

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation

625 Broadway, 12th Floor, Albany, New York 12233-7011

P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

DEC 01 2015

Allied Jackson Heights, LLC
Jeff Kay
118-35 Queens Boulevard
Forest Hills, NY 11375

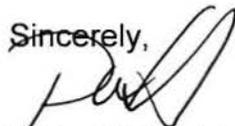
RE: Site Name: Jackson Heights Shopping Center
Site No.: C241176
Location of Site: 75-11 31st Street, Jackson Heights, Queens County, NY

Dear Mr. Kay:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Jackson Heights Shopping Center site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Karen Mintzer, Esq., NYS Department of Environmental Conservation, Office of General Counsel, One Hunters Point Plaza, 47-40 21st Street, Long Island City, New York 11101, or by email at karen.mintzer@dec.ny.gov.

Sincerely,



Robert W. Schick, P.E.
Director

Division of Environmental Remediation

Enclosure

ec: Jonathan Greco, Project Manager

cc: Karen Mintzer, Esq.
A. Guglielmi, Esq. /M. Mastroianni



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.C241176-10-15**

Jackson Heights Shopping Center

DEC Site No.: C241176

Located at: 75-11 31st Avenue
Queens County
Jackson Heights, NY 11370

Hereinafter referred to as "Site"

by:

Allied Jackson Heights, LLC
118-35 Queens Boulevard, Forest Hills, NY 11375

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 July 7, 2015; 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, Allied Jackson Heights, LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. See Appendix A, Paragraph V.C for payment instructions. Applicant acknowledges that all State Costs incurred prior to the effective date of this Agreement are not included on the cost summary and that additional charges may be billed at a later date.

Invoices shall be sent to Applicant at the following address:

Allied Jackson Heights, LLC
118-35 Queens Boulevard
Forest Hills, NY 11375
jkay@muss.com

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.200 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 1124-1 (portion of)
Street Number: 75-11 31st Avenue, Jackson Heights
Owner: Allied Jackson Heights, LLC

III. 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:

Jonathan Greco
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7016
jonathan.greco@dec.ny.gov

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

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Karen Mintzer, 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
karen.mintzer@dec.ny.gov

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

Allied Jackson Heights, LLC
Attn: Jeff Kay
118-35 Queens Boulevard
Forest Hills, NY 11375
jkay@muss.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.

IV. 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:

DEC 01 2015

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

By:

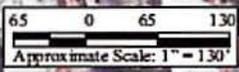


Robert W. Schick, P.E., Director
Division of Environmental Remediation

Commission Expires August 28, 2016
Qualified in Nassau County
No. 0146882220
New York State
Professional Engineer

EXHIBIT A

SITE MAP



PARTNER
 611 Industrial Way West
 Easton town, New Jersey 07724
 Project Number: 00254100000

Legend


 Subject Site 
 Block and lot numbers used to identify adjacent properties.

Site Plan		
Figure	Prepared By	Date
1	C. Niedzwiecki	August 2015
75-07 31st Avenue Jackson Heights, New York 11370		

EXHIBIT B
PAST COSTS

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Bureau of Program Management
625 Broadway, 12th Floor, Albany, NY 12233-7012
P: (518) 402-9764 | F: (518) 402-9722
www.dec.ny.gov

Transmitted via E-Mail
MEMORANDUM

TO: Karen Mintzer, Office of General Counsel, Region 2

FROM: Karen Diligent, Chief, CRS, Bureau of Program Management, DER

SUBJECT: Past Costs Associated with Pending Brownfield Cleanup Agreement: Jackson Heights Shopping Center, BCP #C241176

DATE: SEP 29 2015

Karen Diligent

The purpose of this cost summary is to provide the past costs figure to the Office of General Counsel for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, they are required to pay past costs within 45 days of the effective date of the agreement.

On September 10, 2015, a letter was sent to Allied Jackson Heights, LLC, indicating that their BCP application was complete and an eligibility determination is expected to be made. This cost recovery summary provides available costs incurred by the New York State Department of Environmental Conservation (DEC) to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by DEC through May 6, 2015, in association with the Jackson Heights Shopping Center Site are \$0.00. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. If the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the Attorney General and are not included in this summary. Costs incurred by the New York State Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations.

Please contact Sue Bolesky at (518) 402-9732, if you have any questions on this summary.

Attachments

ec: A. Guglielmi
R. Schick/A. Daniels
J. Greco
J. Moras



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.

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.

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

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 § 27-1423 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, 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 represent payment for or reimbursement of State costs, and 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.

WRITTEN CONSENT OF
ALLIED JACKSON HEIGHTS, LLC

November 4, 2015



THE UNDERSIGNED do hereby consent to and adopt the following actions and resolutions by written consent:

WHEREAS, Allied Jackson Heights, LLC, a New York limited liability company (the "Company") is governed by that certain Operating Agreement of the Company, dated as of March 15, 2005 (as so amended, collectively, the "LLC Agreement"), by and between Allied Jackson Heights Management Corp., a New York corporation (the "Manager") and Jackson Heights Holdings, LLC, a New York limited liability company ("Holdings LLC", and together with the Manager, collectively, the "Members");

WHEREAS, pursuant to Sections 4.02(a), (d) & (f) of the LLC Agreement, the Manager, is authorized in the name officers to execute and deliver contracts and agreements on behalf of the Company;

WHEREAS, the Manager as permitted under the LLC Agreement, has determined that it is advisable and in the best interest of the Company to cause the Company to enter into, deliver and consummate that certain Brownfield Site Cleanup Agreement, Index No C241176-10-15 (the "Brownfield Agreement");

NOW, THEREFORE, it is hereby:

RESOLVED, that the Company be, and hereby is, authorized to enter into, execute, deliver, and perform all of its obligations under the Brownfield Agreement, and to otherwise close the transactions contemplated thereby, as the case may be, and to execute and deliver all agreements and documents and to perform all actions in connection therewith, and the Company be, and hereby is, authorized and directed to execute and deliver any and all other documents deemed necessary, appropriate or desirable by the Chief Operating Officer (as herein defined) executing the same in connection with the transactions contemplated thereunder;

RESOLVED, that Jeffrey Kay (the "Chief Operating Officer") be fully authorized solely to execute and deliver, for and on behalf of the Company, any and all of the agreements, documents and other instruments described in, contemplated by or referred to in the foregoing resolutions;

RESOLVED, that the Chief Operating Officer be, and hereby is, authorized to make any and all additions to, deletions from, changes in or amendments to any and all of the agreements, documents and instruments described in, contemplated by or referred to in the foregoing resolutions, and to execute, deliver and record any and all such other agreements, documents and instruments, and to do or cause to be done any and all acts and things, as the Chief Operating Officer shall deem necessary, appropriate or desirable, in the interests of the Company, to carry out and effect fully the intents and purposes

of the foregoing resolutions and the transactions contemplated hereunder and under the Transactions, such necessity, appropriateness or desirability to be evidenced conclusively by the execution thereof with such additions, deletions, changes, amendments, executions, deliveries and taking of such actions;

RESOLVED, that the actions of the Chief Operating Officer in executing and delivering any and all related documents to which the Company is a party, and any and all ancillary agreements or documents deemed by the Chief Operating Officer to be necessary, appropriate or desirable, in the interests of the Company, to effect the transactions contemplated thereby, are hereby authorized, ratified, consented to, confirmed and approved in all respects;

RESOLVED, that any and all of the acts of the Chief Operating Officer, officers, employees, attorneys, accountants or agents of the Company in connection with the transactions authorized in, contemplated by or referred to in the foregoing resolutions, whether heretofore or hereafter done or performed, which are in conformity with the intents and purposes of the foregoing resolutions, be and the same are hereby, ratified, confirmed, consented to and approved in all respects; and

These resolutions may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument. These resolutions may be executed and delivered by electronic copy or copies, which copy or copies shall be deemed to be original.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent as of the date first above written.

MANAGING MEMBER:

ALLIED JACKSON HEIGHTS
MANAGEMENT CORP.

By: 
Joshua L. Muss, President/Sole Shareholder

OPERATING AGREEMENT

OF

ALLIED JACKSON HEIGHTS, LLC
a New York limited liability company

**OPERATING AGREEMENT
OF
ALLIED JACKSON HEIGHTS, LLC
a New York limited liability company**

THIS OPERATING AGREEMENT made effective as of March 15, 2005 by Allied Jackson Heights Management Corp., a New York corporation, having an office at 118-35 Queens Boulevard, Forest Hills, New York, New York 11375, as Managing Member (the "Managing Member") and the other parties whose signatures appear on the signature page below (herein, with the Managing Member, collectively referred to as the "Members"). Unless otherwise indicated, capitalized words and phrases in this Operating Agreement (as amended from time to time, this "Agreement") shall have the meanings set forth in this Agreement.

RECITALS

Allied Jackson Heights Holdings, LLC (the "Company") shall be formed as a limited liability company pursuant to the New York Limited Liability Company Law (as amended from time to time, the "Act" or the "LLCL") upon the filing of the Articles of Organization of the Company (as amended from time to time, the "Articles of Organization") with the Department of State of the State of New York (the "Department of State"), for the purposes set forth.

The Managing Member wishes to create an operating agreement to establish the rules and procedures that are to govern the business and affairs of the Company.

NOW, THEREFORE, the Managing Member does hereby constitute the Operating Agreement of the Company as follows:

ARTICLE I

FORMATION

SECTION 1.01. Formation; Agreement. The Company shall be formed on the filing of the Articles of Organization with the Department of State, and shall be continued pursuant to the terms hereof. The rights and obligations of the Member and the terms and conditions of the Company shall be governed by the Act and this Agreement. To the extent the Act and this Agreement are inconsistent with respect to any subject matter covered in this Agreement, this Agreement shall govern, but only to the extent permitted by law.

SECTION 1.02. Name. The name of the Company shall be ALLIED JACKSON HEIGHTS HOLDINGS, LLC.

SECTION 1.03. Managing Member. Allied Jackson Heights Management Corp., a New York corporation, shall be the Managing Member of the Company.

Company. The Members may (but shall not be obligated to) make additional Capital Contributions in such form and at such time as the Managing Member shall determine in its sole and absolute discretion; provided, however, that any such additional Capital Contributions shall be evidenced in writing and recorded in the books and records of the Company. The percentage interests of the Members are set forth on **Schedule A**.

SECTION 3.02 Liability of Members. No Member shall be liable for any debts or losses of capital or profits of the Company or be required to contribute or lend funds to the Company.

SECTION 3.03 Other Activities Except as limited by the terms of this Agreement, a Member may conduct other businesses or activities not related to the Company without accounting to the Company or any other Members, whether or not such other businesses or activities, directly or indirectly, compete with the business of the Company. No Member shall be liable or accountable to the Company or any other Member for failure to disclose or make available to the Company any business opportunity that such Member becomes aware of in his capacity as a Member or otherwise.

SECTION 3.04 Title to Property. All property, tangible and intangible, real and personal, owned by the Company, shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in such property in his or its individual name or right, and each Member's membership interest in the Company shall be personal property for all purposes.

SECTION 3.05 Meetings of Members. Except as otherwise provided in Section 4.01 (b), no meetings of the Members shall be required unless the holders of a majority of Members Percentages shall request the Managing Member to call such a Meeting in a written notice (the "Member-Notice") signed by each of such holders. Upon receipt of any such notice, the Managing Member shall fix the time for such meeting at the Company's offices as required under Section 405 of the LLCL. The Managing Member may call meetings of the Members from time to time in its discretion, giving notice of any such meetings as required under Section 405 of the LLCL.

ARTICLE IV

RIGHTS, POWERS, AND OBLIGATIONS OF MANAGING MEMBER

SECTION 4.01 Management of Business.

(a) Allied Jackson Heights Management Corp. is hereby designated as the Managing Member of the Company, as such term is defined in Section 102(p) of the LLCL, and the Managing Member hereby accepts such designation. The Managing Member shall be the Managing Member of the Company for the entire Term.

Muss and Joshua L. Muss during their lifetime and competence, or (ii) after the death or incapacity of either or both of Stanley H. Muss or Joshua L. Muss, the holders of at least two thirds (2/3) of the Members Percentages:

- (a) Financing, net lease, sale, exchange or other disposition of all or substantially all of the Property;
- (b) Admission to the Company of any additional Members;
- (c) Dissolution of the Company; or
- (d) Appointment of a new Managing Member upon withdrawal of the incumbent Managing Member .

SECTION 4.04 Liability of Managing Member to Members. The Managing Member shall not be liable, responsible, or accountable in damages or otherwise to the Members or the Company for any acts performed by him within the scope of the authority conferred on him by this Agreement and made in good faith or based on the opinion of counsel or outside auditors, except for acts of fraud or malfeasance; provided, however, that in all events the standard of conduct owed by the Managing Member to the Company and the other Members shall be that standard which a fiduciary is obligated to maintain with respect to the beneficiaries of any trust of which he is a trustee.

SECTION 4.05 Indemnification of Managing Member. (a) The Managing Member shall be indemnified by the Company for any claims, demands, liability, action, or damage suffered by it on account of any act performed or omitted to be performed by it within the scope of the authority conferred by this Agreement and made or omitted to be made in good faith or based on the opinion of counsel or outside auditors, and for all reasonable costs incurred in defense thereof; including reasonable attorneys fees, provided that any indemnity under this Section shall be paid out of and to the extent of Company assets only. The foregoing indemnities shall not be made if a judgment or other final adjudication adverse to the Managing Member establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(b) Any indemnification of the Managing Member shall be fully subordinated to any obligations respecting the Premises (including, without limitation, the mortgage which secures the Indebtedness) and such indemnification shall not constitute a claim against the Company in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

SECTION 4.06 Compensation of Managing Member. The Managing Member shall only be entitled to receive compensation for services to the Company provided such compensation is approved in writing by the holders of two-thirds (2/3) of the Members Interests.

PSG Engineering, DPC

Certified Mail, Return Receipt Requested

November 9, 2015

Attn: Robert W. Schick
New York State Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor
625 Broadway
Albany, NY 12233-7011

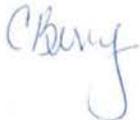
RE: **Brownfield Cleanup Agreement (BCA) Submittal**
Jackson Heights Shopping Center
7507 31st Avenue
Jackson Heights, NY 11370

Dear Mr. Schick:

Please find attached the three signed original proposed BCAs along with the proof documentation associated with the project. PSG Engineering is submitting these documents on behalf of Allied Jackson Heights, LLC.

If you have any questions, please do not hesitate to contact me at (732) 380-1700 x1414.

Sincerely,



Carrie Berry, LSRP
Practice Leader – Site Mitigation Group

