFN):

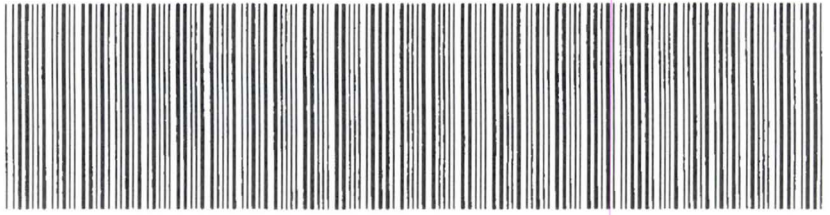
2019000203923



Annette McMill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2019062600756002001C2987

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 5

Document ID: 2019062600756002

Document Date: 06-25-2019

Preparation Date: 06-26-2019

Document Type: ZONING LOT DESCRIPTION

PROPERTY DATA

Borough	Block Lot	Unit	Address
BRONX	2562 58 Entire Lot		763 EAST 133 STREET
Property Type: COMMERCIAL REAL ESTATE			
Borough	Block Lot	Unit	Address
BRONX	2562 60 Entire Lot		761 EAST 133 STREET
Property Type: COMMERCIAL REAL ESTATE			

D.O.B #.:

EXHIBIT III

**ZONING LOT DESCRIPTION AND OWNERSHIP STATEMENT BY
BUILDING DEPARTMENT PERMIT APPLICANT AND TO BE
RECORDED IN THE COUNTY CLERK'S OFFICE OR CITY REGISTER'S OFFICE**

MARKLAND 745 LLC, having an office c/o ADI Altmark, 2447 Third Avenue, Bronx, New York 10451, an applicant for present or future permits pursuant to the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, states that the zoning lot to which the aforementioned permit or permits pertain are shown on the Tax Map of the City of New York, Bronx County as Tax Lot Nos. 49, 56, 58 and 60, in Block 2562, and more particularly described as follows:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF EAST 134TH STREET WITH THE WESTERLY SIDE OF WILLOW AVENUE;

RUNNING THENCE WESTERLY ALONG THE SAID SOUTHERLY SIDE OF EAST 134TH STREET, A DISTANCE OF 104 FEET TO A POINT;

THENCE SOUTHERLY AND PARALLEL WITH WILLOW AVENUE, A DISTANCE OF 106.66 FEET;

THENCE EASTERLY ON A LINE DRAWN PARALLEL TO THE NORTHERLY SIDE OF EAST 133RD STREET, 8.33 FEET;

THENCE SOUTHERLY PARALLEL WITH WILLOW AVENUE, A DISTANCE OF 100 FEET TO THE SAID NORTHERLY SIDE OF EAST 133RD STREET;

THENCE EASTERLY AND ALONG THE SAID NORTHERLY SIDE OF EAST 133RD STREET, A DISTANCE OF 95.67 FEET TO THE WESTERLY SIDE OF WILLOW AVENUE;

THENCE NORTHERLY ALONG THE WESTERLY SIDE OF WILLOW AVENUE, 206.54 FEET TO THE POINT OR PLACE OF **BEGINNING**.

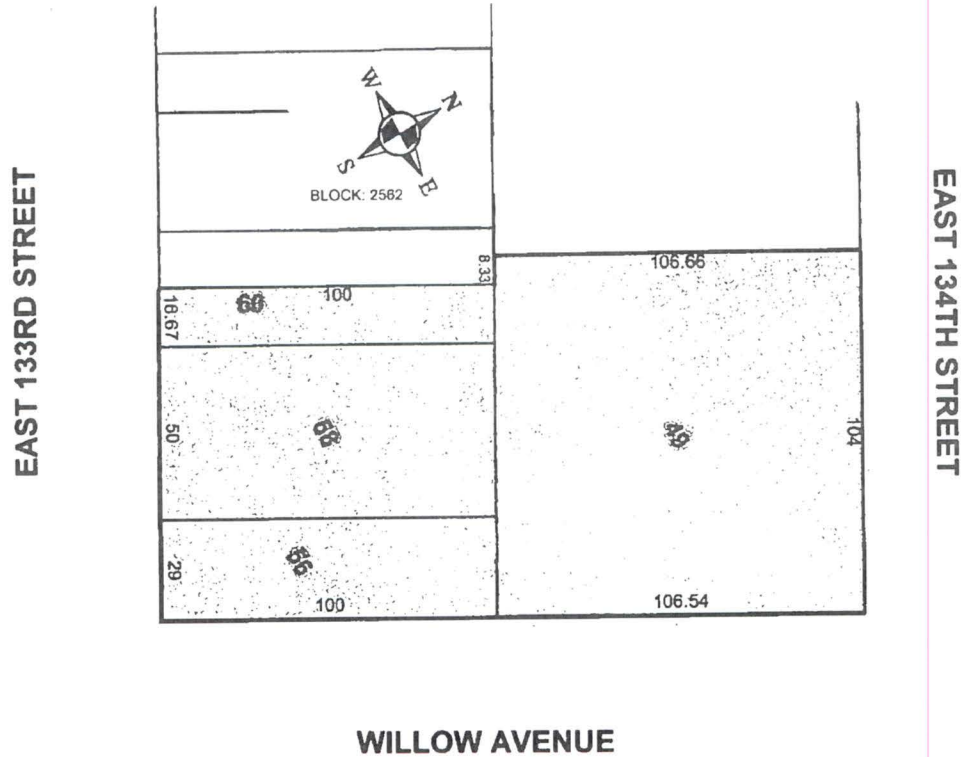
That said premises are to be known as and by the street addresses:

ADDRESS	BLOCK	LOT	D.O.B APPLICATION NO.
750 East 134 th Street	2562	49	

(continued)

D.O.B #.:

Diagram:



No work shall be done to any building without taking into consideration the entire zoning lot and first make application to the Department of Buildings.
Failure to comply with the terms of this declaration may result in the revocation of the Building Permit or Certificate of Occupancy.

The above described zoning lot is presently owned by:

NAME	ADDRESS	NATURE OF INTEREST	DOCUMENT
MARKLAND 745 LLC	C/O ADI ALTMARK 2447 THIRD AVENUE BRONX, NY 10451	FEE OWNER	Recorded 8/17/2011 CRFN NUMBER 2011000290836 (covers premises and more)
DIME COMMUNITY BANK	300 CADMAN PLAZA W 8 TH FLOOR BROOKLYN, NY 11201	MORTGAGE HOLDER (by consolidation)	Recorded 2/15/2019 CRFN NUMBER 2019000053899

D.O.B #.:

IN WITNESS WHEREOF, the applicant for permit has executed this instrument on this
25, day of June, 2019.

MARKLAND 745 LLC

BY: Adi Altmark
AS: Authorized Signatory

STATE OF NEW YORK, County of Bronx) ss:

On the 25 day of JUNE, 2019, before me, the undersigned, personally
appeared: Adi Altmark, personally known to me or proved to me on the
basis of satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his capacity, and that by
his signature on the instrument, the individual or the persons upon behalf of which the
individual acted, executed the instrument.

Notary Public

JACK GINGOLD
NOTARY PUBLIC-STATE OF NEW YORK
No. 01G16207823
Qualified in Westchester County
My Commission Expires June 15, 2021

SEAL