

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

April 13, 2021

Mamaroneck White Plains, LLC
Brian Sewell
3990 Hillsboro Pike, Suite 400
Nashville, TN 37215

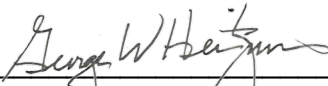
RE: Site Name: YMCA White Plains Site
Site No.: C360206
Location of Site: 250 Mamaroneck Avenue
Westchester County, White Plains, NY 10605

Dear Mr. Sewell:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the YMCA White Plains Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Ashley Johnson, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 21 South Putt Corners Road, New Paltz, NY 12561-1620 or by email at ashley.johnson@dec.ny.gov.

Sincerely,

 /for

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

Enclosure

ec: John Spellman, Project Manager
cc: Ashley Johnson, Esq.
Jennifer Andaloro, Esq./Dale Thiel



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. C360206-04-21**

YMCA - White Plains

DEC Site No: C360206

Located at: 250 Mamaroneck Avenue
Westchester County
White Plains, NY 10605

Hereinafter referred to as "Site"

by:

Mamaroneck White Plains, LLC

3990 Hillsboro Pike, Suite 400, Nashville, TN 37215

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 October 19, 2020; and

WHEREAS, the Applicant submitted additional information received by the Department on March 10, 2021 to document the change in ownership of the property to Mamaroneck White Plains, LLC; 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, Mamaroneck White Plains, LLC, is participating in the BCP as a Volunteer as defined in ECL § 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.160 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 130.28-9-3
Street Number: 250 Mamaroneck Avenue, White Plains
Owner: Mamaroneck White Plains, 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:

John Spellman
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
john.spellman@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

Ashley Johnson, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
21 South Putt Corners Road
New Paltz, NY 12561
ashley.johnson@dec.ny.gov

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

Mamaroneck White Plains, LLC
Attn: Brian Sewell
3990 Hillsboro Pike, Suite 400
Nashville, TN 37215
legalnotices@southernland.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.

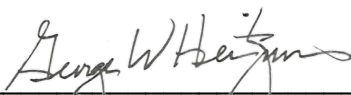
C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

April 13, 2021

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


By:



/for

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

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

By: 

Title: President

Date: 4.8.2021

Tennessee
STATE OF ~~NEW YORK~~)
) SS:
COUNTY OF Davidson)

On the 8th day of April in the year 2021, before me, the undersigned, personally appeared Brian Sewell, 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.





Signature and Office of individual
taking acknowledgment

EXHIBIT A
SITE MAP



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:

Division of Management and Budget
New York State Department of Environmental
Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

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.

MAMARONECK WHITE PLAINS, LLC
ACTION BY WRITTEN CONSENT OF
THE MANAGER

Effective as of January 1, 2021

THE UNDERSIGNED, being the manager (the "Manager") of Mamaroneck White Plains, LLC, a Delaware limited liability company (the "Company") pursuant to the Company's Amended and Restated Limited Liability Company Agreement, as may be amended from time to time, and the provisions of the Delaware Limited Liability Company Act, do hereby (i) consent to taking action on the following resolutions without a meeting, (ii) indicate the vote of the undersigned in favor of the adoption of such resolutions, and (iii) direct that this consent be filed with the minutes of the proceedings of the Manager of the Company:

RESOLVED, that Brian Sewell (an "Authorized Person"), in his capacity as President of the Company, is hereby authorized, directed, and empowered, acting alone, in the name or on behalf of the Company, to execute the Brownfield Cleanup Program ("BCP") Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property located at 250 Mamaroneck Avenue, White Plains, New York;

RESOLVED FURTHER, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Company as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and

RESOLVED FURTHER, that any acts of any manager of the Company and of any persons designated and authorized to act by any such manager of the Company, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby ratified, confirmed, approved and adopted as acts of the Company

Signature page follows.

IN WITNESS WHEREOF, this Written Consent has been executed by the Manager effective as of the date first written above.

MANAGER:

SOUTHERN LAND COMPANY, LLC,
a Tennessee limited liability company

By: 

Name: Alex Fisch

Title: Chief Investment Officer

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
MAMARONECK WHITE PLAINS, LLC**

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “*Agreement*”) of Mamaroneck White Plains, LLC, a Delaware limited liability company (the “*Company*”) is made and entered into as of August **1**, 2020 (the “*Effective Date*”) by REDWOOD SLC LANDCO, LLC (“*LandCo*”), SLC Development, LLC, a Tennessee limited liability company (“*Initial Member*”), and SOUTHERN LAND COMPANY, LLC, a Tennessee limited liability company (“*SLC*”) and the Members listed on **Exhibit A** attached hereto (each a “*Member*”, and collectively, the “*Members*”).

WHEREAS, the Company was originally formed as a Delaware limited liability company under and pursuant to the Delaware Limited Liability Company Act, 6 Del. C § 18-101, et seq., as it may be amended from time to time (the “*Act*”) by filing the Certificate of Formation with the Secretary of State on June 20, 2019 (the “*Certificate of Formation*”).

WHEREAS, a Limited Liability Company Agreement for the Company was entered into effective as of June 10, 2019 (the “*Original Agreement*”) by Initial Member, as the initial Member.

WHEREAS, Initial Member desires to admit additional persons as Members, withdraw as a Member, and amend and restate the Original Agreement in its entirety, and operate the Company in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Original Agreement is hereby amended and restated in its entirety as set forth herein.

**ARTICLE 1
CONTINUATION OF THE COMPANY**

1.1 Continuation. The Company was formed under and pursuant to the provisions of the Act by filing the Certificate of Formation. The Company shall continue to be operated as a limited liability company under the Act, subject to the provisions set forth in this Agreement.

1.2 Name. The name of the Company is “Mamaroneck White Plains, LLC” or such other name as the Manager from time to time may determine, and all business of the Company shall be conducted in such name as the Manager shall determine.

1.3 Principal Place of Business. The principal place of business of the Company shall be 3990 Hillsboro Pike, Suite 400, Nashville, Tennessee 37215. The Company may locate its place of business at any other place or places as the Manager may from time to time deem advisable.

1.4 Purpose. The purposes of the Company are to: (i) direct or indirectly, purchase, own, manage, develop, build, construct, renovate, improve, lease, manage, operate, finance, refinance, hold for investment and/or disposition, operate, finance, refinance, sell, transfer, assign

and otherwise use or deal with the real property located at 250 Mamaroneck Avenue, White Plains, New York, and (ii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies formed under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the foregoing.

1.5 Registered Office and Registered Agent. The registered office and registered agent for service of process of the Company shall be reflected in the Certificate of Formation, or such other registered agent and/or registered office as may be determined by the Manager. The Manager may change the registered agent or office by authorizing appropriate filings with the Secretary of State. In the event the registered agent ceases to act as such for any reason or the location of the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a Notice of Change of Address as the case may be.

1.6 Partnership Classification. It is the intention of the parties hereto that the Company be treated as a partnership for federal income tax purposes as defined in Section 7701 of the Internal Revenue Code of 1986, as amended from time to time.

1.7 Withdrawal of Initial Member. As of the Effective Date, the Company shall redeem all membership interests in the Company held by Initial Member, and Initial Member shall no longer be a member of, or have any interest in, the Company.

ARTICLE 2

MEMBERS; MANAGER; CAPITAL CONTRIBUTIONS

2.1 Manager. The business and affairs of the Company shall be managed by SLC (the “**Manager**”), and the management and conduct of the business of the Company is vested in the Manager. The Manager shall direct, manage and control the business of the Company to the best of its ability and the Manager shall have full and complete authority, power and discretion to make any and all decisions, to take any and all actions, and to execute all instruments or other documents which the Manager, in its sole discretion, shall deem to be reasonably required or appropriate in light of the Company’s business and objectives; *provided*, that Manager shall only act at the direction of the “Executive Committee” of LandCo with respect to those matters required to be approved by such Executive Committee as set forth in Article VI of the Limited Liability Company Operating Agreement of LandCo dated as of November 20, 2019.

2.2 Members. The names of the Members shall be as set forth on **Exhibit A** attached hereto and made a part hereof. The Manager shall amend **Exhibit A** from time to time upon the admission or withdrawal of any Member.

2.3 Initial Capital Contributions. On the Effective Date or at such time as determined by the Manager, each of the Members shall contribute to the Company, as its initial Capital Contribution, the cash set forth opposite its respective name on **Exhibit A** attached hereto.

2.4 Additional Capital Contributions. No Member shall be required to make any additional Capital Contributions after its initial Capital Contribution without such Member’s prior consent.

2.5 Limitation on Liability. No Member or Manager shall be liable under a judgment, decree or order of any court, or in any other manner, for a debt, obligation or liability of the Company, except as provided by law and pursuant to this Agreement. No Member shall be required to loan any funds to the Company.

2.6 Indemnity. To the fullest extent permitted by the Act, the Company, to the extent of its assets legally available for that purpose, will indemnify and hold harmless, the Members, the Manager, and their respective affiliates, and any member, partner, shareholder, director, officer, employee, agent, affiliate and professional or other advisor of any of them (collectively, the “**Indemnified Persons**”) from and against any and all loss, claim, demand, cause of action, cost, damage, expense (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person does or refrains from doing for, or in connection with, or incidental to, the business or affairs of, the Company, except to the extent that the loss, claim, demand, cause of action, cost, damage, expense or liability resulted primarily from the Indemnified Person’s fraud, gross negligence, willful misconduct or willful breach of any provision of this Agreement. Expenses (including reasonable attorneys’ fees and disbursements) incurred by an Indemnified Person in defending any actual or threatened claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Indemnified Person to repay such amounts if it is ultimately determined that such Indemnified Person is not entitled to indemnification under this Section with respect thereto.

2.7 Allocations; Distributions. Each item of income, gain, loss, deduction and credit of Company shall be allocated to the Members in accordance with the percentage interests reflected on **Exhibit A** (the “**Percentage Interests**”). Each distribution of cash or other property shall be made by Manager, at such times and in such amounts as determined by Manager in its sole discretion, in accordance with the Percentage Interests.

2.8 Books and Records. The books and records of the Company shall be kept, and the final financial position and results of its operations recorded, in accordance with the accounting methods elected to be followed by the Manager on behalf of the Company for federal income tax purposes.

2.9 Bank Accounts. All funds of the Company shall be deposited in a federally insured bank account or accounts maintained in the Company’s name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the persons who will have authority with respect to the accounts and funds therein.

ARTICLE 3

TRANSFERS; ADDITIONAL MEMBERS

3.1 Transfers. A Member shall not have the right to sell, assign, pledge, exchange or otherwise transfer for consideration, or to gift or otherwise transfer for no consideration (collectively, “**Transfer**”) or in any other manner whatsoever dispose of all or any part of the Member’s membership interest in the Company unless the Manager approves the proposed Transfer. Any attempted Transfer in contravention of this Section shall be void and of no effect

and shall not bind or be recognized by the Company. Each Member hereby acknowledges the reasonableness of the restrictions on Transfer imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on Transfer contained herein shall be specifically enforceable.

3.2 Additional Members. Additional Members may be admitted to the Company with the approval of the Manager (each, an "*Additional Member*"). The Percentage Interest of other Members shall be adjusted to reflect the Percentage Interest granted to such Additional Member. As a condition to becoming an Additional Member, such person desiring to become an Additional Member shall execute a counterpart of this Agreement, agreeing thereby to be bound by all of the terms and provisions hereof.

ARTICLE 4

DISSOLUTION AND TERMINATION

4.1 Dissolution. The Company shall be dissolved upon the occurrence of any of the following events: (i) the election of the Manager and Members to dissolve, or (ii) upon the sale or other disposition of all assets owned by the Company. As soon as possible following the election to dissolve, the Manager shall file such form as shall be prescribed by the Secretary of State to dissolve the Company or take such other actions as may be required under the Act.

4.2 Termination; Compliance with Laws. Upon completion of the winding up, liquidation and distribution of the Company's assets, the Company shall be deemed terminated. The Manager shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

ARTICLE 5

MISCELLANEOUS PROVISIONS

5.1 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (1) if delivered personally to the party or to an executive officer of the party to whom the same is directed; (2) if sent by registered or certified mail, postage and charges prepaid, or by a recognized overnight delivery service, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement; or (3) upon transmission by pdf technology to the electronic mail address, as shown in the Company's records (if available), of the party being notified with a copy of said notice given by one of the other methods set forth in this Section. Except as otherwise provided herein, any such notice shall be deemed to be given under clause (1) upon delivery, under clause (2) two business days after mailing or one business day after delivery by the overnight delivery service, or under clause (3) upon completion of the facsimile or electronic pdf transmission.

5.2 Application of Delaware Law. This Agreement and the application and interpretation hereof shall be governed exclusively by its terms and by the laws of the State of Delaware and specifically the Act.

5.3 Waiver of Action of Partition. Each Member irrevocably waives during the term of existence of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

5.4 Amendments. The Certificate of Formation and this Agreement may be amended only upon the written consent of the Manager and Members holding a majority of the Percentage Interests; *provided*, that the Manager shall have the authority to amend **Exhibit A** without the consent of the Members. Notwithstanding the foregoing, no Amendment may have a disproportionate adverse economic impact on any Member without such Member's consent.

5.5 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with this Agreement or any laws, rules or regulations.

5.6 Construction of Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person may in the context require. Any reference to the Act or statutes or laws shall include all amendments, modifications or replacements of the specific sections or provisions concerned.

5.7 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

5.8 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

5.9 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

5.10 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be illegal, invalid or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Furthermore, a new provision shall automatically be deemed added to this Agreement in lieu of such illegal, invalid or unenforceable provision, which new provision is as similar in terms to such illegal, invalid or unenforceable provision as is possible with the new provision still being legal, valid and enforceable.

5.11 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

5.12 Not for Creditors' Benefit. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company. Furthermore, this Agreement is

made solely and specifically for the benefit of the parties hereto, their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

5.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The parties hereby acknowledge and agree that electronic signatures, including execution using DocuSign, or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The parties (i) intend to be bound by the signatures (whether original or electronic) on any document sent by electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

5.14 Reliance on Authority of Person Signing Agreement. In the event that a Member is not a natural person, neither the Company nor any Member shall (1) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such Entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (2) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such Entity.

5.15 Original Agreement. This Agreement amends and restates the Original Agreement in its entirety, and as of the date set forth above the Original Agreement shall be of no further force or effect.

[SIGNATURES ON FOLLOWING PAGE]

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

MEMBER:

REDWOOD SLC LANDCO, LLC,
a Delaware limited liability company

By: REDWOOD CAPITAL INVESTMENTS, LLC,
a Maryland limited liability company,
Member

By: _____
Name: Kevin Loden
Its: Principal

By: SOUTHERN LAND COMPANY, LLC,
a Tennessee limited liability company,
Member

By: _____
Name: Alex Fisch
Its: Chief Investment Officer

**MEMBER AND
MANAGER:**

SOUTHERN LAND COMPANY, LLC,
a Tennessee limited liability company,

By: _____
Name: Alex Fisch
Its: Chief Investment Officer

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

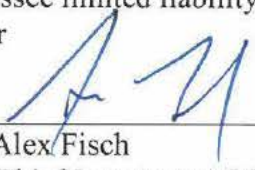
MEMBER:

REDWOOD SLC LANDCO, LLC,
a Delaware limited liability company

By: REDWOOD CAPITAL INVESTMENTS, LLC,
a Maryland limited liability company,
Member

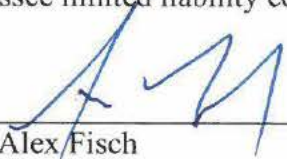
By: _____
Name: _____
Its: _____

By: SOUTHERN LAND COMPANY, LLC,
a Tennessee limited liability company,
Member

By: 
Name: Alex Fisch
Its: Chief Investment Officer

**MEMBER AND
MANAGER:**

SOUTHERN LAND COMPANY, LLC,
a Tennessee limited liability company,

By: 
Name: Alex Fisch
Its: Chief Investment Officer

ACKNOWLEDGMENT OF WITHDRAWAL

Initial Member hereby acknowledges its withdrawal as a Member of the Company pursuant to the terms of the Agreement.

SLC DEVELOPMENT, LLC,
a Tennessee limited liability company

By: Southern Land Company, LLC
a Tennessee limited liability company
its sole member

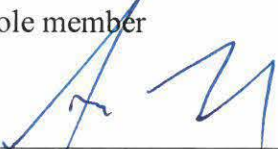
By: 
Name: Alex Fisch
Title: Chief Investment Officer

EXHIBIT A

SCHEDULE OF MEMBERS

Members	Initial Capital Contributions	Percentage Interest
Redwood SLC LandCo, LLC c/o Southern Land Company 3990 Hillsboro Pike, Suite 400 Nashville, Tennessee 37215		75.0%
Southern Land Company, LLC 3990 Hillsboro Pike, Suite 400 Nashville, TN 37215		25.0%
<u>Total:</u>	\$	100%