

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

625 Broadway, 12th Floor, Albany, NY 12233-7011

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

www.dec.ny.gov

Laconia Properties LLC  
George Kondos  
30-29 Steinway Street, 2nd Floor  
Astoria, NY 11103

APR 20 2020

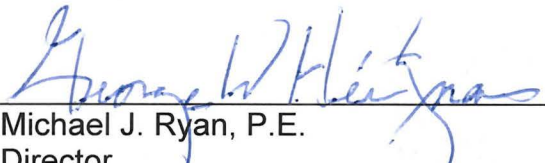
RE: Site Name: 4125-4149 Laconia Avenue  
Site No.: C203124  
Location of Site: 4125-4149 Laconia Avenue, Bronx County, Bronx, NY 10466

Dear Mr. Kondos:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 4125-4149 Laconia Avenue Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Leia Schmidt, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway Albany, NY 12233-1500 or by email at [leia.schmidt@dec.ny.gov](mailto:leia.schmidt@dec.ny.gov).

Sincerely,

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

Enclosure

ec: Aaron Fischer, Project Manager  
cc: Leia Schmidt, Esq.  
Jennifer Andaloro, Esq./Dale Thiel

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

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In the Matter of a Remedial Program for

**BROWNFIELD SITE  
CLEANUP AGREEMENT  
Index No. C203124-03-20**

**4125-4149 Laconia Avenue**

DEC Site No:C203124

Located at: 4125-4149 Laconia Avenue  
Bronx County  
Bronx, NY 10466

Hereinafter referred to as "Site"

by:

Laconia Properties LLC

30-29 Steinway Street, 2nd Floor, Astoria, NY 11103

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 November 4, 2019; and

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

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

**I. Applicant Status**

The Applicant, Laconia Properties 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:

Laconia Properties LLC  
30-29 Steinway Street, 2nd Floor, Astoria, NY 11103  
[gkondos@ditmarsrec.com](mailto:gkondos@ditmarsrec.com)

## II. Tangible Property Tax Credit Status

The Site is located in a City having a population of one million or more and the Applicant has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

## III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.740 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 15-4877-1  
Street Number: 4125-4149 Laconia Avenue, Bronx  
Owner: Laconia Properties 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:

Aaron Fischer  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233  
[aaron.fischer@dec.ny.gov](mailto:aaron.fischer@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](mailto:christine.vooris@health.ny.gov)

Leia Schmidt, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway  
Albany, NY 12233  
[leia.schmidt@dec.ny.gov](mailto:leia.schmidt@dec.ny.gov)

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

Laconia Properties LLC  
Attn: George Kondos  
30-29 Steinway Street, 2nd Floor  
Astoria, NY 11103  
[gkondos@ditmarsrec.com](mailto:gkondos@ditmarsrec.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 20, 2020*

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

By:

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



## CONSENT BY APPLICANT

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

Laconia Properties LLC

By:  \_\_\_\_\_

Title: MANAGING MEMBER

Date: 3/18/2020

STATE OF NEW YORK     )  
                                   ) ss:  
 COUNTY OF Queens    )

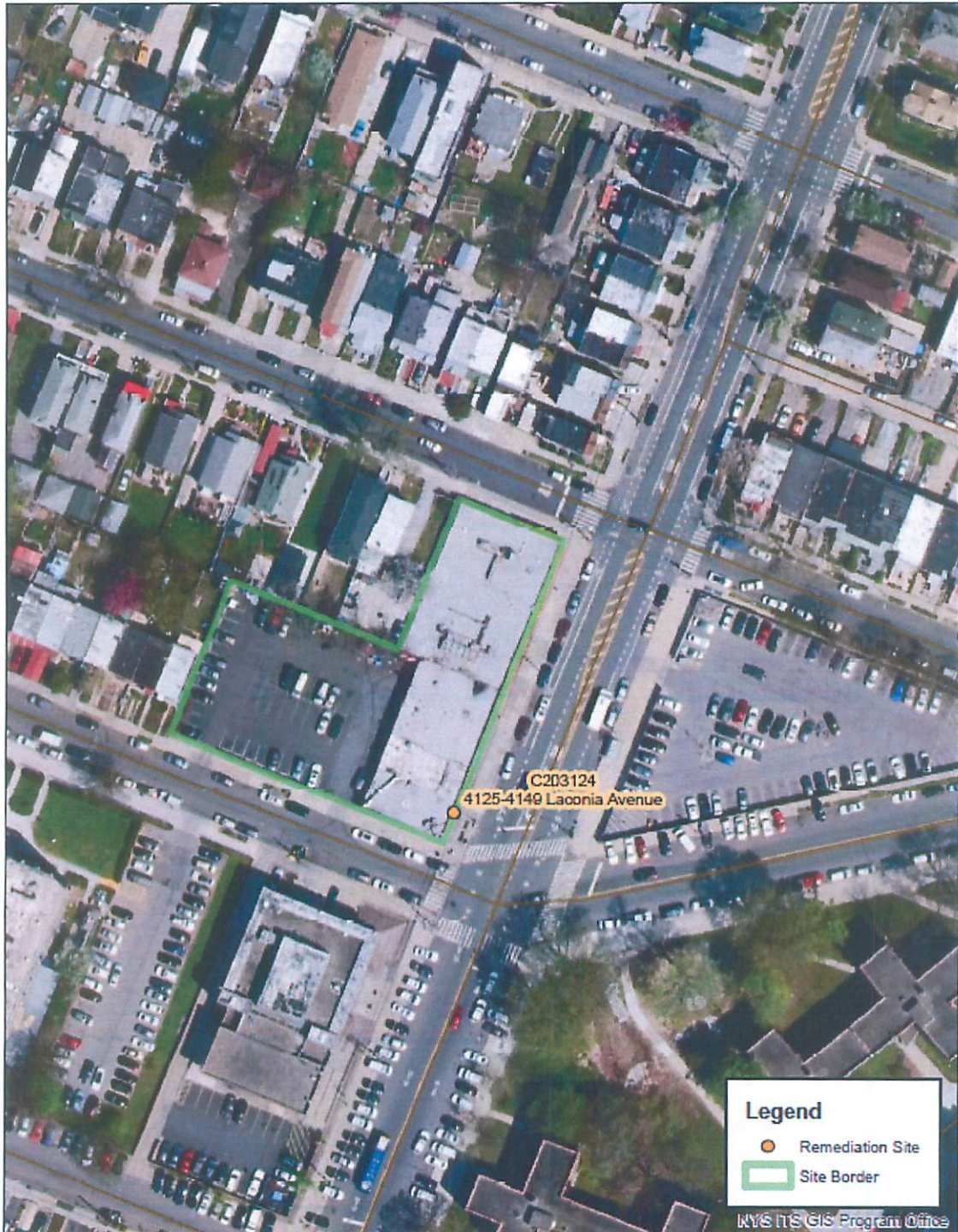
On the 18<sup>th</sup> day of March in the year 2020, before me, the undersigned, personally appeared George Kondos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that 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.

JOYCE FERREZZA  
 NOTARY PUBLIC-STATE OF NEW YORK  
 No. 01FE6266027  
 Qualified in Queens County  
 My Commission Expires July 23, 2020

  
 \_\_\_\_\_  
 Signature and Office of individual  
 taking acknowledgment

EXHIBIT A  
SITE MAP

C203124, 4125-4149 Laconia Avenue  
Site Location Map



130 65 0 130 Feet



**EXHIBIT B  
PAST COSTS**

Pursuant to Paragraph I, within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth in this Exhibit. The Exhibit includes a summary of past State Costs incurred prior to the effective date of the Agreement. The payment shall be made payable to "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

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION  
BUREAU OF PROGRAM MANAGEMENT**

**COST SUMMARY**

SITE NAME: 4125-4149 Laconia Ave.  
SITE NO.: C203124  
RELATED SITE NO: 203124  
TIME FRAME: DEC Life - 12/25/19

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$397.60	
FRINGE	\$253.91	
INDIRECT	<u>\$220.78</u>	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$872.29</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$872.29	
DOH TOTAL (NOT AVAILABLE)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	<u>N/A</u>	
<i>DEC &amp; DOH TOTAL</i>	<i>\$872.29</i>	
COST CAP (IF APPLICABLE)	<u>N/A</u>	
<b>GRAND TOTAL</b>	<b>\$872.29</b>	



# EXHIBIT II



## Cost Query - Ad Hoc

Criteria: Timecard End Date 12/25/19 And Task Code 74433 Or Task Code 73919 And Timecard Begin Date 4/18/19

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)

[Print](#)

Jump To Employee:

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Deduct	Hours	Cost
<b>Task: 73919 - 203324 - 4125-4149 LACONIA AVENUE</b>														
2019/4	05/14/2019 - 05/29/2019	06/12/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	42.54	40.75	35.44	1.50	63.31
2019/11	08/22/2019 - 09/04/2019	09/18/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	42.54	27.17	23.62	1.00	42.54
2019/13	09/19/2019 - 10/02/2019	10/16/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	41.46	13.24	11.51	0.50	20.73
2019/14	10/03/2019 - 10/16/2019	10/30/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	42.26	40.48	38.29	1.50	63.39
2019/16	10/31/2019 - 11/13/2019	11/27/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	37.12	41.48	36.07	1.75	64.96
2019/17	11/14/2019 - 11/27/2019	12/11/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	42.26	13.49	11.73	0.50	21.13
2019/18	11/28/2019 - 12/11/2019	12/24/2019	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	42.26	40.48	35.20	1.50	63.39
2019/19	12/12/2019 - 12/25/2019	01/06/2020	430221	LS	2019	FISCHER, AARON	ASSISTANT ENGINEER (ENVIRONMENTAL)	615127	Central Office - 625 Broadway	42.65	12.62	11.85	0.50	21.34
2019/4	05/14/2019 - 05/29/2019	06/12/2019	430228	LS	2019	O'Connell, Jane	Professional Geologist 2	43730	R2 - New York City - Regional HQ	72.62	23.19	20.16	0.50	36.31
<b>Task 73919 Sub Total:</b>											253.91	220.76	9.25	397.60
<b>Report Total:</b>											253.91	220.76	9.25	397.60



## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

#### I. Citizen Participation Plan

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

#### II. Development, Performance, and Reporting of Work Plans

##### A. Work Plan Requirements

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

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

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

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

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

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

##### B. Submission/Implementation of Work Plans

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

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

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

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

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

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

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

#### C. Submission of Final Reports

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

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

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

#### D. Review of Submittals other than Work Plans

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

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

#### E. Department's Determination of Need for Remediation

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

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

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

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

#### F. Institutional/Engineering Control Certification

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

#### III. Enforcement

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

#### IV. Entry upon Site

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

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

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

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

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

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

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

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

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

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

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

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

#### VI. Liability Limitation

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

#### VII. Reservation of Rights

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

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

#### VIII. Indemnification

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

#### IX. Change of Use

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

#### X. Environmental Easement

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



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

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

#### XI. Progress Reports

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

#### XII. Termination of Agreement

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

#### XIII. Dispute Resolution

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

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

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

#### XIV. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

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

eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

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

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

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

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

# **OPERATING AGREEMENT**



**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**  
**OF**  
**LACONIA PROPERTIES, LLC**

**PAUL F. STOCKSCHLAEDER, ESQ.**  
**30 VESEY STREET, 11<sup>TH</sup> FLOOR**  
**NEW YORK, NEW YORK 10007**  
**Tel. (212) 233-6097**

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

of

**LACONIA PROPERTIES, LLC**

This Limited Liability Company Operating Agreement of LACONIA PROPERTIES, LLC, a limited liability company organized pursuant to the New York Limited Liability Company Act, is entered into and shall be effective as of the Effective Date, by and among the Company and the persons executing this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**Article I  
Definitions**

For the purposes of this Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Act" shall mean the New York Limited Liability Company Act, as amended.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in the Member's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(i) the deficit shall be decreased by the amounts which the Member is obligated to restore pursuant to Section 4.4.2 or is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and

(ii) the deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5) and (6).

"Adjusted Capital Balance" shall mean, as of any day, a Member's total Capital Contributions less all amounts actually distributed to the Member pursuant to Sections 4.1 and 4.4. hereof. If a Membership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Membership Interest transferred.

"Affiliate" means, with respect to any Member, any Person; (i) which owns more than FIFTY (50%) percent of the voting interests in the Member; or (ii) in which the Member owns more than FIFTY (50%) percent of the voting interests; or (iii) in which more than FIFTY (50%) percent of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above or who otherwise controls, is controlled by, or under common control with, another person.

"Agreement" shall mean this Operating Agreement, as amended from time to time.

"Articles" shall mean the Articles of Organization of the Company, as amended from time to time, and filed with the Department of State of New York.

"Capital Account" shall mean the account maintained for each Member in accordance with the following provisions:

(i) a Member's Capital Account shall be credited with the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member (or which are secured by Company property distributed to the Member), the Member's distributive share of Profit and any item in the nature of income or gain specially allocated to the Member pursuant to the provisions of Article IV (other than Section 4.3.3); and

(ii) a Member's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), the Member's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Member pursuant to the provisions of Article IV (other than Section 4.3.3.).

If any Membership Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Membership Interest. If the book value of Company property is adjusted pursuant to Section 4.3.3, the Capital Account of each Member shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulations Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" shall mean the total amount of cash and the fair market value of any other assets contributed by a Member, net of liabilities assumed or to which the assets are subject.

"Capital Proceeds" shall mean the gross receipts received by the Company from a Capital Transaction.

"Capital Transaction" shall mean any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds.

"Cash Flow" shall mean all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the General Manager. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"Company" shall mean the limited liability company formed in accordance with this Agreement.

"Effective Date" shall mean September 27, 2002.

"Family" shall mean a Member's spouse, lineal descendants by birth or adoption, siblings, and trusts for the exclusive benefit of a Member or any of the foregoing individuals.

"Fiscal Year" shall mean the calendar year.

"Involuntary Withdrawal" shall mean the taking of the following actions by a Member or the occurrence of any of the following events, with respect to a Member:

- (i) making an assignment for the benefit of creditors;
- (ii) filing a voluntary petition of bankruptcy;



(iii) being adjudged bankrupt or insolvent or there is entered an order for relief in any bankruptcy or insolvency proceeding;

(iv) filing a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) seeking, consenting to, or acquiescing in the appointment of a trustee for, receiver for, or liquidation of all or any substantial part of the Member's properties;

(vi) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);

(vii) permitting the continuation for 120 days after the commencement thereof of any proceeding seeking the Member's reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, or the appointment of a trustee, receiver, or liquidator of all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(viii) the Member's death, incapacity, or adjudication as incompetent to manage the Member's person or property;

(ix) if the Member is a trustee of a trust, the termination of the trust;

(x) if the Member is a partnership or limited liability company, the dissolution and winding up of the partnership or limited liability company;

(xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter;

(xii) if the Member is an estate, the distribution of the estate's entire interest in the Company;

"Managing Member" shall mean the Person(s) designated as such in Article V.

"Member" shall mean each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.

"Membership Interest" shall mean the rights of a Member in the Company, including a Member's: (i) right to share the Profits and Losses of, and to receive distributions from, the Company; (ii) right to inspect the Company's books and records; and (iii) right to the extent permitted by this Agreement to participate in the management of the Company and vote on matters before the Company.

"Member Loan Nonrecourse Deductions" shall mean any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regulation Section 1.704-2(i).

"Minimum Gain" has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Member in a manner consistent with the Regulations under Code Section 704(b).

"Negative Capital Account" shall mean a Capital Account with a balance of less than zero.

"Nonrecourse Deductions" has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regulations Section 1.704-2(c).

"Nonrecourse Liability" shall mean any liability of the Company with respect to which no Member has personal liability.

"Partnership" shall mean the general partnership known as LACONIA REALTY CO.

"Percentage" shall mean the percentage set forth after the Member's name on Exhibit A, as amended from time to time.

"Person" shall mean any individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

"Positive Capital Account" shall mean a Capital Account with a balance greater than zero.

"Profit" and "Loss" shall mean, for each taxable year of the Company (or other period for which Profit or Loss must be

computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and

(iv) gain or loss resulting from any taxable disposition of Company shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.

"Regulation" shall mean the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

"Transfer" shall mean, when used as a noun, any sale, hypothecation, pledge, assignment, attachment, or other transfer, and when used as a verb, means to sell, hypothecate, pledge, assign, or otherwise transfer.

"Voluntary Withdrawal" shall mean a Member's disassociation with the Company by means other than a Transfer or an Involuntary Withdrawal.

## Article II

### Formation and Name: Office, Purpose; Term

2.1. *Organization.* The Members hereby consent to the conversion of the Partnership to a limited liability company pursuant to the Act. The assets of the Partnership are hereby transferred to the Company and the interest of the former partners in the Partnership are hereby converted to Membership Interests in the Company.

2.2. *Name of the Company.* The name of the Company shall be **LACONIA PROPERTIES, LLC**. The Company may do business under that name and under any other name or names which the Managing Member selects. If the Company does business under a name other than that set forth in its Articles, then the Company shall file a "doing business certificate" as required by law.

2.3. *Purpose.* The Company is organized to (i) purchase, acquire, buy, sell, own, trade in, hold, develop, lease, manage, subdivide, and otherwise deal in and with real property and improvements thereon, (ii) engage in any lawful act or activity for which limited liability companies may be formed in the State of New York and (iii) do any and all things necessary, convenient, or incidental to such purposes.

2.4. *Term.* The parties have been affiliated as members of the Partnership. They shall continue their relationship as members of the Company, the term of which shall commence on the date of the acceptance of the Articles by the New York Department of State and continue until December 31, 2077, unless the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Agreement.

2.5. *Registered Agent.* The registered agent for the service of process and the registered office shall be that Person and location set forth in the Articles. The Managing Member, may, from time to time, change the registered agent or office through appropriate filings with the Department of State of New York. In the event that the registered agent ceases to act as such for any reason or the registered office shall change, the Managing Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Managing Member shall fail to designate a replacement registered agent or file a notice of change of address, any Member may designate a replacement registered agent or file a notice of change of address.



2.6. *Principal Office.* The Principal Office of the Company shall be located at 128 South Road, Stanfordville, New York 12581.

2.7. *Members.* The name, present mailing address, taxpayer identification number, and Percentage of each Member are set forth on Exhibit A.

### Article III

#### Members; Capital; Capital Accounts

3.1. *Initial Capital Contributions.* The Members have contributed to the Company for their interest the cash and other property the amounts respectively set forth on Exhibit A.

#### 3.2. *Additional Capital Contributions.*

3.2.1. If the Managing Member at any time or from time to time determines that the Company requires additional Capital Contributions, then the Managing Member shall give notice to each Member of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contribution is required, (iii) each Member's proportionate share of the total additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Member's additional Capital Contribution is due and payable, which date shall be thirty (30) days after the notice has been given. A Member's share of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Member's Percentage and the total additional Capital Contribution required. A Member's share shall be payable in cash or by certified check, or wire transfer.

3.2.2. Except as provided in Section 3.2.1, no Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company.

3.2.3. If a Member fails to pay when due all or any portion of any Capital Contribution, the Managing Member shall request the non-defaulting Members to pay the unpaid amount of the defaulting Member's Capital Contribution (the "Unpaid Contribution"). To the extent the Unpaid Contribution is contributed by any other Member, the defaulting Member's Percentage shall be reduced and the Percentage of each Member who makes up the Unpaid Contribution shall be increased, so that each Member's Percentage is equal to a fraction, the numerator of which is that Member's total Capital Contribution and the denominator of which is the total Capital Contributions of all Members. The Managing Member shall amend

Exhibit A accordingly. This remedy is in addition to any other remedies allowed by law or by this Agreement.

3.3. *No Interest on Capital Contributions.* Members shall not be paid interest on their Capital Contributions.

3.4. *Return of Capital Contributions.* Except as otherwise provided in this Agreement, no Member shall have the right to receive any return of any Capital Contribution.

3.5. *Form of Return of Capital.* If an Member is entitled to receive a return of a Capital Contribution, the Member shall not have the right to receive anything but cash in return of the Member's Capital Contribution.

3.6. *Capital Accounts.* A separate Capital Account shall be maintained for each Member.

3.7. *Loans.* Any Member including the Managing Member may, at any time, make or cause a loan to be made to the Company in any amount and on such terms as shall be approved by the Managing Member.

#### **Article IV Profit, Loss, and Distributions**

4.1. *Distributions of Cash Flow and Allocations of Profit or Loss Other than Capital Transactions.*

4.1.1. *Profit or Loss Other Than from a Capital Transaction.* After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of Section 4.2) shall be allocated to the Members in proportion to their Percentages.

4.1.2. *Cash Flow.* The Company shall distribute to the Members, from time to time, the Cash Flow of the Company which is not required for the operation or reasonable working capital requirements of the Company in proportion to their Percentages but not later than one hundred twenty (120) days after the end of the taxable year.

4.2. *Distributions of Capital Proceeds and Allocation of Profit or Loss from Capital Transactions.*

4.2(a) Profit. After giving effect to the special allocations set forth in Section 4.3., Profit from a Capital Transaction shall be allocated as follows:

4.2(a)(1) If one or more Members has a Negative Capital Account, to those Members, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been increased to zero.

4.2(a)(2) To the Members in accordance with, and in the order and priority of, the cumulative distributions made (other than distributions representing in the judgement of the Managing Member, a return of capital which are hereinafter referred to as "Excluded Distributions") pursuant to this Agreement with respect to the current fiscal year and for all prior fiscal years until the aggregate amount allocated to each Member pursuant to this Section 4.2(a)(2) equals the aggregate amount distributed to each Member (other than Excluded Distributions) pursuant to Article IV; provided, however, that if the Profits allocable under this Section for the current fiscal year and all prior fiscal years exceed the cumulative distributions (other than Excluded Distributions) pursuant to Article IV with respect to the current fiscal year and all prior fiscal years (the "Excess Profits") the portion of the Excess Profits derived in the current fiscal year shall be allocated to the Members in accordance with, and in the order and priority of, the Distributions that would have been made pursuant to Article IV had distributions been made in the current fiscal year in an amount equal to the Excess Profits derived in the current fiscal year.

4.2(b). Loss. After giving effect to the special allocations set forth in Section 4.3, Loss from a Capital Transaction shall be allocated as follows:

(i) If one or more Members has a Positive Capital Account, to those Members, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

(ii) Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to Section 4.2.2.1 shall be allocated to the Members in proportion to their Percentages.

4.2(c). Capital Proceeds. Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

(i) to the payment of all expenses of the Company incident to the Capital Transaction; then

(ii) to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Member); then

(iii) to the establishment of any reserves which the Managing Member deems necessary for liabilities or obligations of the Company; then

(iv) the balance shall be distributed as follows:

(A) to the Members in proportion to their Adjusted Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;

(B) the balance, to the Members in proportion to their Percentages.

#### 4.3. Regulatory Allocations.

4.3.1. *Qualified Income Offset.* No Member shall be allocated Losses or deductions if the allocation causes the Member to have an Adjusted Capital Account Deficit. If an Member receives (1) an allocation of Loss or deduction (or item thereof) or (2) any distribution, which causes the Member to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Member, before any other allocation is made of Company items for that taxable year, in the in amount and in proportions required to eliminate the excess as quickly as possible. This Section 4.3.1 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

4.3.2. *Minimum Gain Chargeback.* Except as set forth in Regulation Section 1.704-2(f), if, during any taxable year, there is a net decrease in Minimum Gain, each Member, prior to any other allocation pursuant to this Article IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Member's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.3.2 shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from

a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3.2 shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

4.3.3. *Contributed Property and Book-ups.* In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Regulations thereunder.

4.3.4. *Code Section 754 Adjustment.* To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2), to be taken into account in determining Capital Accounts the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

4.3.5. *Nonrecourse Deductions.* Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Members in proportion to their Percentages.

4.3.6. *Member Loan Nonrecourse Deductions.* Any Member Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Member who bears the risk of loss with respect to the loan to which the Member Loan Nonrecourse Deduction is attributable in accordance with Regulation Section 1.704-2(b).

4.3.7. *Guaranteed Payments.* To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.3 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the



Person's capacity as a Member within the meaning of Code Section 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

4.3.8. *Unrealized Receivables.* If an Member's Economic Interest is reduced (provided the reduction does not result in a complete termination of the Member's Economic Interest), the Member's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code Section 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 4.4 hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Member, be specially allocated among the Members in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income (recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the Managing Member.

4.3.9. *Withholding.* All amounts required to be withheld pursuant to Code Section 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Members for all purposes under this Agreement.

#### 4.4. *Liquidation and Dissolution.*

4.4.1. If the Company is liquidated, the assets of the Company shall be distributed to the Members in accordance with the provisions of Section 4.2.

4.4.2. No Member shall be obligated to restore a Negative Capital Account.

#### 4.5. *General.*

4.5.1. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Managing Member.

4.5.2. If any assets of the Company are distributed in kind to the Members, those assets shall be valued on the basis of their fair market value, and any Member entitled to any interest in those

assets shall receive that interest as a tenant-in-common with all other Members so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Managing Member. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section 4.2 and shall be properly credited or charged to the Capital Accounts of the Members prior to the distribution of the assets in liquidation pursuant to Section 4.4.

4.5.3. All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Members as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer, Voluntary Withdrawal or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Member and the successor on the basis of the number of days each was an Member during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary nonrecurring items of the Company.

4.5.4. The Managing Member is hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Member without the Member's prior written consent.

## Article V

### Management: Rights, Powers, and Duties

#### 5.1 Management.

5.1.1. *Managing Member.* The Company shall be managed by a Managing Member, who shall be a Member. **STEPHEN KATOS** and **MICHAEL KATOS** are hereby designated to serve as the Managing Member.

5.1.2. *General Powers.* The Managing Member shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and

operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, for Company purposes, the power to:

5.1.2(a) . acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

5.1.2(b) construct, operate maintain, finance, and improve, and to own, sell, convey, assign, mortgage, or lease any real estate and any personal property;

5.1.2(c) sell, dispose, trade, or exchange Company assets in the ordinary course of the Company's business;

5.1.2(d) enter into agreements and contracts and to give receipts, releases, and discharges;

5.1.2(d) purchase casualty, liability and other insurance to protect the Company's properties and business;

5.1.2(e) borrow money for and on behalf of the Company, and, in connection therewith, execute and deliver instruments authorizing the confession of judgment against the Company;

5.1.2(f) execute or modify leases with respect to any part or all of the assets of the Company;

5.1.2(g) prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any asset of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;

5.1.2(h) execute any and all other instruments and documents which may be necessary or in the opinion of the Managing Member desirable to carry out the intent and purpose of this Agreement, including, but not limited to, documents whose operation and effect extend beyond the term of the Company;

5.1.2(i) make any and all expenditures which the Managing Member, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, with limitation, all legal, accounting and other related expenses incurred in connection with the organization and financing and operation of the Company.

5.1.2(j) enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company;

5.1.2(k) invest and reinvest Company reserves in short-term instruments or money market funds;

5.1.2(l) institute, prosecute and defend any lawsuits, claims or actions in the Company's name; and

5.1.2(m) hire, appoint and discharge employees and agents of the Company, define their duties and fix their compensation on such terms as the Managing Member shall determine.

5.1.3. *Extraordinary Transactions.* Notwithstanding anything to the contrary in this Agreement, the Managing Member shall not undertake any of the following without the approval of the Members.

5.1.3(a) any Capital Transaction, other than a refinancing of any mortgage encumbering any of the Company's properties;

5.1.3(b) the Company's borrowing of more than \$2,000,000.00.

5.1.3(c) the admission of additional Members to the Company;

5.1.3(d) the Company's engaging in business in any jurisdiction which does not provide for the registration of limited liability companies;

5.1.3(e) the sale, exchange, lease, mortgage pledge, or other transfer of all or substantially all of the assets of the Company not in the ordinary course of business;

5.1.3(f) approval of a merger or consolidation of the Company with or into another LLC or other business entity; and

5.1.3(g) amending the Articles (except as permitted by the Act).

5.1.4. *Limitation on Authority of Members.*

5.1.4(a) No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

5.1.4(b) This Section 5.1 supersedes any authority granted to the Members pursuant to Section 401 of the Law. Any Member who takes any action or binds the Company in violation of this Section 5.1 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

5.1.5. *Removal of Manager.* The Members, at any time and from time to time and with or without cause, by the affirmative vote of Members holding a majority (over 66 2/3rd's percent) or more of the Percentages then held by Members, may remove any or all managers of the Company then acting and elect a new manager or managers or make other provisions or arrangements for the management of the Company.

5.2. *Meetings of and Voting by Members.*

5.2.1. A meeting of the Members may be called at any time by the Managing Member or by those Members holding at least 33 1/3 percent of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place in the State of New York designated by the Person calling the meeting. Not less than ten (10) nor more than sixty (60) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, hour, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than a majority (over 50 percent) of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney-in-fact.

5.2.2. Except as otherwise provided in this Agreement, the affirmative vote of Members holding a majority (over 66 2/3rd's percent) or more of the Percentages then held by Members shall be required to approve any matter coming before the Members.

5.2.3. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding such Percentages then held by Members as

would be required for Members to take action under this Agreement.

5.3. *Personal Service - Compensation.*

5.3.1. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Managing Member, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

5.3.2. The Managing Member shall be reimbursed for all out-of-pocket expenses reasonably incurred in connection with the management of the Company's business. The Managing Member shall receive compensation at a rate equal to five (5.00%) percent of the gross rental income received by the Company from real property owned by the Company.

5.4. *Duties of Parties.*

5.4.1. The Managing Member shall devote such time to the business and affairs of the Company as is necessary to carry out the Managing Member's duties set forth in this Agreement.

5.4.2. Except as otherwise expressly provided in Section 5.4.3. nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

5.4.3. Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

5.5. *Liability and Indemnification.*

5.5.1. The Managing Member shall not be liable, responsible, or accountable, in damages or otherwise, to any Member

or to the Company for any act performed by the Managing Member within the scope of the authority conferred on the Managing Member by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

5.5.2. The Company shall indemnify the Managing Member for any act performed by the Managing Member within the scope of the authority conferred on the Managing Member by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

#### 5.6. Power of Attorney.

5.6.1. *Grant of Power.* Each Member constitutes and appoints the Managing Member as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place, and stead, to make, execute, sign, acknowledge, and file:

5.6.1(a) one or more articles of organization;

5.6.1(b) all documents (including amendments to articles of organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement.

5.6.1(c) any and all other certificates or other instruments required to be filed by the Company under the laws of the State of New York or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of New York;

5.6.1(d) one or more fictitious or trade name certificates; and

5.6.1(e) all documents which may be required to dissolve and terminate the Company and to cancel its articles of organization.

5.6.2. *Irrevocability.* The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of a Membership Interest, except that if the transferee is admitted as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this



power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

## Article VI

### Transfer of Interests and Withdrawal of Members

6.1.1. *Transfers, Conditions of Transfer.* No Person may Transfer all or any part of any interest or rights in the Person's Membership Interest unless the following conditions are satisfied:

A. The Transfer will not require the registration of the economic interest or Membership Interest under any federal or state securities law;

B. The transferee delivers to the Company a written agreement to be bound by the terms of this Agreement;

C. The Transfer will not result in the termination of the Company pursuant to Code Section 708;

D. The Managing Member shall have consented in writing to the Transfer;

E. The transferor or the transferee delivers the following information to the Company; (i) the transferee's Taxpayer Identification Number; (ii) the transferee's initial tax basis of the Transferred Interest; and (iii) the transferor complies with the provisions set forth in Section 6.1.4.

6.1.2 If the above conditions are satisfied then a Member or Transferee may transfer all or any portion of that Person's economic interest subject to the terms of Section 6.1.4. The Transfer of an economic interest pursuant to this Section 6.1 shall not result, however, in the Transfer of the remainder, if any, of the Transferrer's other membership interest and the Transferee of the economic interest shall have no right to (i) become a Member; (ii) exercise any rights of a Member other than those specifically pertaining to the ownership of an economic interest; or (iii) act as agent of the Company.

6.1.3. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The voluntary Transfer of any Membership Interest, including economic interests, in violation of the prohibition contained in this Section 6.1 shall be deemed

invalid, null and void, and of no force or effect. Any Person to whom Membership Interests are attempted to be transferred in violation of this Section 6.1 shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Membership Interest.

6.1.4. *Right of First Offer.*

6.1.4.1. If a Member (a "Transferor") desires to Transfer all or any portion of, or any interest or rights in, the Transferor's Membership Interest (the "Transferor Interest"), the Transferor shall notify the Company of that desire (the "Transfer Notice"). The Transfer Notice shall describe the Transferor Interest. The Company and any of the other Members ("Remaining Members") shall have the option (the "Purchase Option") to purchase all of the Transferor Interest for a price (the "Purchase Price") equal to the amount the Transferor would receive if the Company were liquidated and an amount equal to the Book Value (as determined pursuant to Section 6.4) were available for distribution to the Members pursuant to Section 4.4. Within five (5) business days after receipt of the Transfer Notice, the Managing Member shall send a copy of the Transfer Notice to the Remaining Members.

6.1.4.2. The Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") commencing on the date of the Transfer Notice and ending at 6:00 P.M., at the Company's Principal Office, on the one hundred eightieth (180th) day following the date of the Transfer Notice.

6.1.4.3. At any time during the Transfer Period, either the Company or one or more of the Remaining Members may elect to exercise the Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of voting on whether the Company shall elect to exercise the Purchase Option.

6.1.4.4. If the Company or one or more of the Remaining members elects to exercise the Purchase Option, the notice of election shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than fifteen (15) days after the date of the notice of election or more than ninety (90) days after the expiration of the Transfer Period.

6.1.4.5. If the Company or one or more of the Remaining Members elects to exercise the Purchase Option, the Purchase Price shall be paid in cash on the Transfer Closing Date unless they

elect to pay the Purchase Price in installments pursuant to Section 6.5 of this Agreement.

6.1.4.6. If the Company or the Remaining Members fail to exercise the Purchase Option, the Managing Member, on behalf of the Company, shall offer and sell the Transferor Interest to any Person for a period of one Hundred eighty (180) days after the expiration of the Transfer Period at the best price that can be obtained.

6.1.4.7. Any Transfer of the Transferor Interest made without strict compliance with the terms, provisions, and conditions of this Section 6.1 and the other terms, provisions and conditions of this Agreement, shall be null and void and of no force or effect.

6.1.5 *Transfers to Affiliates and Family.* Notwithstanding anything set forth in this Agreement to the contrary, but provided that the Conditions of Transfer are satisfied, any Member may at any time, and from time to time, Transfer all, or any portion of, or any interest or rights in, the Member's Membership Interest to (i) any member of the Member's Family; or (ii) any Affiliate of the Member.

6.1.6 *Admission of Transferee as Member.* If the Conditions of Transfer are satisfied, then the transferee shall be admitted as a Member and shall be entitled to exercise the rights of a Member.

6.2. *Voluntary Withdrawal.* No Member shall have the right or power to Voluntary Withdraw from the Company, except as otherwise provided by this Agreement. Any withdrawal in violation of this Agreement shall entitle the Company to damages for breach, which may be offset against the amounts otherwise distributable to such Member.

6.2.1. If any Member (the "Withdrawing Member") shall elect to withdraw or retire from the Company, the Withdrawing Member shall serve written notice of the Withdrawing Member's election to withdraw or retire (the "Withdrawal Notice") upon the Company. Within five (5) business days after receipt of the Withdrawal Notice, the General manager shall send a copy of the Withdrawal Notice to the Remaining Members.

6.2.2. Upon the receipt of the Withdrawal Notice, the Company and any of the other Members (the "Remaining Members") shall have the right to either (i) purchase the Membership Interest of the Withdrawing Member within one hundred eighty (180) days (the "Withdrawal Period") from the date of their receipt of the Withdrawal Notice, or if the Withdrawal Notice was received by the Remaining Members on different dates, then from the latest date of

receipt by a Remaining Member of the Withdrawing Member's Withdrawal Notice; or (ii) dissolve the Company and liquidate its business.

6.2.3 In the event that the Remaining Members do not elect to dissolve the Company, each Remaining Member shall have the primary right to purchase the Withdrawing Member's Membership Interest in the same proportion that such Remaining Member's Percentage bears to the Percentage interest of the other Remaining Members in the Company and a secondary right to purchase the remaining portion of the Withdrawing Member's Interest not purchased by any other Remaining Member in the exercise of his primary right. If more than one Remaining Member desires to exercise his secondary right to purchase any remaining portion of the Withdrawing Member's Membership Interest, they shall be entitled to purchase the same in equal proportions.

6.2.3.1. If the Remaining Members, or one or more of them, elect to purchase the Withdrawing Member's entire Membership Interest, they shall give written notice of their election to the Withdrawing Member, the Managing Member and the Remaining Members before the end of the Withdrawal Period. If the Remaining Members, or one or more of them, elect to purchase the Withdrawing Member's entire Membership Interest, the Purchase Price shall be the Book Value, as determined pursuant to Section 6.4, as of the close of business on the date of the Withdrawal Notice. The Purchase Price shall be paid on the Closing Date and in accordance with Section 6.5

6.2.3.2 If the Withdrawing Member's Interest is accepted for purchase by two or more Remaining Members, the portion of the Purchase Price payable by each Remaining Member shall be the sum determined by multiplying the Purchase Price for the entire Withdrawing Member's interest by the fraction representing the proportion purchased by the respective remaining Members.

6.2.4 If the Remaining Members do not elect, before the expiration of the Withdrawal Period, and in the manner herein provided, to purchase the Withdrawing Member's interest, the Remaining Members shall be deemed to have elected to dissolve the Company. The Managing Member shall wind up the Company's affairs in accordance with the provisions of this Agreement. On winding up of the Company, the assets of the Company shall be distributed, first to creditors of the Company, including Members who are creditors, in satisfaction of the liabilities of the Company, and then to the Members in accordance with Section 4.4.

6.3. *Involuntary Withdrawal.* Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon become an economic interest holder, but shall not become a Member. If the Company is continued as provided in Section 7.1.3., the successor Member shall have all the rights of Member, but shall not be entitled to receive in liquidation of the economic interest, the fair market value of the Member's economic interest as of the date the Member involuntarily withdrew from the Company.

6.3.1. *Purchase Option in Event of Involuntary Withdrawal.*

If the Members elect to continue the Company after an Involuntary Withdrawal, the Withdrawn Member shall be deemed to offer for sale (the "Withdrawal Offer") to the Company and the Members other than the Withdrawn Member ("Remaining Members") all of the Membership Interests owned of record and beneficially by the withdrawn Member (the "Withdrawal Interest") for a price (the "Purchase Price") equal to the Withdrawn Member's Percentage times the amount the Withdrawn Member would receive if the Company were liquidated and an amount equal to the Book Value were available for distribution to the Withdrawn Member pursuant to Section 4.4. (the "Withdrawal Purchase Price"). In the absence of an agreement among the Remaining Members, each Remaining Member shall purchase the Withdrawal Interest in the proportion that his respective Percentage bears to the total Percentages of all of the Remaining Members.

6.3.2 The Remaining Members, by written notice addressed to the Withdrawn Member, shall fix a closing date (the "Withdrawal Closing Date") for the purchase. The Withdrawal Closing Date shall not be earlier than ten (10) days or later than one hundred eighty (180) days after the later of the date on which the Involuntary Withdrawal occurred or the date on which the Company received notice of the Involuntary Withdrawal.

6.3.3. The Withdrawal Purchase Price shall be paid in cash on the Withdrawal Closing Date, unless the Remaining Members elect prior to or on the Withdrawal Closing Date to pay the Withdrawal Purchase Price in installments as provided in Section 6.5 of this Agreement. Simultaneously with the delivery of the Remaining Members' promissory notes to evidence their respective obligations to pay the Withdrawal Purchase Price, the Withdrawn Member shall execute, and deliver to the Remaining Members those assignments and other instruments as may be reasonably required to vest in the Remaining Members all right, title, and interest in and to the Withdrawal Interest, free and clear of all liens and encumbrances.

6.3.4. Notwithstanding anything to the contrary contained in this Section 6.3, in the event of the death of a Member who is a natural person, and only in such event, the duly qualified legal representative of such deceased Member shall have the right to elect to have the estate of such deceased Member continue as a Member for the purpose of if settling the deceased Member's estate and administering the estate's property during such period of administration. The notice of such election shall be given to the Company within 60 days of the date of death of the deceased Member. Upon the giving of such notice, the provisions of Section 6.3 shall not be applicable.

#### 6.4. Book Value.

6.4.1 The term "Book Value" shall mean the book value of the seller's equity in the Company as of the end of the last full taxable year immediately preceding the date of any Transfer Notice, Withdrawal Notice or Involuntary Withdrawal (collectively "Withdrawal Notice"). The Book Value shall be adjusted by substituting the fair market value as of that date, in place of the Book Value, of any real estate owned by the Company. The Adjusted Book Value shall be established in accordance with the accounting practices regularly following by the Company, and in cases not covered by such practices, in accordance with generally accepted accounting practices.

(a). No allowance shall be made for goodwill, trade names or other intangible assets, except for those intangible assets which have been reflected on the Company's books immediately prior to the date of the Withdrawal Notice.

(b). Such Book Value shall include the Withdrawing Member's Capital Account as at the end of the last accounting year as shown on the Company's books, increased by the withdrawing Member's share of Profits or decreased by the Member's share of Losses for the period from the beginning of the accounting year in which the withdrawal occurred until the date of the Withdrawal Notice as increased by contributions and decreased by withdrawals during such periods.

(c). In making the adjustment for the fair market value of real estate, such real estate shall be appraised in accordance with Section 6.4 of this Agreement.

(d). A statement showing the Adjusted Book Value and the supporting items and computations, including, without limitation, a copy of the appraisal relied upon, shall be completed by the Managing Member in accordance with the accounting practices

regularly followed by the Company. A copy shall be delivered to the Withdrawing Member and to the Remaining Members before the expiration of the Withdrawal Period.

(e). The Adjusted Book Value as set out in the statement shall constitute and be deemed to be the Purchase Price for the Withdrawing Member's Membership Interest, binding upon all Members, unless and until change by written agreement of the Members or by an arbitration award as otherwise herein provided.

(f). The Adjusted Book Value (Purchase Price) as determined pursuant to the preceding paragraphs shall be subject to increases and decreases as follows: If either the withdrawing Member or the remaining Members shall dispute the adjusted book value shown on the account statement, such party shall give to the withdrawing Member and all other remaining Members written notice of such dispute, containing a specification of the reasons therefore, within twenty (20) days after the expiration of the accepted. If the dispute is not settled within twenty (20) days thereafter by written Agreement between the withdrawing Member and the remaining Members (the agreement of a majority of the Members shall constitute the agreement of and shall be binding upon all of the remaining Members) then the Book Value of the withdrawing Member's interest as of the date of his withdrawal, as adjusted, and the dispute respecting same, shall be settled and determined by arbitration as provided in Section 9.9. If the amount of such adjusted book value is changed by the Agreement of the parties or by the Arbitrator, the new amount shall govern and shall be the Purchase Price of the withdrawing Member's Interest.

If the new amount is not fixed and determined until after the Closing Date, then (i) any increase in the Purchase Price shall be paid in cash by the Purchaser to the withdrawing Member within six (6) months after the date of the Agreement or the arbitration award or on the thirtieth (30th) day of January of the following calendar year in which the Closing Date occurs, whichever date is later; and (ii) any decrease in the Purchase Price shall be credited against the Promissory Note of the Purchaser in the invoice order of maturity.

6.4.2. In the event that the Withdrawn Member does not agree with the appraisal of the real estate assets annexed to the statement showing the Adjusted Book Value. Within fifteen (15) days after demand by either one to the other, the Company and the withdrawn Member shall each appoint an appraiser to determine the fair market value of the Company's real estate assets. If the two appraisers agree upon the equity value of the Company's assets, they shall jointly render a single written report stating that



value. If the two appraisers cannot agree upon the equity value of Company's assets, they shall each render a separate written report and shall appoint a third appraiser, who shall appraise the Company's Assets and determine the value of the equity therein, and shall render a written report of his opinion thereon. Each party shall pay the fees and other costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties. The appraiser shall be instructed to disregard any premium for control or discount for minority interest.

6.4.2. The fair market value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the fair market value used to adjust the Book Value as provided in section 6.4.1; provided, however, that if the fair market value contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall govern; and provided, further, that if the value of the equity contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall govern.

#### *6.5 Payment of Purchase Price, Closing.*

6.5.1. The Purchase Price due from each purchasing Remaining Member ("Purchaser") shall be paid by the Purchaser to the Withdrawing Member as follows: (i) 25% in cash on the Closing Date (as hereinafter defined) and (ii) the balance by the Purchaser's execution and delivery of twelve (12) Promissory Notes, each dated as of the Closing Date, each in the principal amount of 1/12 of the balance of the Purchase Price, payable with interest at the rate of nine (9.00%) per cent per annum to the order of the Withdrawing Member at a New York City Bank. The first of such Note shall be payable on a date three months following the Closing Date and the remaining 11 Notes shall be payable successively, every three months thereafter. The Promissory Notes shall provide that they may be prepaid at any time without premium or penalty in inverse order of maturity and shall recite that all Promissory Notes shall become due at the option of the holder if all or any part of the principal or interest due on any such Note remains unpaid for thirty (30) days after the date on which same shall become due by terms of such Promissory Note.

6.5.2. The Closing Date shall be the thirtieth (30th) day after the expiration of the Withdrawal Period, provided, however, that the Purchaser shall have the right to advance the Closing Date on five (5) days written notice to the Withdrawing Member. The

closing shall be held at the Principal Office of the Company or at any other place agreed to by the parties.

6.5.3. Simultaneously with the delivery of the Purchase Price, the Withdrawing Member shall deliver to the Purchaser(s) duly executed instruments of transfer and assignment, assigning, conveying and transferring good and marketable title to the Withdrawing Member's entire Membership Interest free from any liens or encumbrances or rights of others. The Withdrawing Member's entire interest thus transferred shall comprise all of his right, title and interest in and to the Company, its name and all assets thereof, including but not limited to, the Withdrawing Member's Capital Account as of the date of the Withdrawal Notice, his share of any undistributed Profits or Losses from any fiscal year up to and his share of net profits from the beginning of the fiscal year in which the withdrawal occurs. The Withdrawing Member's entire interest shall not be deemed to include any debts or liability of the Company to the Withdrawing Members for loans and advances, other than by way of Capital Contribution (made by him, which shall be repaid by the Company as required by the terms of the instruments evidencing such loans and advances. The Percentage of each Purchaser in the Profits and Losses of the Company shall be increased by that portion of the Withdrawing Member's percentage therein equal to the fraction of the Withdrawing Member's entire Membership Interest purchased by such Purchaser.

## Article VII

### Dissolution, Liquidation, and Termination of the Company

7.1. *Events of Dissolution.* The Company shall be dissolved upon the happening of any of the following events:

(a). when the period fixed for its duration in Section 2.4 has expired;

(b). upon the written agreement of the Members holding 2/3 or more of the Percentages then held by Members; or

(c). the occurrence of an Involuntary Withdrawal unless remaining Members holding 2/3 or more of the Percentages then held by Members, within ninety (90) days after the occurrence of the Involuntary Withdrawal, elect to continue the business of the Company pursuant to the terms of this Agreement.

7.2. *Procedure for Winding Up and Dissolution.* If the Company is dissolved, the Managing Member shall wind up its affairs. On winding up of the Company, the assets of the Company

shall be distributed, first, to creditors of the Company, including Members who are creditors, in satisfaction of the liabilities of the Company, and then to the Members in accordance with Section 4.4.

7.3. *Filing of Articles of Dissolution.* If the Company is dissolved, the Managing Member shall promptly file Articles of Dissolution with the Department of State. If there is no Managing Member, then the Articles of Dissolution shall be filed by the remaining Members; if there are no remaining Members, the Articles shall be filed by the last Person to be a Member, if there is neither a Managing Member, remaining Members, or a Person who last was a Member, the Articles shall be filed by the legal or personal representatives of the Person who last was a Member.

## Article VIII

### Books, Records, Accounting and Tax Elections

8.1. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Managing Member 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 the funds therein.

#### 8.2. *Books and Records.*

8.2.1. The Managing Member shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the Company's business. The records shall include, but not be limited to:

(1) a current alphabetized list of the names and addresses of all of the Members, as well as the contribution and the share of profits and losses of each Member or information from which such share can be readily derived.

(2) if the firm is managed by a manager or managers, a current alphabetized list of the names and addresses of the managers;

(3) a copy of the Articles and all amendments thereto or restatements thereof, together with executed copies of any power of attorney pursuant to which any certificate of amendment has been executed;

(4) a copy of the Operating Agreement and any amendments thereto and any amended and restated operating agreement; and

(5) a copy of the Company's federal, state, and local income tax or information returns and reports, if any, for the three most recent fiscal years.

8.2.2. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

8.2.3. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

8.3. *Annual Accounting Period.* The annual accounting period of the Company shall be its Fiscal Year. The Company's taxable year shall be its Fiscal Year, subject to the requirements and limitations of the Code.

8.4. *Reports.* Within one hundred twenty (120) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was a Member at any time during the taxable year then ended: (i) an annual compilation report, prepared by the Company's independent accountants in accordance with standards issued by the American Institute of Certified Public Accountant; and (ii) a report summarizing the fees and other remuneration paid by the Company to any Member, the Managing Member, or any Affiliate in respect of the taxable year. In addition, within one hundred twenty (120) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was an Member at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year. At the request of any Member, and at the Member's expense, the Managing Member shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

8.5. *Tax Matters Member.* The Managing Member shall be the Company's tax matters Member ("Tax Matters Member"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Member shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all

reasonable third party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

8.6. *Tax Elections.* The Managing Member shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the Managing Member's sole and absolute discretion.

8.7. *Title to Company Property.*

8.7.1. Except as provided in Section 8.7.2., all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

8.7.2. The Managing Member may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Managing Member may cause title to be acquired and held in its name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company and all of such property shall be treated as Company property.

## Article IX

### General Provisions

9.1. *Assurances.* Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing and other acts as the Managing Member deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

9.2. *Notifications.* Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either served or delivered personally or sent by certified or registered mail, postage prepaid, return receipt

requested or by facsimile transmission. Any notice to be given hereunder by the Company shall be given by the Managing Member. A notice must be addressed to a Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's Principal Office. A notice that is sent by mail will be deemed given when it is mailed. A notice that is served or delivered personally will be deemed given when it is served or delivered. A notice sent by facsimile is deemed given when receipt is acknowledged. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

9.3. *Specific Performance.* The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

9.4. *Complete Agreement.* This Agreement constitutes the complete and exclusive statement of the agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended except in writing with the written consent of the Members holding 2/3 or more of the Percentages then held by Members.

9.5. *Applicable Law.* All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of New York.

9.6. *Article and Section Titles.* The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

9.7. *Binding Provisions.* This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective

heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

9.8. *Exclusive Jurisdiction and Venue.* Any suit involving any dispute or matter arising under this Agreement may only be brought in a United States District Court located in the State of New York or any New York State Court having jurisdiction over the subject matter of the dispute or matter. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

9.9. *Arbitration.* Any controversy or claim arising out of or relating to this Agreement, or to its interpretation, breach or enforcement, shall be submitted to and settled by binding arbitration in the City of New York in accordance with the rules of the American Arbitration Association. Any award made by the Arbitrator or Arbitrators shall be final, binding and conclusive on all parties for all purposes and judgment may be entered on the award in any court having jurisdiction.

9.10. *Terms.* Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

9.11. *Separability of Provisions.* Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

9.12. *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

9.13. *Estoppel Certificate.* Each Member shall, within ten (10) days after written request by the Managing Member, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof. If the certificate is not received within that ten (10) day period, the Managing Member shall execute and deliver the certificate on behalf of the requested



Member, without qualification, pursuant to the power of attorney granted in Section 5.6.

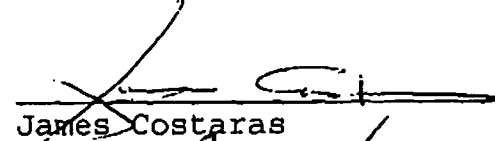
IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

WITNESS OR ATTEST

MEMBERS



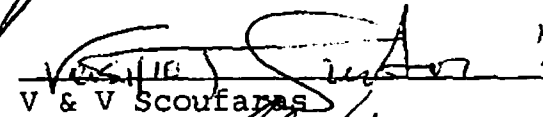
Michael Demetriou



James Costaras



Angie Keriazes



V & V Scoufaras



George Kondos

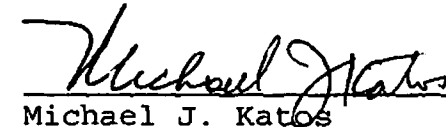
E & A Associates

By: 

Authorized Signatory



Stephen Katos



Michael J. Katos

Exhibit A

List of Members, Capital, and Percentages

<u>Name, Address</u>	<u>SSN</u>	<u>Capital Contribution</u>
Michael Demetriou 20 Rolling Drive Brookville, NY 11545	131-24-3138	16.33% interest in Laconia Realty Co.
James Costaras 14-05 156 <sup>th</sup> Street Beechhurst, NY 11357	131-24-6603	6.13% interest in Laconia Realty Co.
V & V Scoufaras 23-32 26 <sup>th</sup> Street Astoria, NY 11105		8.17% interest in Laconia Realty Co.
Angie Keriazes 24-49 Crescent Street Astoria, NY 11105	103-28-5626	6.13% interest in Laconia Realty Co.
George Kondos <del>259 Ft. Hill Road</del> & CASTLE WALK Scarsdale, NY 10583	<del>133-38-9543</del> 110-40-0350	4.08% interest in Laconia Realty Co.
E & A Associates 128 South Road Stanfordville, NY 12581		8.17% interest in Laconia Realty Co.
Stephen Katos 128 South Road Stanfordville, NY 12581	064-32-7542	25.5% interest in Laconia Realty Co.
Michael J. Katos 128 South Road Stanfordville, NY 12581	064-32-7239	25.5% interest in Laconia Realty Co.

## **2012 APPOINTMENT OF NEW MANAGERS**

# Laconia Properties, LLC

21-11 31st Street  
Astoria, NY 11105

718-932-5600  
Fax 718-726-7912

June 28, 2012

James Costaras  
14-05 156<sup>th</sup> Street  
Beechhurst, NY 11357

Re: Appoint of new Managing Members  
4125-4141 Laconia Avenue, Bronx, NY

Dear Partners:

Due to the unfortunate demise of Michael J. Katos, we must appoint new Managing Member(s) to the partnership. As the sole surviving Managing Member, it is my recommendation that the following three individuals replace Michael at this time:

- 1) George Kondos, who has been involved with Ditmars Consultants since its inception, has over 40 years experience in management and finance and has been handling the day-to-day management of the property for the last 10 years. His expertise includes being an executive officer of four banks, with his highest title being President of Crossland Savings Bank.
- 2) Demetrios Katos, who joined Ditmars Consultants in 2002, is currently an Associate Broker and is working to obtain his Brokers License. He has been involved in the day-to-day operations of the company and the management of the property for the last six years.
- 3) Argyrios Katos received his law degree in 2007 and has been practicing law this last year out of the Ditmars Consultants' office. He is involved with the legal aspects of the property and was our legal counsel for the recent refinance of the subject property loan.

I hereby recommend that the partners approve the aforementioned. I believe together with the three new Managing Members, we will make a good team for the future. They have proven themselves to be able to continue the proper management of the property, which will ensure that the property continues to have an increase in its value.

Under the bi-laws we require an affirmative vote of a majority of the Members, or 66 2/3 %.


Kindly acknowledge your acceptance of this letter and return same to our office no later than July 25, 2012.

Very truly yours,

  
Stephen Katos

SK/jf

Agreed & Accepted:

  
James Costaras

# Laconia Properties, LLC

21-11 31st Street  
Astoria, NY 11105

718-932-5600  
Fax 718-726-7912

June 28, 2012

V & V Scoufaras Partners  
23-32 26<sup>th</sup> Street  
Astoria, NY 11105

Re: Appoint of new Managing Members  
4125-4141 Laconia Avenue, Bronx, NY

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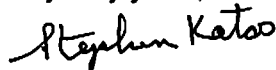
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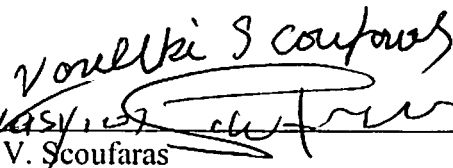
Very truly yours,



Stephen Katos

SK/jf

Agreed & Accepted:

  
V. Scoufaras

# Laconia Properties, LLC

21-11 31st Street  
Astoria, NY 11105

718-932-5600  
Fax 718-726-7912

June 28, 2012

E & A Associates  
128 South Road  
Stanfordville, NY 12581

Re: Appoint of new Managing Members  
4125-4141 Laconia Avenue, Bronx, NY

Dear Partners:

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Very truly yours,



Stephen Katos

SK/jf

Agreed & Accepted:

AK

Anna Katos

# *Laconia Properties, LLC*

*21-11 31st Street  
Astoria, NY 11105*

*718-932-5600  
Fax 718-726-7912*

June 28, 2012

Katos 2000  
128 South Road  
Stanfordville, NY 12581

Re: Appoint of new Managing Members  
4125-4141 Laconia Avenue, Bronx, NY

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Very truly yours,

  
Stephen Katos

SK/jf

Agreed & Accepted: \_\_\_\_\_

*SK*  
Stephen Katos

# *Laconia Properties, LLC*

*21-11 31st Street  
Astoria, NY 11105*

*718-932-5600  
Fax 718-726-7912*

June 28, 2012

D & M Associates  
23-14 38<sup>th</sup> Street  
Astoria, NY 11105

Re: Appoint of new Managing Members  
4125-4141 Laconia Avenue, Bronx, NY

Dear Partners:

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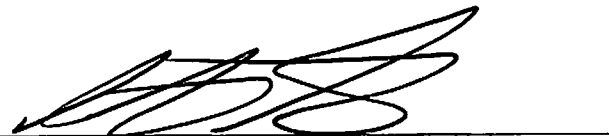
Very truly yours,



Stephen Katos

SK/jf

Agreed & Accepted:



Demetrios Katos



# Laconia Properties, LLC

21-11 31st Street  
Astoria, NY 11105

718-932-5600  
Fax 718-726-7912

June 28, 2012

George Kondos  
2 Castle Walk  
Scarsdale, NY 10583

Re: Appoint of new Managing Members  
4125-4141 Laconia Avenue, Bronx, NY

Dear Partners:

Due to the unfortunate demise of Michael J. Katos, we must appoint new Managing Member(s) to the partnership. As the sole surviving Managing Member, it is my recommendation that the following three individuals replace Michael at this time:

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Very truly yours,

  
Stephen Katos

SK/jf

Agreed & Accepted:

  
George Kondos

**D&M ASSOCIATES K-1**

Schedule K-1 (Form 1065)

Department of the Treasury Internal Revenue Service

2019

For calendar year 2019, or tax year

Final K-1

Amended K-1

OMB No. 1545-0123

beginning ending

Partner's Share of Income, Deductions, Credits, etc.

See separate instructions.

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 2 columns: Description and Amount. Rows include Ordinary business income (loss), Credits, Net rental real estate income (loss), Foreign transactions, Other net rental income (loss), Guaranteed payments for services/capital, Total guaranteed payments, Interest income, Alternative min tax (AMT) items, Ordinary dividends, Tax-exempt income and nondeductible expenses, Qualified dividends, Dividend equivalents, Royalties, Distributions, Net short-term capital gain (loss), Net long-term capital gain (loss), Collectibles (28%) gain (loss), Unrecaptured section 1250 gain, Net section 1231 gain (loss), Other income (loss), Section 179 deduction, Other deductions, Self-employment earnings (loss), More than one activity for at-risk/passive purposes.

Part I Information About the Partnership

Part I Information About the Partnership. Fields: A Partnership's employer identification number (11-2407039), B Partnership's name, address, city, state, and ZIP code (LACONIA PROPERTIES, LLC, 128 SOUTH ROAD, STANFORDVILLE, NY 12581), C IRS Center where partnership filed return (E-FILE), D Check if this is a publicly traded partnership (PTP).

Part II Information About the Partner

Part II Information About the Partner. Fields: E Partner's SSN or TIN (20-0141947), F Name, address, city, state, and ZIP code for partner (D & M ASSOCIATES, 128 SOUTH ROAD, STANFORDVILLE, NY 12581), G General partner or LLC member-manager (checked), Limited partner or other LLC member, H1 Domestic partner (checked), Foreign partner, H2 If the partner is a disregarded entity (DE), enter the partner's: TIN, Name, I1 What type of entity is this partner? (PARTNERSHIP), I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here, J Partner's share of profit, loss, and capital: Beginning/Ending Profit, Loss, Capital percentages, Check if decrease is due to sale or exchange of partnership interest, K Partner's share of liabilities: Beginning/Ending Nonrecourse, Qualified nonrecourse financing, Recourse amounts, Check this box if Item K includes liability amounts from lower tier partnerships.

L Partner's Capital Account Analysis. SEE STATEMENT. Table with 2 columns: Description and Amount. Rows: Beginning capital account (\$70,702), Capital contributed during the year, Current year net income (loss) (\$41,415), Other increase (decrease) (attach explanation), Withdrawals & distributions, Ending capital account (\$112,117).

M Did the partner contribute property with a built-in gain or loss? Yes No (checked) If "Yes," attach statement. See instructions.

N Partner's Share of Net Unrecognized Section 704(c) Gain or (Loss). Beginning Ending

For IRS Use Only

\*See attached statement for additional information.

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SCHEDULE K-1 SECTION 199A INFORMATION, BOX 20, CODE Z

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DESCRIPTION	AMOUNT
RENT - 4125-4141 LACONIA AVENUE	
RENTAL INCOME (LOSS)	41,025.
UNADJUSTED BASIS OF ASSETS	23,846.

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SCHEDULE K-1 CURRENT YEAR NET INCOME (LOSS) AND  
OTHER INCREASES(DECREASES)

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DESCRIPTION	AMOUNT	TOTALS
RENTAL REAL ESTATE INCOME (LOSS)	41,025.	
DIVIDEND INCOME	390.	
SCHEDULE K-1 INCOME SUBTOTAL		41,415.
NET INCOME (LOSS) PER SCHEDULE K-1		41,415.

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SCHEDULE K-1 ITEM L. PARTNER'S CAPITAL ACCOUNT ANALYSIS

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TAX BASIS

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SCHEDULE K-1 FOOTNOTES

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THE PARTNERSHIP IS NOT SUBJECT TO THE IRC SEC. 163(J)  
BUSINESS INTEREST LIMITATION FOR THE CURRENT TAX REPORTING  
PERIOD. IN THE EVENT THAT YOU ARE SUBJECT TO THE  
IRC SEC. 163(J) BUSINESS INTEREST LIMITATION,  
PLEASE CONTACT US FOR THE NECESSARY INFORMATION.

Schedule K-1 (Form 1065)

2007

Department of the Treasury Internal Revenue Service

For calendar year 2007, or tax year beginning ... 2007 ending ... 20

Partner's Share of Income, Deductions, Credits, etc. See back of form and separate instructions.

Final K-1 Amended K-1 OMB No. 1545-0099

Part I Information About the Partnership

A Partnership's employer identification number 11-2407039
B Partnership's name, address, city, state, and ZIP code Laconia Properties, LLC 128 South Road Stanfordville, NY 12581
C IRS Center where partnership filed return Cincinnati, OH
D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number 20-0141947
F Partner's name, address, city, state, and ZIP code D & M Associates 128 South Road Stanfordville, NY 12581

G General partner or LLC member-manager Limited partner or other LLC member
H Domestic partner Foreign partner
I What type of entity is this partner? Partnership
J Partner's share of profit, loss, and capital:
K Partner's share of liabilities at year end:

L Partner's capital account analysis:
Beginning capital account
Capital contributed during the year
Current year increase (decrease)
Withdrawals & distributions
Ending capital account
Tax basis GAAP Section 704(b) book Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 2 columns: Item number and Description. Rows include Ordinary business income (loss), Net rental real estate income (loss), Other net rental income (loss), Guaranteed payments, Interest income, Ordinary dividends, Qualified dividends, Royalties, Net short-term capital gain (loss), Net long-term capital gain (loss), Collectibles (28%) gain (loss), Unrecaptured section 1250 gain, Net section 1231 gain (loss), Other income (loss), Section 179 deduction, Other deductions, Self-employment earnings (loss), Credits, Foreign transactions, Alternative minimum tax (AMT) items, Tax-exempt income and nondeductible expenses, Distributions, Other information.

\*See attached statement for additional information.

For IRS Use Only

# **KATOS 2000 K-1**

Schedule K-1 (Form 1065)

Department of the Treasury Internal Revenue Service

2019

For calendar year 2019, or tax year

Final K-1

Amended K-1

OMB No. 1545-0123

beginning ending

Partner's Share of Income, Deductions, Credits, etc.

See separate instructions.

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 2 columns: Description and Amount. Rows include Ordinary business income (loss), Credits, Net rental real estate income (loss), Foreign transactions, Other net rental income (loss), Guaranteed payments for services/capital, Total guaranteed payments, Interest income, Alternative min tax (AMT) items, Ordinary dividends, Tax-exempt income and nondeductible expenses, Qualified dividends, Dividend equivalents, Royalties, Distributions, Net short-term capital gain (loss), Net long-term capital gain (loss), Collectibles (28%) gain (loss), Unrecaptured section 1250 gain, Net section 1231 gain (loss), Other income (loss), Section 179 deduction, Other deductions, Self-employment earnings (loss).

Part I Information About the Partnership

A Partnership's employer identification number 11-2407039

B Partnership's name, address, city, state, and ZIP code

LACONIA PROPERTIES, LLC 128 SOUTH ROAD STANFORDVILLE, NY 12581

C IRS Center where partnership filed return E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's SSN or TIN (Do not use TIN of a disregarded entity. See inst.) 06-1603096

F Name, address, city, state, and ZIP code for partner entered in E. See instructions.

KATOS 2000 128 SOUTH ROAD STANFORDVILLE, NY 12581

G General partner or LLC member-manager Limited partner or other LLC member

H1 Domestic partner Foreign partner

H2 If the partner is a disregarded entity (DE), enter the partner's:

TIN Name

I1 What type of entity is this partner? PARTNERSHIP

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital:

Table with 2 columns: Beginning, Ending. Rows: Profit, Loss, Capital.

Check if decrease is due to sale or exchange of partnership interest

K Partner's share of liabilities:

Table with 2 columns: Beginning, Ending. Rows: Nonrecourse, Qualified nonrecourse financing, Recourse.

Check this box if Item K includes liability amounts from lower tier partnerships.

L Partner's Capital Account Analysis

SEE STATEMENT

Table with 2 columns: Description, Amount. Rows: Beginning capital account, Capital contributed during the year, Current year net income (loss), Other increase (decrease), Withdrawals & distributions, Ending capital account.

M Did the partner contribute property with a built-in gain or loss?

Yes No

N Partner's Share of Net Unrecognized Section 704(c) Gain or (Loss)

Table with 2 columns: Description, Amount. Rows: Beginning, Ending.

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21 More than one activity for at-risk purposes\* 22 More than one activity for passive activity purposes\*

\*See attached statement for additional information.

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SCHEDULE K-1 SECTION 199A INFORMATION, BOX 20, CODE Z

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DESCRIPTION	AMOUNT
RENT - 4125-4141 LACONIA AVENUE	
RENTAL INCOME (LOSS)	41,025.
UNADJUSTED BASIS OF ASSETS	23,847.

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SCHEDULE K-1 CURRENT YEAR NET INCOME (LOSS) AND  
OTHER INCREASES (DECREASES)

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DESCRIPTION	AMOUNT	TOTALS
RENTAL REAL ESTATE INCOME (LOSS)	41,025.	
DIVIDEND INCOME	390.	
SCHEDULE K-1 INCOME SUBTOTAL		41,415.
NET INCOME (LOSS) PER SCHEDULE K-1		41,415.

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SCHEDULE K-1 ITEM L. PARTNER'S CAPITAL ACCOUNT ANALYSIS

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TAX BASIS

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SCHEDULE K-1 FOOTNOTES

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THE PARTNERSHIP IS NOT SUBJECT TO THE IRC SEC. 163(J) BUSINESS INTEREST LIMITATION FOR THE CURRENT TAX REPORTING PERIOD. IN THE EVENT THAT YOU ARE SUBJECT TO THE IRC SEC. 163(J) BUSINESS INTEREST LIMITATION, PLEASE CONTACT US FOR THE NECESSARY INFORMATION.



Schedule K-1 (Form 1065)

2007

Department of the Treasury Internal Revenue Service

For calendar year 2007, or tax year beginning ... 2007 ending ... 20...

Final K-1 Amended K-1 OMB No. 1545-0099

Partner's Share of Income, Deductions, Credits, etc. See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number 11-2407039
B Partnership's name, address, city, state, and ZIP code Laconia Properties, LLC 128 South Road Stanfordville, NY 12581
C IRS Center where partnership filed return Cincinnati, OH
D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number 061-60-3096
F Partner's name, address, city, state, and ZIP code Katos 2000 128 South Road Stanfordville, NY 12581

G General partner or LLC member-manager Limited partner or other LLC member
H Domestic partner Foreign partner

I What type of entity is this partner? Partnership

J Partner's share of profit, loss, and capital: Table with columns for Beginning and Ending, and rows for Profit, Loss, and Capital.

K Partner's share of liabilities at year end: Nonrecourse, Qualified nonrecourse financing, Recourse

L Partner's capital account analysis: Beginning capital account, Capital contributed during the year, Current year increase (decrease), Withdrawals & distributions, Ending capital account

Tax basis GAAP Section 704(b) book Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 15 rows and 2 columns. Row 1: Ordinary business income (loss) 35,676. Row 2: Net rental real estate income (loss). Row 3: Other net rental income (loss). Row 4: Guaranteed payments. Row 5: Interest income 452. Row 6: Ordinary dividends. Row 7: Qualified dividends. Row 8: Royalties. Row 9: Net short-term capital gain (loss). Row 10: Net long-term capital gain (loss). Row 11: Collectibles (28%) gain (loss). Row 12: Unrecaptured section 1250 gain. Row 13: Net section 1231 gain (loss). Row 14: Other income (loss). Row 15: Self-employment earnings (loss).

\*See attached statement for additional information.

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