



Department of  
Environmental  
Conservation

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

☒ Amendment to [check one or more boxes below]

- ☒ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☐ Yes ☒ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:  
Application to add Gowanus Green Partners LLC to BCA as a prospective purchaser of the property.

**\*Please refer to the attached instructions for guidance on filling out this application\***

**Section I. Existing Agreement Information**

BCP SITE NAME: Carroll Gardens/Public Place Former MGP BCP SITE NUMBER: C224012

NAME OF CURRENT APPLICANT(S): Brooklyn Union Gas Company; City of New York

INDEX NUMBER OF EXISTING AGREEMENT: A2-0610-0808 DATE OF EXISTING AGREEMENT: 2-18-09

**Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME Gowanus Green Partners LLC

ADDRESS 826 Broadway, 11th Floor

CITY/TOWN New York, NY

ZIP CODE 10003

PHONE (212) 777-9500

FAX

E-MAIL akoffman@hudsoninc.com

Is the requestor authorized to conduct business in New York State (NYS)? ☒ Yes ☐ No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

[See Exhibit A](#)

NAME OF NEW REQUESTOR'S REPRESENTATIVE Aaron Koffman

ADDRESS 826 Broadway, 11th Floor

CITY/TOWN New York, NY

ZIP CODE 10003

PHONE (212) 777-9500

FAX

E-MAIL akoffman@hudsoninc.com

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) David Yudelson of Sive, Paget &amp; Riesel P.C.

ADDRESS 560 Lexington Ave, 15th Floor

CITY/TOWN New York, NY

ZIP CODE 10022

PHONE (646) 378-7219

FAX

E-MAIL dyudelson@sprlaw.com

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? [See Exhibit B](#) ☒ Yes ☐ No

Describe Requestor's Relationship to Existing Applicant:

Gowanus Green Partners LLC is the prospective purchaser of the property and has no prior involvement with the site. Gowanus Green Partners has no relationship to either the City of New York or Brooklyn Union Gas Company, the existing applicants.

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☒ No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☒ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☒ No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☒ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☒ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☒ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☒ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? ☐ Yes ☒ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☒ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☒ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☒ No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☒ VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

[See Exhibit C](#)

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☒ Potential /Future Purchaser ☐ Other \_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☒ Yes ☐ No [See Exhibit D](#)

**Note: a purchase contract does not suffice as proof of access.**

#### Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS Intersection of Smith Street and 5th Street

CITY/TOWN Brooklyn, NY

ZIP CODE 11231

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
Smith Street and 5th Street (Parcel I)	I		471	1	3.6
68 5th Street (Parcel II)	II		471	100	2.2

Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

☐

Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

# Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Carroll Gardens/ Public Place MGP Site	BCP SITE NUMBER: C224012
NAME OF CURRENT APPLICANT(S): Brooklyn Union Gas Company; City of New York	
INDEX NUMBER OF EXISTING AGREEMENT: A2-0610-0808	
EFFECTIVE DATE OF EXISTING AGREEMENT: 02/18/09	

### Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

### Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.


Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am (title Authorized Signatory) of (entity Gowanus Green Partners LLC); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Aaron Koffman's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/19/2020 Signature: 

Print Name: Aaron Koffman

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/13/20

Signature: 

Print Name: Rona Reodica

(Entity)

I hereby affirm that I am an Assistant Commissioner (title) of City of New York (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/13/20

Signature: 

Print Name: Rona Reodica

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☒ VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

City of New York  
Gowanus Green Partners LLC

Effective Date of the Original Agreement:

February 13, 2009

Signature by the Department:

DATED: 11/25/20

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

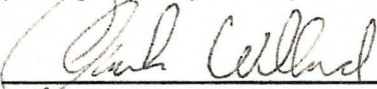
By: 

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

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

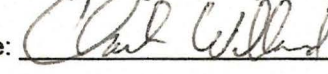
I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/13/2020 Signature: 

Print Name: Charles Willard

(Entity)

I hereby affirm that I am Authorized Representative (title) of The Brooklyn Union Gas Co. d/b/a National Grid NY (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. NY signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/13/2020 Signature: 

Print Name: Charles Willard

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:



**PARTICIPANT**

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

National Grid



**VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

Effective Date of the Original Agreement: February 13, 2009

Signature by the Department:

DATED: 11/25/20

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

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

**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**BROWNFIELD CLEANUP PROGRAM (BCP)**  
**INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

**SECTION II NEW REQUESTOR INFORMATION**

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

**SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.**

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

**SECTION IV****NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

**SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)**

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

# Exhibit A

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through August 17, 2020.

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Selected Entity Name: GOWANUS GREEN PARTNERS LLC

Selected Entity Status Information

**Current Entity Name:** GOWANUS GREEN PARTNERS LLC

**DOS ID #:** 3673145

**Initial DOS Filing Date:** MAY 19, 2008

**County:** NEW YORK

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

C/O HUDSON GOWANUS LLC

ATTN AARON KOFFMAN

826 BROADWAY 11 FL

NEW YORK, NEW YORK, 10003

**Registered Agent**

LESLIE J LEVINE ESQ

ACKERMAN LEVINE ETAL

1010 NORTHERN BLVD SUITE 400

GREAT NECK, NEW YORK, 11021

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_token=9FC136310CD5B5C1F1BDA0DAF648BDB138BB99E48...).

**\*Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

\*Stock information is applicable to domestic business corporations.

**Name History**

Filing Date	Name Type	Entity Name
MAY 19, 2008	Actual	GOWANUS GREEN PARTNERS LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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# Exhibit B

## RESOLUTION

Gowanus Green Partners LLC, a New York limited liability company (the “LLC”) does hereby consent to and adopt the following resolutions:

**WHEREAS**, the LLC will be the developer of the property located at the intersection of 5th Street and Smith Street, Brooklyn, New York (Block 471, Lots 1 and 100 on the Tax Map of Kings County (the “Property”));

**WHEREAS**, the Property has been accepted into the New York State Department of Environmental Conservation Brownfields Cleanup Program (the “BCP”), site C224012;

**WHEREAS**, the LLC is seeking to be added as a requestor to the Brownfield Site Cleanup Agreement with the New York State Department of Environmental Conservation (the “Agreement”), evidencing its participation in the BCP.

**NOW, THEREFORE, BE IT RESOLVED**, that the LLC hereby authorizes and directs Aaron Koffman as Authorized Signatory to acknowledge, execute and deliver for and on behalf of the LLC, any and all agreements, resolutions, documents, certificates, easements, and authorizations which may be necessary, convenient or advisable to effect the inclusion of the Property in the BCP, including but not limited to, the Agreement, and to take such additional actions as he deems desirable and appropriate to carry out the intent and to accomplish the purposes of these resolutions;

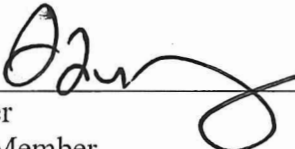
**RESOLVED FURTHER**, that any and all lawful action taken in good faith by the Authorized Signatory prior to the date hereof on behalf of the LLC and in furtherance of the transactions contemplated by the foregoing resolution are in all respects ratified, confirmed and approved by the LLC as its own acts and deeds, and shall conclusively be deemed to be the acts and deeds of the LLC for all purposes.


[individual signature pages of each LLC members follow]

IN WITNESS WHEREOF, the undersigned has executed this Resolution in the capacity noted below as of this 1st day of September 2020.

**GOWANUS GREEN PARTNERS LLC**

By: BLUESTONE GOWANUS GREEN PARTNERS LLC  
Member

  
\_\_\_\_\_  
Ira Lichtiger  
Managing Member

  
\_\_\_\_\_  
Eric Bluestone  
Managing Member

**ACKNOWLEDGMENT**

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF QUEENS     )

On this 1 day of September, 2020, before me, the undersigned, personally appeared Ira Lichtiger, Eric Bluestone, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

CHARLES DAVIS NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01DA6380226 Qualified in Queens County My Commission Expires September 04, 2022
-------------------------------------------------------------------------------------------------------------------------------------------------------------

IN WITNESS WHEREOF, the undersigned has executed this Resolution in the capacity noted below as of this 8<sup>th</sup> day of September 2020.

**GOWANUS GREEN PARTNERS LLC**

By: FAC GOWANUS GREEN LLC  
Member

By: FIFTH AVENUE COMMITTEE, INC.  
Sole Member



Michelle de la Uz  
Executive Director

**ACKNOWLEDGMENT**

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

On this 8<sup>th</sup> day of September, 2020, before me, the undersigned, personally appeared Michelle de la Uz, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, or the person upon behalf of which the individual acted, executed the instrument.

Morven Vice Rose #01R0617911

Notary Public

IN WITNESS WHEREOF, the undersigned has executed this Resolution in the capacity noted below as of this 4<sup>th</sup> day of September 2020.

**GOWANUS GREEN PARTNERS LLC**

By: HUDSON GOWANUS LLC

Member



Aaron Koffman

Authorized Signatory

**ACKNOWLEDGMENT**

STATE OF NEW YORK

COUNTY OF *Greene*

} S...

On this 4 day of September, 2020, before me, the undersigned, personally appeared Aaron Koffman, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person upon behalf of which the individual acted, executed the instrument.



Notary Public

**SANDRA R. MILLER**  
Notary Public, State of New York  
Registration No. 6133009  
Qualified in Greene County  
Commission Expires September 6, 2021

IN WITNESS WHEREOF, the undersigned has executed this Resolution in the capacity noted below as of this 3rd day of September 2020.

**GOWANUS GREEN PARTNERS LLC**

By: ROSE GOWANUS LLC  
Member

By: ROSE CAPITAL LLC  
Sole Member

  
\_\_\_\_\_  
Jonathan Rose  
Managing Member

**ACKNOWLEDGMENT**

STATE OF NEW YORK     )  
                                  *Westchester* ) ss.:  
COUNTY OF NEW YORK )

On this 3 day of September, 2020, before me, the undersigned, personally appeared Jonathan Rose, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

VIVIAN WEIXELDORFER  
Notary Public, State of New York  
No. 01WE5034560  
Qualified in Westchester County  
Commission Expires October 17, 2022

## OPERATING AGREEMENT

OF

### BLUESTONE GOWANUS GREEN PARTNERS, LLC

OPERATING AGREEMENT of Bluestone Gowanus Green Partners, LLC (the "Company"), as of July 15, 2008 by among Sara B. Herbstman, residing at 527 Haworth Avenue, Haworth, NJ 07641 ("Sara"), Thomas Potvin, residing at 1554 Andrews Lane, East Meadow, NY 11554 ("Thomas"), Ira Lichtiger, residing at 141 James Street, Hastings-On-Hudson, NY 10706 ("Ira"), Steven Bluestone residing at 32 Wooddale Avenue, Croton-on-Hudson, NY 10520, and Eric Bluestone, residing at 1365 Baptist Church Road, Yorktown Heights, NY 10598 ("Eric") (Sara, Thomas, Ira, Steven and Eric being referred to herein collectively as the "Managing Members" or "Members").

NOW, THEREFORE, each Member hereby agrees as follows:

#### ARTICLE ONE

##### Definitions

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article One.

**"Act"** shall mean the New York Limited Liability Company Law, chapter 34 of the consolidated laws of the State of New York Section 101, et seq., as it may be amended from time to time, and any successor to the Act.

**"Capital Account"** shall have the meaning set forth in, Section 3.2.

**"Capital Contribution"** shall mean the amount of cash and the fair market value of any property (other than cash) that a Member contributes to the Company.

**"Cash Flow"** shall mean the Net Income and Net Loss of the Company, plus (a) Depreciation and other non-cash charges deducted in determining such Net Income and Net Loss, (b) the net proceeds from any refinancing of the Company's mortgages and (c) the net proceeds from the sale of any of the Company's assets, minus principal payments on all mortgages, and any other cash expenditures which have not been deducted in determining the Net Income or Net Loss of the Company.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of any succeeding law).

**“Company”** shall have the meaning set forth in the preamble.

**“Distributable Cash”** shall mean Cash Flow less any amount necessary to maintain sufficient working capital and reasonable reserves for replacements, as determined from time to time by a two-thirds vote of Members. The Company’s Distributable Cash shall be determined separately for each fiscal year and not cumulatively and, and as so determined, Distributable Cash shall be distributed in accordance with the provisions of Section 5.1 hereof.

**“Gain”** shall have the meaning set forth in Section 6.2.1.

**“Indemnified Person”** shall have the meaning set forth in Section 4.1.

**“Loss”** shall have the meaning set forth in Section 6.2.2.

**“Managing Member”** shall have the meaning set forth in the preamble.

**“Member”** or **“Members”** shall have the meaning set forth in the preamble.

**“Membership Interest”** or **“Membership Interests”** shall have the meaning set forth in Section 2.6.1.

**“Net Income”** or **“Net Loss”** shall mean the net income or net loss of the Company as determined for federal income tax purposes by the accountant serving the Company, including, without limitation, each item of Company income, gain, loss, deduction, tax preference and credit, all as such terms are used in the Code.

**“Notice”** shall have the meaning set forth in Section 11.1.

**“Non-Managing Member”** shall have the meaning set forth in the preamble.

**“Percentage Interest”** shall mean for each Member, the percentage interest set forth opposite such Member’s name on Exhibit A attached hereto.

**“Person”** shall mean any individual, partnership, corporation, limited liability company, unincorporated organization or association, trust or other entity.

**“Premises”** shall mean the real property that is owned or managed by the Company from time to time.

**“Proceeding”** shall have the meaning set forth in Section 4.1.

**“Property Owner”** shall mean the beneficial owner(s) of the Premises pursuant to a nominee agreement with a housing development fund company. Property Owner shall be a limited liability company formed in New York.

**“Refinancing Proceeds”** shall have the meaning set forth in Section 5.3.

**“Regulations”** shall mean the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of any succeeding regulations).

**“Sales Proceeds”** shall have the meaning set forth in Section 5.3.

**“Secretary of State”** shall mean the New York Secretary of State.

**“Tax Matters Member”** shall have the meaning set forth in Section 10.6.

**“Transfer”** shall mean any sale, transfer, gift, assignment, other disposition, pledge or grant of a security interest, by operation of law or otherwise, in or of an interest in the Company or of rights under this Agreement, excluding, however, any grant of such a security interest in favor of the Company.

## ARTICLE TWO

### Organization

2.1 **Formation and Qualification.** The Members unanimously agree to and do hereby ratify formation of a limited liability company pursuant to the provisions of the Act and this Agreement.

2.2 **Name.** The name of the Company is Bluestone Gowanus Green Partners, LLC.

2.3 **Purposes.** The purpose of the Company shall be any lawful business or activity which may be conducted by a limited liability company organized under the Act, including, without limitation, to acquire, own, expand, renovate, lease, manage, operate, sell and otherwise deal with certain real property and any improvements, and to conduct

such other business activities and operations as are consistent with and reasonably related to the foregoing purposes; to borrow money and issue evidence of indebtedness and to secure the same by mortgage, deed of trust, pledge or other security interest, in furtherance of any and all objects of the business of the Company and to do any and all other acts and things which may be necessary, incidental or convenient to carry out the business of the Company as contemplated by this Agreement.

2.4 **Principal Office.** The location of the principal office of the Company shall be 93-04 Horace Harding Expressway, Fresh Meadows, New York 11365, or such other location as the Managing Members may from time to time designate.

2.5 **Duration.** The term of the Company shall commence on the date that the Articles of Organization were filed with the Secretary of State and shall continue in full force and effect unless earlier terminated in accordance with the provisions of this Agreement.

2.6 **Members and Membership Interests.**

2.6.1 A Member's membership interest ("Membership Interest") is its Percentage Interest of the Company's assets, liabilities, capital, Net Income or Net Loss, each subject to the provisions of this Agreement and the Act. Each Membership Interest shall be personal property for all purposes.

2.6.2 No Member shall be entitled to any fees, commissions or other compensation from the Company for any services rendered to or performed for the Company, except as provided in Section 2.7.

2.6.3 Any Member shall be entitled to engage in and/or possess any interest in other businesses and investment ventures or transactions of any nature or description, whether existing as of the date hereof or hereafter coming into existence, and whether or not directly or indirectly competitive with the business of the Company; provided that, if such business, venture or transaction (each, a "Venture") involves the opportunity to acquire or develop real property located within 500 feet of any property then owned by the Company, such Member shall first present the opportunity to participate in such Venture to the Company and may not participate in such Venture unless the Company determines not to participate therein. Neither the Members nor the Company, as such, shall have any rights in or to any Venture or the income or profits derived therefrom, by reason of such Member's participation in the Company provided such participation is not in violation of the provisions hereof.

2.7 **Management.**

2.7.1 Except as otherwise expressly provided herein, the business and affairs of the Company shall be managed by the Managing Members, who shall, act by vote of a majority in number of the Managing Members. If a Managing Member (x) is unable, whether by reason of disability or otherwise, to perform his duties hereunder as Managing Member for more than 12 consecutive months, or (y) retires from active management of the Company, such Managing Member (or such Managing Member's Successor, as defined in Section 7.4 hereof, provided such Successor is admitted as a Member) shall become a Non-Managing Member.

2.7.1(a) Intentionally Omitted

2.7.2 Subject to the provisions of Section 2.7.4 hereof, Managing Members of the Company shall be responsible for the day-to-day business, operations and affairs of the Company, shall have such powers as are usually exercised by designated officers of a New York corporation and shall have the authority to bind the Company through the exercise of such powers subject to, and to the extent consistent with, the terms hereof. In addition to, and without limitation to other powers, but subject to the provisions of Sections 2.7.1(a) and 2.7.4 hereof, the Managing Members shall have the right to bind the Company and to (i) sign on behalf of the Company all documents, including without limitation, consents and resolutions, contracts, leases, bank account applications and checks, management agreements, and other documents required in connection with the leasing and mortgage of the Premises; (ii) incur any obligations or enter into any agreement which would subject the Company to liabilities, provided, however, that any of the foregoing actions shall require the signature of two Managing Members.

2.7.3 In carrying out the provisions of Section 2.7.1 and Section 2.7.2, the Managing Members shall have the power to delegate their authority to qualified Persons, including by way of entering into a management agreement with any Person on such terms as the Managing Members may deem appropriate, subject, however, to the provisions of Section 2.7.4 below.

2.7.4 (a) Subject to paragraph 2.7.1(a), the following actions may not be taken without the consent of Members holding at least 2/3 of all Membership Interests:

- (1) Any liquidation or dissolution of the Company;
- (2) Any material amendment to this Agreement that adversely affects the economics or rights of non-Managing Members;

(3) Any sale, assignment, mortgage, refinancing or other disposition of any real property owned by the Company other than leases made in the ordinary course of business;

(4) Any call for capital contributions from Members of the Company;

(5) Any assignment for the benefit of creditors or any bankruptcy or insolvency filing or similar proceedings;

(6) Any merger, consolidation or other business combination of the Company with or into any other entity, or sale, conveyance, transfer or lease of the assets of the Company substantially as an entity to any other entity;

(7) Approval, termination or amendment of any management agreement pursuant to Section 2.7.3 above;

(8) Approval by the Members of the annual valuation made by the Managing Members of any real property owned by the Company;

(9) The appointment of a new Managing Member, the removal of an existing Managing Member (other than by reason of the retirement of such Managing Member), or any increase or decrease in the number of Managing Members;

(10) Any other decision of similar import not covered by the provisions of paragraphs (b) or (c) below and not in the ordinary course of business of Company;

(11) Any direct or indirect distribution of profits or assets of the Company, including any distribution in the form of salary or other compensation, to any Member other than strictly pro rata in proportion to each Member's Membership Interests; or

(12) Salary or other compensation payable to any Member.

(b) Notwithstanding anything to the contrary in this Agreement or the Act, the following actions may not be taken without the unanimous consent of all Members:

- (1) The acquisition of any new real property.
- (2) The deviation from any of the purposes of the Company as set forth in Section 2.3
- (3) The doing of any act in contravention of this Agreement;
- (4) The acquisition of any interest in any entity, except for acquiring the Managing Member interest of 1182 Woodycrest, LLC. and as otherwise set forth herein;

(c) Notwithstanding anything to the contrary in this Agreement or the Act, the following actions may not be taken without the consent of Members holding at least 75% of all Membership Interests:

(1) The admission of any new Members, except as otherwise provided in Section 7.6 hereof;

(2) Acquisition by the Company of any Member's Membership Interest.

2.7.5 The Company shall reimburse the Managing Members for all reasonable out-of-pocket expenses incurred on behalf of the Company.

2.7.6 The Managing Members shall not be required to devote all or any specific portions of such Managing Member's time or business efforts to the affairs of the Company. The Managing Members shall devote so much time and attention to the Company as they may deem necessary and advisable to manage the affairs of the Company to the best advantage of the Company. No Managing Member shall be liable or accountable in damages or otherwise to the Company or any other Managing Member for any failure to take any action or the taking of any action within the scope of authority conferred on it by this Agreement, made in good faith.

2.8 **Indemnification.** The Company shall indemnify each Managing Member on account of any claim, liability, action or damage arising from or relating to any act of the Managing Member within the scope of its authority as and to the extent provided in Article Four hereof.

## 2.9 Meetings.

2.9.1 Meetings of the Members for the transaction of business shall be held in accordance with the provisions of the Act. The presence in person or by proxy of Members holding at least that percentage of the total Membership Interests needed to approve all of the items submitted for approval at such meeting shall constitute a quorum at any meeting of Members; provided that if different percentages of Membership Interests are required to approve different items, then the highest percentage required to approve any of such items shall be the percentage required to constitute a quorum. In the absence of a quorum at any such meeting, a majority of Membership Interests held by Members so represented may adjourn the meeting from time to time. The Members represented in person or by proxy to a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of any holders of Membership Interests the absence of which would cause less than a quorum.

2.9.2 If a quorum is represented in person or by proxy at a meeting of Members, the affirmative vote of Members holding more than fifty percent (50%) of the Membership Interests so represented at such meeting shall be the act of the Members, unless the vote of a greater or lesser percentage is required by this Agreement or the Act, in which case the affirmative vote of Members holding such greater or lesser percentage of Membership Interests shall be required to constitute the act of the Members. Any Member may vote either in person or by proxy executed in writing by the Member. For purposes of this Section, the Term "writing" shall be deemed to include, without limitation, a telegram, telex, cablegram, e-mail or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member. Proxies for use at any meeting of Members or in connection with the taking of any action by written consent shall be filed with the Managing Members, before or at the time of the meeting or the execution of the written consent, as the case may be. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided therein. A proxy shall be revocable unless the proxy conspicuously states that it is irrevocable and is coupled with an interest.

2.9.3 Meetings of the Members may be held by means of conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at such meeting, except where participation in such meeting is for the express purpose of objecting to the holding of, or the transaction of any business at, such meeting.

2.9.4 Any action required or permitted to be taken at a meeting of Members may be taken without a meeting and without a vote if one or more written consents describing the action taken shall be executed by Members holding the Membership Interest that would be required for such action at a meeting at which a quorum of Members entitled to vote on such action were represented, in person or by proxy. For purposes of this Section, the term "writing" shall be deemed to include, without limitation, a telegram, telex, cablegram, e-mail or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member. A Member executing a consent must state in such consent the date of its execution. Action take under this Section is effective when all consents necessary for such action have been delivered to the Company, unless such consent specifies a different effective date; provided, however, that no consent with respect to any action shall be effective unless, within sixty (60) days after the date of the earliest consent delivered to the Company, all consents necessary for such action have been delivered to the Company.

## **ARTICLE THREE**

### **Capital; Capital Accounts**

#### **3.1 Capital Contributions.**

3.1.1 Each Member's Percentage Interest is set forth on Exhibit A. No Member shall be required to make any other contribution of capital to the Company except pursuant to a capital call authorized in accordance with the provisions of Section 2.7.4 (a) hereof (a "Capital Call"). If a Member (a "Defaulting Member") fails to contribute additional capital as required by a duly authorized Capital Call, then the remaining Members shall have the right, but not the obligation, to make up the resulting shortfall by lending the Company an amount equal to the capital not contributed by the Defaulting Member. Such loan shall be made on whatever terms the Managing Members may deem appropriate in their absolute discretion; provided that any such loan shall bear interest at a rate equal to 4% over prime and shall have priority over any other indebtedness owing to Members with respect to repayment on dissolution or liquidation of the Company. The Company shall be entitled, upon demand, to be reimbursed by the Defaulting Member for all interest paid on any such loan and may, at its option, set off the amount of any such interest paid by it in respect of any such loans, as well as the outstanding principal balance thereof, against any distributions otherwise owing to such Defaulting Member.

3.1.2 No Member shall be entitled to withdraw any part of its

Capital Contribution or to receive any distribution from the Company, except as expressly provided in this Agreement. No Member shall be entitled to demand or receive any property from the Company other than cash as expressly provided herein.

3.1.3 No Member shall be paid interest on any Capital Contribution.

3.2 Capital Accounts. An individual capital account (the “Capital Account”) shall be maintained for each Member in accordance with the following provisions. (The maintenance of such accounts, however, shall be for the purposes of information only and shall not prevent or prohibit the intermingling of all the funds of the Company in a common account):

3.2.1 Each Member’s Capital Account shall be credited with (1) such Member’s Capital Contribution and (2) the amount of such Member’s allocable share of Net Income.

3.2.2 Each Member’s Capital Account shall be charged with (1) the amount of cash distributed to such Member by the Company, (2) the amount of such Member’s allocable share of Net Loss, (3) the book value of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code) and (4) the amount of any expenditures described in Code Section 705(a)(2)(B) allocated to such Member.

3.2.3 If any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

## **ARTICLE FOUR**

### **Members Not Liable for Company Losses**

Except as expressly provided under the Act, the Members shall have no personal liability for the losses, debts, claims, expenses or encumbrances of or against the Company or its property.

4.1 Right to Indemnification. Subject to the limitations and conditions provided for in this Article and the Act, each Person (an “Indemnified Person”) who was

or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative (a "Proceeding"), or any appeal in such a Proceeding, by reason of the fact that he or she was or is a Member of, or a Managing Member of or an officer of the Company or he or she was or is the legal representative of or a Managing Member, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of a Member, shall be indemnified by the Company against judgments and penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if such Indemnified Person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceedings, that the Indemnified Person had reasonable cause to believe such conduct was unlawful.

4.2 Derivative Claims. Subject to the limitations and conditions provided for in this Article and the Act, the Company shall and does hereby indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member or a Managing Member of or an officer of the Company, the legal representative of a Member or a Managing Member of or officer, or a Managing Member, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of a Member against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit, if such Person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or intentional misconduct in the performance of his or her duties to the Company unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

4.3 Success on Merits. To the extent that a Person has been successful, on the merits or otherwise, in the defense of any Proceeding referred to in Sections 4.1 or

4.2 or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorney's fees and disbursements) actually and reasonably incurred by such Person in connection therewith.

4.4 Determinations. Any indemnification under this Article (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that indemnification is proper in the circumstances because such Person has met the applicable standard of conduct set forth therein. Such determination shall be made (i) by the holders of a majority of the Membership Interests who were not parties to such Proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Members so directs, by the Company's independent legal counsel in a written opinion.

4.5 Survival. Indemnification under this Article shall continue as to a Person who has ceased to serve in the capacity that initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendment, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

4.6 Advance Payment. The right to indemnification conferred by this Article shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this Article or otherwise.

4.7 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred by this Article shall not be exclusive of any other right which a Person may have or hereafter acquire under any law (common or statutory), any provision of the Company's organizational documents or this Agreement, any vote of the Members or otherwise.

4.8 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any Indemnified Person against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person

against such expense, liability or loss under this Article.

4.9 Savings Clause. If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any Proceeding to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE FIVE

### Distributions

#### 5.1 Distributions Generally.

5.1.1 Distributable Cash of the Company, as, when and to the extent available with respect to each fiscal year of the Company, or any portion thereof, shall be distributed to the Members in proportion to their Percentage Interests, at the discretion of the Managing Members; provided, however, that distributions of available Distributable Cash shall be made at least annually in accordance with the provisions of Schedule A annexed hereto.

5.1.2 The Company shall retain funds necessary to cover its reasonable business needs, which shall include reserves against possible losses and the payment and making provision for the payment, when due, of obligations of the Company, and may retain funds for any other Company purposes. The Managing Members shall determine, subject to the provisions of Section 2.7.4 hereof, the amounts of such reserves and the purposes for which such reserves are made; provided that the annual budget submitted for approval of the Members shall include provision for reserves on hand at the beginning of the fiscal year covered by such budget, together with the Managing Members' good-faith best estimate of year-end reserves for such fiscal year.

#### 5.2 Intentionally Omitted.

5.3 Definition of Refinancing Proceeds and Sale Proceeds; Pro Forma Financial Statements. (a) Refinancing Proceeds shall mean the proceeds from a replacement, increase, consolidation, modification or extension, etc. of any mortgages on the property after deducting the expenses incurred in connection with the receipt or collection thereof, and the amounts thereof-which are applied in reduction of Company

liabilities. Sale Proceeds shall mean the proceeds from any sale, condemnation, voluntary or involuntary conversion, insured casualty or other disposition of the property or any portion thereof, after deducting (i) expenses incurred in connection with the receipt or collection thereof, (ii) in the case of condemnation, voluntary or involuntary conversion and insured casualty, such portion thereof as is required to repair, restore or replace the property or any portion thereof and (iii) all amounts which are applied in reduction of Company liabilities.

(b) In connection with the approval of any proposed refinancing, the Managing Members shall present to the Members pro forma financial statements reflecting the effect of the refinancing. Such financial statements shall include, among other things, the Managing Members' good faith estimate of the amounts expected to be available for distribution to the Members.

5.4 Distribution of Refinancing Proceeds and Sale Proceeds.

Refinancing Proceeds, as, when and to the extent available, after payment of all unpaid fees relating to the refinancing, and subject to Section 2.7.4(a)(11), shall be distributed to the Members in proportion to their Percentage Interests. Sales Proceeds, as, when and to the extent available, after payment of all unpaid fees and loans, shall be distributed to the Members in proportion to their Percentage Interests.

5.5 Allocation of Distributable Cash. Distributions made to the Members shall be allocated among them pro-rata in accordance with their respective Percentage Interests.

## ARTICLE SIX

### Allocations

6.1 Allocation of Net Income and Net Loss Other Than from a Sale or Liquidation. Except as otherwise provided in Section 6.2 hereof, Net Income and Net Loss for each fiscal year shall be allocated among the Members in proportion to their Percentage Interests.

6.2 Allocation of Net Income and Net Loss from a Sale or Liquidation. For any year in which there occurs a sale or liquidation pursuant to Section 8.2 hereof, Net Income and Net Loss with respect to or resulting from such sale or liquidation shall be allocated as follows:

6.2.1 If the Company realizes items of income or gain for Federal

income tax purposes (hereinafter collectively referred to as “Gain”) upon such sale or liquidation, all such Gain shall be allocated to the Members in proportion to their Percentage Interests.

6.2.2 If the Company realizes items of loss or deduction (herein collectively referred to as a “Loss”) upon such sale or liquidation, such Loss shall be allocated to the Members in proportion to their Percentage Interests.

6.3 [Intentionally omitted.]

6.4 Tax Allocations.

6.4.1 In the event of a Transfer of an interest in the Company, then, unless otherwise determined by the Managing Members, Net Income or Net Loss and distributions for such year shall be allocated among the Members for the periods before and after the effective date of the Transfer based on an interim closing of the books. For purposes of this Section 6.4, a Transfer shall be effective (1) on the last day of the calendar month immediately preceding the calendar month in which the Transfer occurred, if the Transfer occurred on or before the 15th day of such calendar month, or (2) on the last day of the calendar month in which the Transfer occurred, if the Transfer occurred after the 15th day of such calendar month.

6.4.2 Except as otherwise provided in Section 6.4.3, all items of Company income, gain, deduction and loss shall be allocated among the Members in the same proportion as they share in Net Income and Net Loss to which such items relate.

6.4.3 Income, gain, loss and deductions of the Company shall, solely for income tax purposes, be allocated between the Members in accordance with Section 704(c) of the Code, so as to take account of any difference between the adjusted basis of the assets of the Company for federal income tax purposes and their respective fair market values, and otherwise shall be allocated in the same manner as the related book items were allocated under Sections 6.1 and 6.2 hereof. Any allocations required by Section 704(c) of the Code shall be effectuated using the traditional method described in Treasury Regulation § 1.704-3(b)(1).

## **ARTICLE SEVEN**

### **Transfers of Membership Interests**

7.1 Withdrawal of Members. Except as otherwise provided herein or by

the laws of the State of New York, no Member may resign, withdraw or retire voluntarily as a member of the Company or sell, transfer, assign or otherwise dispose of his or its interest in the Company. In no event whatsoever may any Managing Member transfer, directly or indirectly, to any third party any management rights whatsoever. In the event of any transfer of the Membership Interest of the Managing Member, the transferee, once admitted as a Member in accordance with the provisions of this Agreement, shall not become a Managing Member solely by reason of such transfer.

7.2 Additional Members. Additional Members shall be admitted in accordance with the provisions of Section 2.7.4 (c) hereof.

7.3 Transfers by Members (a) Each Member shall have the right, during his lifetime to assign all or a part of his interest in and to the Company, its capital, profits and losses to his spouse, children or grandchildren, the children or grandchildren of another Member, or a trust or trusts for the benefit of one or more of the foregoing (a Permitted Transferee”), provided however, that no such Permitted Transferee shall be admitted as a Member except in compliance with Section 7.6 and, if such Permitted Transferee is not admitted as a substitute Member in accordance with the provisions of Section 7.6 hereof then, at the option of the transferring Member, (i) the Company shall acquire the entire Membership Interest that was proposed to be assigned to such Permitted Transferee at a purchase price equal to the Fair Value thereof, determined in accordance with the provisions of Section 7.7 hereof, or (ii) the transferring Member may rescind the proposed transfer and retain the Membership Interest proposed to be transferred. Notwithstanding the foregoing, prior to making any such assignment, the proposed transferor shall furnish to the Managing Members an opinion of his or its counsel, in form and substance acceptable to the Managing Members, to the effect that such assignment shall not jeopardize the status of the Company as a partnership for Federal income tax purposes, or cause a termination of the Company within the meaning of Section 708 (b) of the Internal Revenue Code of 1986 as amended, or violate, or cause the Company to violate, any applicable law or governmental rule or regulation.

(b) Except as otherwise expressly provided herein, each Member shall not, during his lifetime or during its existence, as the case may be, sell, assign, transfer, pledge, hypothecate, grant a security interest in, encumber or in any other manner dispose of all or any part of his or its interest in and to the Company, its capital, profits and losses, or the economic interest resulting therefrom, without the prior written consent of Members holding 75% of all Membership Interests, which may be given or withheld in their absolute discretion. In the event that any Member at any time attempts to make a sale, assignment, transfer, pledge, hypothecation, mortgage, encumbrance or other disposition of his or its interest in and to the Company, its capital, profits and losses, or any part thereof, in violation of the provisions of this Agreement, the other

Members or any one of them shall, in addition to all other rights and remedies which they may have in law, in equity or under the provisions of this Agreement, be entitled to a decree or order restraining and enjoining such attempted sale, assignment, transfer, pledge, hypothecation, mortgage, encumbrance or other disposition, and the offending Member shall not plead in defense thereto that there would be an adequate remedy at law, it being recognized and agreed that the injury and damage resulting from such a breach would be impossible to measure monetarily.

7.4 Effect of Death, Incompetency or Bankruptcy of a Member. The death, adjudication of incompetency or bankruptcy of a Member shall not cause a dissolution of the Company. Upon the death, adjudication of incompetency or bankruptcy of a Member, the representative or successor-in-interest thereof, as the case may be (the "Successor"), shall be deemed to be an assignee of the economic interest of the Member and may apply for admission to the Company as a substituted Member upon compliance with Section 7.6 hereof; provided, however, that if such Successor is not admitted as a substitute Member in accordance with the provisions of Section 7.6 hereof, then the Company shall acquire the entire Membership Interest of the deceased, incompetent or bankrupt Member (the "Former Member") at a purchase price equal to the Fair Value thereof, determined in accordance with the provisions of Section 7.7 hereof.

7.5 Closing. Closing upon any purchase of a Membership Interest as provided herein shall occur at the offices of the Company within 60 days following: (i) in the case of any purchase pursuant the exercise of the option granted under Section 7.3 (a) or 7.4 hereof, the final determination of the Fair Value of the Membership Interest to be sold, or (ii) in any other case, the consent of the Members to the sale. The purchase price for such Membership Interest shall be payable in 60 equal monthly installments, commencing 30 days after the closing date, with interest at the rate then being paid on United States treasury notes having a maturity five years after the closing. The purchase price shall be evidenced by promissory note of the Company and shall be an unsecured obligation of the Company.

7.6 Substituted Members. Anything herein contained to the contrary notwithstanding:

a. No successor-in-interest of a Member and no assignee or transferee of all or any part of a Member's interest in and to the Company, its capital, profits and losses, shall be admitted to the Company as a Member except upon:

(i) submitting to the Managing Member a duly executed and acknowledged counterpart of the instrument or instruments making

such transfer, together with such other instrument or instruments, including, but not limited to, a counterpart of this Agreement as it then may have been amended, signifying such transferee's agreement to be bound by all of the provisions of the Company, including, but not limited to, the restrictions upon transfers of interests therein and thereto, all of the foregoing in such form and substance as shall be satisfactory to the Managing Members;

(ii) obtaining the consent thereto of at least 75% of all outstanding Membership Interests, which consent may be given or withheld in their absolute discretion, except that, in the case of either (x) a transfer under Section 7.3 (a) hereof, or (y) or a transfer under Section 7.4 hereof to a Permitted Transferee, in lieu of the consent described above, such transfer shall require the consent of Members (other than the transferor) holding at least 25% of all outstanding Membership Interests, which consent may be given or withheld in their absolute discretion;

(iii) agreeing to bear all costs and expenses, including legal fees of the Company, incurred in effecting such substitution.

Upon such transferee's compliance with the foregoing provisions, each of the Managing Members shall take all actions reasonably required to effectuate the recognition of the effectiveness of such transfer and the admission of such transferee to the Company as a substituted Member including, but not limited to, transferring such interest in and to the Company, its capital, profits and losses upon the books thereof and executing, acknowledging and causing to be filed any necessary or desirable amendment to this Agreement and the other organizational documents of the Company.

b. The Managing Members shall not consent to the admission of any such Transferee as a substituted Member if, in the reasonable opinion of the Managing Members, such admission:

(i) would jeopardize the status of the Company as a partnership for Federal income tax purposes;

(ii) would cause a termination of the Company within the meaning of Section 708(b) of the Internal Revenue Code of 1986 as amended; or

(iii) would violate, or cause the Company to violate, any applicable law or governmental rule or regulation.

c. No assignment to a minor or incompetent shall be effective in any respect.

**7.7 Fair Value.** For all purposes of this Agreement, the “Fair Value” of the Membership Interest of any Member (the “Selling Member”) shall be an amount equal to the product of the Selling Member’s Membership Interest percentage times the value of the Company, as determined by an independent MAI appraiser experienced in valuing businesses such as that conducted by the Company and who is selected by the Company’s outside accountant for the Company. The determination of the appraiser selected hereunder (the “Appraised Value”) shall be final and binding on the parties, and the expenses of the appraisal shall be borne equally by the Company and the selling Member. Notwithstanding the foregoing, in the case of any proposed transfer by any Member of a Membership Interest to a Permitted Transferee with respect to which the Company becomes obligated to acquire the Membership Interest of the transferring Member pursuant to the provisions of Section 7.3 (a) hereof, the Fair Value payable by the Company for such Membership Interest shall be the Appraised Value of such Membership Interest.

**7.8 Non-Complying Assignments.** Any assignment, sale, exchange or other transfer in contravention of any of the provisions of this Article Seven shall be void and ineffectual, and shall not bind or be recognized by the Company.

**7.9 Forced Sale.** If any Member (a “Defaulting Member”) materially violates any of the provisions of Section 2.6.3 hereof, or misappropriates, for his own use or for use by any third party, any material proprietary information of the Company, then in either such event, the Company may, upon written notice to such Defaulting Member, purchase such Defaulting Member’s entire Membership Interest at a purchase price equal to 50% of the Fair Value thereof, which purchase price shall be payable in 84 equal monthly installments of principal, without interest, commencing 30 days after the date of closing. Closing on such purchase shall occur at the principal offices of the Company within 30 days following delivery of such notice to the Defaulting Member. The Company is hereby authorized and directed to reflect any such transfer on its books and records in accordance with the provisions hereof.

**7.10 Obligations of Successors.** Any person who acquires an interest in the Company by assignment or is admitted to the Company as a substituted Member shall be subject to and bound by all the provisions of this Agreement, as amended, as if originally a party to this Agreement.

## **ARTICLE EIGHT**

## **Dissolution and Liquidation**

### **8.1 Dissolution.**

8.1.1 The Company shall dissolve, without further action of the Members, upon, but not before, the first to occur of the following:

- (a) The sale of all of the Company's assets;
- (b) By the action of the Members in accordance with the provisions of Section 2.7.4 (a) hereof; and
- (c) Except to the extent otherwise expressly provided herein, any other event, which, under the Act, would cause the dissolution of a limited liability company unless a majority of the Members consent to continue the Company.

8.1.2 Upon dissolution of the Company, the Company shall immediately commence to wind up its affairs and the Managing Members shall proceed with reasonable promptness to liquidate the business of the Company.

8.1.3 During the period of the winding up of the affairs of the Company, the rights and obligations of the Members shall continue.

### **8.2 Liquidation.**

8.2.1 The Company shall terminate after its affairs have been wound up and its assets fully distributed in liquidation as follows:

- (a) first, to the payment of the debts and liabilities of the Company and the expenses of liquidation;
- (b) next, to the setting up of any reserves which the Managing Members may deem necessary for any contingent or unforeseen liabilities or obligations of the Company; and
- (c) thereafter, to the Members, pursuant to Article Five hereof.

8.2.2 No Member shall have any right to demand property other than cash upon dissolution and termination of the Company and the Company shall not

make any distribution in kind.

8.3 Cancellation of Certificate of the Company. Upon the completion of the liquidation of the Company's property, the Managing Members shall cause the cancellation of the Company's organizational documents.

## **ARTICLE NINE**

### **Company Property**

9.1 Company Property. The Company's property shall consist of all its assets and funds. Title to the Company's property may be taken and held only in the name of the Company. All property now or hereafter owned by the Company shall be deemed owned by the Company as an entity and no Member, individually, shall have any ownership of such property.

9.2 Prohibition Against Partition. Each Member hereby permanently waives and relinquishes any and all rights it may have to cause all or any part of the Company's property to be partitioned, it being the intention of the Members to prohibit any Member from bringing a suit for partition against the other Member.

## **ARTICLE TEN**

### **Records and Accounting; Fiscal Affairs**

10.1 Fiscal Year. The Company's fiscal year shall be the calendar year.

10.2 Bank Accounts. All of the Company's funds shall be deposited in such banks or accounts as shall be designated by the Managing Members. Withdrawals from any such bank account shall be made upon such signature or signatures as the Managing Members may designate, and shall be made only for the purposes of the Company.

10.3 Books and Records. The Managing Members shall, at the Company's cost and expense, maintain full and accurate books and records, in accordance with the Company's accounting policies consistently applied, at the principal place of business of the Company, showing all receipts and expenditures, assets and liabilities, Net Income or Net Loss, and all other records necessary for recording the Company's business and affairs, including those sufficient to record the allocations and

distributions provided for in this Agreement. The books and records shall, upon reasonable prior notice to the Company, be open for inspection and copying by any Member or its duly authorized representatives during regular business hours at such principal place of business. Any expense for any inspection or copying shall be borne by the member causing such inspection or copying to be conducted. Any information obtained by a Member with respect to the affairs of the Company shall, except as may be required by law, be kept strictly confidential.

10.4 Tax Status. Each Member hereby recognizes that the Company will be treated as a partnership for federal and New York tax purposes and will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code. The Managing Members shall use all reasonable efforts to cause the Company's accountant to prepare and make timely filings of all tax returns and statements which the accountants determine must be filed on behalf of the Company with any taxing authority.

10.5 Tax Returns; Elections.

10.5.1 The Managing Members shall use reasonable efforts to cause all income tax and information returns for the Company to be prepared by the Company's accountant and shall cause such tax returns to be timely filed with the appropriate authorities. Copies of such returns shall be kept at the Company's principal place of business or at such other place as the Managing Members shall determine and shall be available for inspection by the Members or their duly authorized representatives during regular business hours.

10.5.2 The Managing Members may, in their discretion, cause the Company to make an election for federal income tax purposes to the extent permitted by applicable law and regulations, as follows:

(1) in case of a transfer of all or part of any Membership Interest, the Company may elect in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code; and

(2) such other elections, if any, permitted to be made by the Company, as the Managing Members shall determine, in consultation with the Company's accountant.

10.5.3 No Members shall take any action or refuse to take any action which would cause the Company to forfeit the benefits of any tax election previously made or agreed to be made by the Company.

10.6 Tax Matters Member. Pursuant to Section 6231(a)(7)(A) of the Code, if applicable to the Company, Ira Lichtiger is hereby designated as the “Tax Matters Member” of the Company for all purposes of the Code and for the corresponding provision of any state or local statute. In the event Ira Lichtiger is no longer a Managing Member, Eric Bluestone shall become the Tax Matters Member. All of the Members hereby consent to such designation and agree to take any such further action as may be required by regulations or otherwise to effectuate such designation.

10.7 Financial Statements. The Managing Members shall cause the Company to distribute to the Members internally prepared statements of income and expense, as promptly as possible following the close of each fiscal year of the Company. In addition, the Managing Members shall distribute to the Members internally prepared quarterly statements of income and expense as promptly as possible following the close of each fiscal quarter of the Company.

## **ARTICLE ELEVEN**

### **Miscellaneous**

11.1 Notice. Unless otherwise provided herein, any offer acceptance, election, approval, consent, certification, request, waiver, notice or other communication required or permitted to be given hereunder (hereinafter collectively referred to as a “Notice”) shall be deemed given only if in writing and sent by nationally recognized overnight courier or mailed first class certified or registered mail, return receipt requested, postage prepaid, addressed to the Company at its then principal office and to the Member or Members to whom any such Notice is addressed at the addresses herein stated for such Member or Members or at such other address as any Member hereafter may designate to the others in accordance with the provisions of this Section. Notice of change of address of any Member shall not be deemed to have been given until actual receipt by the Company.

11.2 Severability. The invalidity or unenforceability of any provision in this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11.3 Interpretation. This Agreement shall be interpreted and construed in accordance with the laws of the State of New York. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons referred to may require. The captions of sections of this Agreement have been inserted as a matter of convenience only and shall not control

or affect the meaning or construction of any of the terms or provisions hereof.

11.4 Entire Agreement. All understandings and agreements heretofore made between the Members are merged in this Agreement, which alone fully and completely expresses their agreement with respect to the subject matter hereof. There are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among the members, other than as set forth in this Agreement and the Articles of Organization. All prior agreements among the Members are superseded by this Agreement, which integrates all promises, agreements, conditions, and understandings among the Members with respect to the Company and its property.

11.5 Termination, Revocation, Waiver, Modification or Amendment. No termination, revocation, waiver, modification or amendment of this Agreement shall be binding unless agreed to in writing and executed by the Members.

11.6 Counterparts; Effective Date. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signatures of any Member to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. This Agreement is dated and shall be effective among the Members as of the date first above written.

11.7 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Members and their respective successors and permitted assigns.

11.8 Further Assurances. Each Member shall execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents, and take all such further action as may be required by law or deemed by the Managing Members to be necessary or useful in furtherance of the Company's purposes and the objectives and intentions underlying this Agreement and not inconsistent with the terms hereof.

11.9 Waiver. No consent or waiver, express or implied, by any Member to or of any breach or default by any other Member in the performance by such other Member of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Member of the same or any other obligation of such other Member hereunder. Failure on the part of a Member to complain of any act or failure to act of any other Member or to declare such other Member in default, irrespective of how long such failure or default continues, shall not constitute a waiver by such Member of its rights hereunder.

11.10 Additional Remedies. The rights and remedies of the Members shall not be mutually exclusive. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it limit or affect, any other rights in equity or any rights at law or by statute or otherwise of any Member aggrieved as against the other Members, for breach or threatened breach of any provision hereof, it being the intention of this section to make clear the agreement of the Members that their respective rights and obligations hereunder shall be enforceable in equity as well as at law or otherwise.

11.11 Confidentiality. Each Member will treat in confidence this Agreement and all documents, materials and other information concerning this Agreement or the Company. This provision shall survive the termination of this Agreement.

11.12 No Reliance by Third Parties. The provisions of this Agreement are not for the benefit of any creditor or other Person other than a Member to whom any losses, debts, claims, expenses or encumbrances are owed by, or who otherwise has any claim against, the Company or any Member.

11.13 Special Power of Attorney and Appointment of Managing Members. Each Non-Managing Member, by his or her execution hereof, hereby irrevocably makes, constitutes and appoints each of the Managing Members as his or her true and lawful attorney-in-fact, with power and authority in his or her name, place and stead, to make, execute, sign, acknowledge and file on behalf of each of them and on behalf of the Company:

a. Such amended certificates that may be required to be filed with the Secretary of State from time to time as may be required or permitted pursuant to the provisions of this Agreement or by law;

b. All papers which may be deemed necessary or desirable by the Managing Members to effect the termination of the Company after the dissolution thereof as provided in this Agreement or to effect the transfer of such Member's Membership Interest in accordance with the provisions of Section 7.9 hereof;

c. All such other instruments, documents and certificates which may from time to time be required or permitted by the laws of any state, the United States of America, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid and subsisting existence, rights and property of the Company as a limited liability company and its power to carry out its purposes as set forth in this Agreement.

The foregoing appointment is

a. Irrevocable and shall be deemed to be a power coupled with an interest in recognition of the fact that each of the Members will be relying upon the power of each of the Managing Members to act as contemplated by this Agreement in such execution, acknowledgment and filing and such other actions by the Managing Members on behalf of each Non-Managing Member;

b. Shall survive the death, incapacity, dissolution or bankruptcy of any of the Non-Managing Members granting the same and the Transfer, by operation of law or otherwise (as permitted in this Agreement), by any such granting Non-Managing Member of the whole or any part of his or her interest in and to the Company, its capital, profits or losses hereunder; and

c. May be exercised by each Managing Member on behalf of the Non-Managing Members by a facsimile signature of such Managing Member or by listing all of the Non-Managing Members executing any instrument with a single signature of a Managing Member, as attorney-in-fact for all of them.

Each Non-Managing Member hereby agrees to execute, acknowledge and deliver to the Managing Members, promptly upon request therefor by the Managing Members, a power of attorney in recordable form satisfactory to the Managing Members evidencing the foregoing appointment.

11.14 Non-Disclosure Covenant. No Member shall, at any time, hire or encourage or facilitate any third party to hire any employee of the Company or solicit or encourage any employee of the Company to leave his or her employment with the Company. Nor shall any Member appropriate for his or her own use or for the use of any third party any proprietary or confidential information of the Company. Upon request by the Company, any Member shall return to the Company any such proprietary or confidential information that may be in such Member's possession or control.

[\[Signatures begin on next page.\]](#)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

**MEMBERS:**



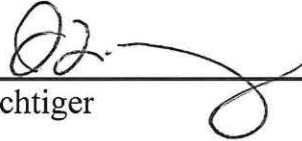
Thomas Potvin



Sara Herbstman



Eric Bluestone



Ira Lichtiger

Steven Bluestone

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

**MEMBERS:**

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Thomas Potvin

---


Sara Herbstman

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Eric Bluestone

---

Ira Lichtiger



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Steven Bluestone

EXHIBIT A

**Bluestone Gowanus Green Partners, LLC**

**Members**

**Percentage Interest**

Managing Members

Eric Bluestone	20%
Sara Herbstman	20%
Thomas Potvin	20%
Ira Lichtiger	20%
Steven Bluestone	20%

## SCHEDULE A

All Distributable Cash shall be distributed to the Members in proportion to their percentage Membership Interest in the Company.

AMENDMENT TO  
OPERATING AGREEMENT OF  
BLUESTONE GOWANUS GREEN PARTNERS, LLC

This Amendment dated as of July 1, 2019, to the Operating Agreement (defined below) of Bluestone Gowanus Green Partners, LLC (the “Company”) among, Sara B. Herbstman, residing at 527 Haworth Avenue, Haworth, NJ 07641 (“Sara”), Ira Lichtiger, residing at 161 Broadway, Hastings-On-Hudson, NY 10706 (“Ira”), and Eric Bluestone, residing at 25 West 81<sup>st</sup> Street, Apartment 16A, New York, NY 10019 (“Eric”) (Sara, Ira and Eric being referred to herein collectively as the “Managing Members” or “Members”), and Thomas Potvin, residing at 1299 Corporate Drive, Suite 2110, Westbury, New York 11590 (a “Resigning Member”), and Steven Bluestone, residing at 36 Springbrook Lane, Stop #43, Hillsdale, New York 12529 (a “Resigning Member” and, together with Steven Bluestone, the “Resigning Members”).

**WHEREAS**, the Operating Agreement of the Company, dated as of July 15, 2008 (“Operating Agreement”), provides for the management and operation of the Company; and

**WHEREAS**, by Assignment dated as of January 1, 2019, Steven Bluestone assigned and transferred his interests in the Company on an equal one-third basis to Sara, Eric and Ira; and

**WHEREAS**, pursuant to a certain Transfer Agreement, dated February 19, 2019, Thomas Potvin assigned and transferred his interests in the Company on an equal one-third basis to Sara, Eric and Ira, the remaining Members;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the Members or their successors in interest agree to and hereby amend the Operating Agreement as follows:

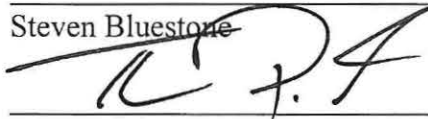
1. The definition of Managing Members is revised as provided in the preamble herein above.
2. Effective as of January 1, 2019, Steven Bluestone shall no longer be a Member of the Company.
3. Effective as of February 19, 2019, Thomas Potvin shall no longer be a Member of the Company.

4. Each of the remaining Members has consented to the transfers described above.
5. Exhibit A of the Operating Agreement is hereby deleted and replaced in its entirety with Exhibit A annexed hereto.
6. This Amendment may be executed in two or more counterparts, each of which shall be an original but together shall constitute one and the same agreement, and a facsimile signature shall be deemed an original for purposes hereof.

**Signatures on Following Page**


IN WITNESS WHEREOF, the parties have signed and delivered this Amendment effective as of the date first above written.


**RESIGNING MEMBERS:**

~~Steven Bluestone~~  
  
Thomas Potvin

**MEMBERS:**

  
Sara Herbstman

  
Eric Bluestone

  
Ira Lichtiger

IN WITNESS WHEREOF, the parties have signed and delivered this Amendment effective as of the date first above written.

**RESIGNING MEMBERS:**



Steven Bluestone

\_\_\_\_\_  
Thomas Potvin

**MEMBERS:**

\_\_\_\_\_  
Sara Herbstman

\_\_\_\_\_  
Eric Bluestone

\_\_\_\_\_  
Ira Lichtiger

AMENDED EXHIBIT A

BLUESTONE ARVERNE ASSOCIATES, LLC

Members

Percentage Interest

Eric Bluestone  
Sara Herbstman  
Ira Lichtiger

33 and 1/3%  
33 and 1/3%  
33 and 1/3%

**FAC GOWANUS GREEN LLC**

**OPERATING AGREEMENT**

**As of July 7, 2008**

## FAC GOWANUS GREEN LLC

### OPERATING AGREEMENT

This Operating Agreement (this "Agreement") of FAC GOWANUS GREEN LLC, a New York limited liability company (the "Company"), is hereby adopted, executed, and agreed to as of July 7, 2008 by Fifth Avenue Committee, Inc., a New York not-for-profit corporation, with an address at 621 Degraw Street, Brooklyn, New York 11217 (the "Member").

#### Article I

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

1.1. *Organization.* The Member is organizing a limited liability company pursuant to the New York Limited Liability Company Law, as amended from time to time (the "Law"), and pursuant to the provisions of this Agreement and, for that purpose, has caused the Articles of Organization filed with the New York State Department of State on an even date herewith.

1.2. *Name of the Company.* The name of the limited liability company shall be FAC GOWANUS GREEN LLC. The Company may do business under that name and under any other name or names upon which the Member decides. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file a certificate as required by General Business Law §130.

1.3. *Purpose.* The Company is organized for the purpose of development, ownership, leasing and operation of real estate and to do any and all things necessary, convenient, or incidental to that purpose.

1.4. *Term.* The Company shall have a perpetual existence, unless its existence is sooner terminated pursuant to Article 7 of this Agreement.

1.5. *Members.* The name and present mailing address of the Member is as follows:

Name	Address
Fifth Avenue Committee, Inc.	621 Degraw Street Brooklyn, New York 11217

#### Article II

##### Member; Capital; Capital Account

2.1. *Initial Capital Contribution.* Upon the execution of this Agreement, the Member is contributing to the company cash in the amount of \$100.00.

2.2. *No Additional Capital Contributions Required.* The Member shall not be required to contribute any additional capital to the Company. The Member shall not have any personal liability for any debt, obligation or liability of the Company.

2.3. *No Interest on Capital Contributions.* The Member shall not be paid interest on its Capital Contribution.

2.4. *Return of Capital Contributions.* Except as otherwise provided in this Agreement, the Member shall not have the right to receive any return of its Capital Contribution.

2.5. *Form of Return of Capital.* If the Member is entitled to receive a return of its Capital Contribution, the Company may distribute cash, notes, property, or a combination thereof to the Member in return of the Capital Contribution.

2.6. *Loans.* The Member may, at any time, make or cause a loan to be made to the company in any amount and on those terms as determined by the Member.

### **Article III**

#### **Profit, Loss, and Distributions**

3.1. *Distributions of Cash Flow.* Cash Flow for the Company may be distributed to the Member at such times and in such amounts as determined by the Member. Such distributions shall be allocated to the Member in the same proportion as its membership interest.

### **Article IV**

#### **Management: Rights, Powers, and Duties**

##### *4.3. Management.*

4.3.1. The Company shall be managed by the Member. The Member shall have the full and exclusive right and power to act for and bind the Company.

4.3.2. The Member may cause the Company to employ and retain such other persons as may be necessary or appropriate for the conduct of the Company's business, on such terms as the Member shall determine, including persons who may be designated as officers. The officers of the Company shall have the titles, powers and duties delegated to them by the Member. Any number of titles may be held by the same officer.

4.3.3. The Member shall have the power and authority to delegate his or her right and power to manage and control the business and affairs of the Company to one or more other persons (including one or more committees, managers and agents, employees and/or affiliates of a manager), including delegation by management agreement or other arrangement.

#### *4.4. Liability and Indemnification.*

4.4.1 Except as otherwise provided by law, no Member shall be liable, responsible or accountable in any way for damages or otherwise to the Company or to any of the Members for any act or failure to act pursuant to this Agreement or otherwise unless there is a judicial determination that (i) such person acted in bad faith, (ii) the conduct of such person constituted intentional misconduct or a knowing violation of law, (iii) such person gained a financial benefit to which he or she was not legally entitled or (iv) such person failed to perform his or her duties, specifically with respect to distributions under Section 508(a) of the Law, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

4.4.2. The Company shall indemnify, defend and hold harmless the Member and any delegate, employee or officer of the Member (severally, the "Indemnatee" and collectively, the "Indemnitees"), from and against any claims, losses, liabilities, damages, fines, penalties, costs and expenses (including, without limitation, reasonable fees and disbursements of counsel and other professionals) arising out of or in connection with any act or failure to act by an Indemnatee pursuant to this Agreement, or the business and affairs of the Company, to the fullest extent permitted by law; provided, however, that an Indemnatee shall not be entitled to indemnification hereunder if there is a judicial determination that (a) such Indemnatee's actions or omissions to act were made in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or (b) such Indemnatee personally gained a financial benefit to which the Indemnatee was not legally entitled.

### **Article V Transfers of Interest**

5.1. *Transfers.* The Member may transfer in whole or in part its interest in the Company.

### **Article VI Admission of Additional Members**

6.1. *Admission of Additional Members.* The Member may admit one or more additional members to the Company in its sole discretion.

### **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:

7.1.1. upon the consent of the Member;

7.1.2. upon the dissolution of the Member;

7.1.3. upon the entry of a decree of judicial dissolution under Section 702 of the Law.

## **Article VIII**

### **General Provisions**

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

8.2. *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.

8.3. *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.

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IN WITNESS WHEREOF, the Member has executed, or caused this Agreement to be executed as of the date set forth hereinabove.

**FIFTH AVENUE COMMITTEE, INC.**

By:  \_\_\_\_\_  
Name: Michelle de la Uz  
Title: Executive Director

# AMENDED AND RESTATED OPERATING AGREEMENT

## OF

### HUDSON GOWANUS LLC

THE OPERATING AGREEMENT (this “**Agreement**”) of HUDSON GOWANUS LLC, a New York limited liability company (the “**Company**”), was entered into as of April 16, 2008 (the “**Initial Effective Date**”) by and among the Company, and hereby amend that Agreement as of October 6, 2020 (the “**Effective Date**”) the Members executing this Agreement as of the date hereof and each other Person who after the date hereof becomes a Member of the Company and becomes a party to this Agreement.

## PREAMBLE

The parties hereto desire to enter into this Agreement in order to set forth and establish their respective rights, duties and obligation with respect to the Company.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby covenant and agree as follows:

## ARTICLE 1 ORGANIZATIONAL MATTERS

The meaning of certain capitalized terms as used in this agreement is set forth following the first use of such terms or in the Schedule of Definitions attached hereto.

**Section 1.1 Name.** The name of the Company is HUDSON GOWANUS LLC.

**Section 1.2 Formation.** The Members have formed the Company under the New York Limited Liability Company Act (the “**Act**”) by filing Articles of Organization with the Secretary of State of the State of New York on April 16, 2008 (the “**Articles**”).

**Section 1.3 Organization.** The Members shall cause to be filed such certificates and documents as are necessary to comply with the applicable requirements of the laws of the State of New York and of any other jurisdiction in which the Company shall conduct business.

**Section 1.4 Principal Office.** The address of the principal office of the Company in the State of New York shall be 826 Broadway, 11<sup>th</sup> floor, New York, NY 10003, or such other address in New York City as may be designated from time to time by the Manager.

**Section 1.5 Purpose.** The single purpose of the Company shall be to directly or indirectly, acquire, own, hold, sell, transfer, service, convey, safekeep, dispose of, pledge, mortgage, assign, borrow money against, finance, refinance, develop, redevelop, manage, lease, maintain, operate, improve, renovate, expand, originate or otherwise deal with the Property. The Company shall not engage in any other business or activity.

**Section 1.6 Powers.** The Company is empowered to do any and all acts and things which a limited liability company is permitted to do under the Act or other applicable law which is necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Company. No Member, on the basis of being a Member, has the authority to bind the Company, except with the authority of the Manager.

**Section 1.7 Term.** The “Term” of the Company commenced upon the filing of the Articles and shall continue unless and until the Company is dissolved pursuant to the provisions of this Agreement or as otherwise provided by law.

**Section 1.8 Title to Company Assets.** Title to Company assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company, and no Member, individually or collectively, shall have any ownership interest in any Company assets or any portion thereof. Title to any or all of the Company assets may be held in the name of the Company, or one or more nominees or subsidiaries of the Company, all as the Manager may determine. All Company assets shall be recorded as the property of the Company in its books and records, irrespective of the name in which legal title to such Company assets is held.

**Section 1.9 Admission of Members.**

**A.** Each Person that has executed this Agreement and whose name is listed on **Schedule A**, as the same may be amended from time to time, is hereby admitted as a Member.

**B.** Additional Members may be admitted as Members, from time to time, at the discretion of the Manager and subject to the provisions hereof.

**Section 1.10 Names, Contact and Other Information of the Members.** Set forth below the name of each Member on **Schedule A** shall be appropriate contact information for such Member (including such Member’s mailing address, telephone number, and facsimile number as well as, in the case of a Member that is an entity, the name or title of an individual to whom notices and other correspondence should be directed). Each Member shall promptly provide the Company with the information required to be set forth for such Member on **Schedule A** and shall thereafter promptly notify the Company of any change to such information.

**Section 1.11 Additional Documents.**

**A.** The Manager shall cause to be executed, filed, recorded, published, or amended any documents, as the Manager in its reasonable discretion determines to be

necessary or advisable: **(i)** in connection with the formation, operation, dissolution, winding-up, or termination of the Company pursuant to applicable law; or **(ii)** to otherwise give effect to the terms of this Agreement. The terms and provisions of each document described in the preceding sentence shall be initially established and shall be amended as necessary to cause such terms and provisions to be consistent with the terms and provisions of this Agreement.

**B.** Each Member hereby grants to the Manager a special power of attorney (with full rights of assignment) irrevocably appointing the Manager as the granting Member's attorney-in-fact with power and authority to execute or acknowledge, in the granting Member's name and on its behalf, any document described in this **Section 1.11** insofar as any such document relates to a matter, action or transaction previously approved by the Members in accordance with this Agreement. Each special power of attorney granted under this **Section 1.11** is coupled with an interest and shall not be revoked by the bankruptcy, death, disability or other event of legal incapacity of the granting Member.

**Section 1.12 Incorporation by Reference.** The Exhibits and Schedules attached hereto are incorporated herein and made a part of this Agreement.

## **ARTICLE 2 CAPITALIZATION**

### **Section 2.1 Capital Accounts.**

**A. Maintenance of Capital Accounts.** A separate Capital Account shall be established on the books of the Company for each Member, including any Additional Members, and each Capital Account shall be maintained and adjusted as provided in this **Article 2**. The Capital Account of each Member shall be:

**(i)** credited with: **(a)** all cash capital contributions made to the Company by such Member on account of Capital Contributions, **(b)** the lesser of the agreed upon fair market value or the book value of any property contributed by such Member to the Company (net of any liabilities secured by such property that the Company is considered to assume or take subject to Section 752 of the Code) on account of Capital Contributions, and **(c)** any amount credited to such Member pursuant to **Sections 6.1** and **6.2**;

**(ii)** debited with: **(a)** the amount of any distributions to such Member pursuant to **Sections 5.1**, **(b)** the fair value of any asset distributed in kind to such Member pursuant to **Section 5.1** (net of any liabilities secured by such asset that such Member is considered to assume or take subject to Section 752 of the Code), and **(c)** any amount debited to such Member pursuant to **Sections 6.1** and **6.2**; and

**(iii)** adjusted simultaneously with the making of any adjustment to the book value of the Company's assets, to reflect the aggregate net adjustments to

such book value as if the Company recognized Profit or Loss equal to the respective amount of such aggregate net adjustments immediately before the event causing such adjustments.

**B. Compliance with Treasury Regulations.** The provisions of this **Section 2.1** relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b)(2)(iv) or such regulations as are applicable thereto and shall be interpreted and applied in a manner consistent with such Treasury Regulations. The Capital Account of each Member also shall be adjusted appropriately to reflect any other adjustment required pursuant to Treasury Regulations Section 1.704-1 or 1.704-2, or in the discretion of the Manager, pursuant to **Section 6.2** hereof. Upon the occurrence of any event specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f), the Manager may cause the Capital Accounts of the Member to be adjusted to reflect the fair value of the Company's assets at such time (as determined by the Manager in its sole discretion) in accordance with such Regulations. If the Manager determines that it is necessary or prudent to modify the manner in which the Capital Accounts are maintained in order to comply with such Treasury Regulations, including any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q) or such regulations as are applicable thereto, the Manager may make such modification; provided, that, notwithstanding any other provision in this Agreement, such modification will not have more than a de minimus effect on the amounts distributable to any Member without such Member's prior written consent.

## **Section 2.2 Capital Contributions.**

**A.** Each Contributing Member shall make an initial Capital Contribution to the Company upon becoming a Member (an “**Initial Capital Contribution**”). Each Contributing Member shall make any additional Capital Contributions to the Company pursuant to a Capital Call issued by the Manager (the “**Additional Capital Contributions**”). Unless otherwise consented to by the Manager, all Capital Contributions shall be in cash.

**B.** In the event that in the discretion of the Manager additional funds are needed to fund the Company, any of the Project Entities or the Project, the Manager may make a capital call (“**Capital Call**”) for Additional Capital Contributions from the Contributing Members. A Capital Call shall be issued to each Contributing Member, stating (i) the aggregate amount requested of all Contributing Members (the “**Aggregate Capital Call Amount**”), (ii) the specific amount requested of such Contributing Member (the “**Member's Capital Call Amount**”), and (iii) the time the Additional Capital Contribution is due to be made to the Company; provided, however, that all Capital Calls shall provide not less than ten (10) days' prior notice to the Contributing Members. For any Capital Call, a Member's Capital Call Amount shall equal the Aggregate Capital Call Amount multiplied by such Contributing Member's Contribution Percentage.

## **Section 2.3 Failure to Fund Capital Contributions.**

A. In the event that a Contributing Member fails to make all or any portion of a Capital Contribution as required in accordance with **Section 2.2** and such default continues for ten (10) Business Days, then such Contributing Member (a "**Defaulting Member**") shall be deemed to be in default hereunder. In such event, any non-defaulting Contributing Member (a "**Non-Defaulting Member**") may, in its discretion, elect to make a loan (a "**Member Default Loan**") to the Defaulting Member in the amount of all or any portion of such Defaulting Member's required Capital Contribution. The Member Default Loan shall then be contributed to the Company on behalf of the Defaulting Member as a Capital Contribution. Each Member Default Loan shall be a demand loan, bear interest at the rate of ten per cent (10%) per annum from the date funded until the date repaid in full and shall be secured by all distributions payable to the Defaulting Member. Each Contributing Member authorizes the Company to pay to the maker of a Member Default Loan (a "**Loan Maker**") all distributions payable to the Defaulting Member up to the balance due on the Member Default Loan.

B. In the event that a Member Default Loan is not repaid in full together with all interest within one (1) year of when made, the Loan Maker may, in his discretion, elect to convert the remaining balance (including any interest accrued but unpaid to date) of the Member Default Loan (the "**Loan Balance**") to equity. In such event, the following shall occur:

(i) the Capital Account of the Defaulting Member shall be reduced by the Loan Balance; provided, that such Capital Account balance shall not be reduced below zero;

(ii) the Capital Account of the Loan Maker shall be increased by the Loan Balance;

(iii) the Percentage Interest of the Defaulting Member shall be reduced by the Reallocated Percentage Interest; and

(iv) the Percentage Interest of the Loan Maker shall be increased by the Reallocated Percentage Interest.

C. The "**Reallocated Percentage Interest**" shall equal the product of the Defaulting Member's Percentage Interest prior to conversion of the debt to equity, multiplied by one and one-half times ( $1\frac{1}{2} \times$ ) a fraction expressed as a percentage, rounded to the nearest whole number, the numerator of which is the Loan Balance and the denominator of which is the aggregate Capital Contributions of the Defaulting Member through the date of conversion.

**Section 2.4 Return of Capital.** Except to the extent of distributions made pursuant to this Agreement, no Member shall be entitled to the withdrawal or return of his Capital Contributions, nor may any Member withdraw from the Company or otherwise have any right to demand or receive the return of his Capital Contributions to the Company. Except as otherwise expressly provided in this Agreement and for repayment of Member

Loans, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or distributions. No Member shall be liable for the return of any portion of the Capital Contribution of any other Member, and the return, if any, of any Member's Capital Contributions shall be made solely from the Company's assets.

**Section 2.5 Guarantees.** David Kramer, Aaron Koffman and Alison Novak, personally, and Whitfarm Realty LLC agree to provide all guarantees that are required by lenders or other Project participants and that have been unanimously approved by the Contributing Members (the "**Guarantees**"). If the Contributing Members have not unanimously approved a guarantee, no Contributing Member shall have any obligation with respect to such guarantee. William Fowler's obligation to provide such Guarantees shall be made by Whitfarm Realty LLC, an entity wholly owned by him. All payments made under any Guaranty shall be treated as Additional Capital Contributions for purposes of determining adjustments to Capital Accounts. In the event that a Contributing Member is permitted to withdraw from the Company or Transfer his Interest, the Manager shall make a best efforts attempt to have such Contributing Member released from any obligations under any Guarantee. With respect to each Guaranty, the Contributing Members shall execute and deliver to each other a Contribution Agreement in the form annexed hereto as Exhibit B.

### **ARTICLE 3 MANAGEMENT AND OPERATIONS**

**Section 3.1. Management.** The business and affairs of the Company shall be managed by David Kramer (the "**Manager**"), who, in accordance with and subject to the terms of this Agreement, shall have the authority to exercise all of the powers and privileges granted by the Act, any other law or this Agreement, together with any powers incidental thereto, and to take any other action not prohibited under the Act or other applicable law, so far as such powers or actions are necessary or convenient or related to the conduct, promotion or attainment of the business, purposes or activities of the Company. Decisions of the Manager consistent with the terms of this Agreement shall be presumed to be within its scope of authority and shall be binding upon the Company and each Member. In the event that Manager becomes incapacitated, dies or withdraws as Manager, a new Manager will be selected by the unanimous consent of the Contributing Members. No Member, in his/her individual capacity, shall have the power or authority legally to bind the Company.

#### **Section 3.2. Rights, Powers and Duties of the Manager/Officers.**

**A.** Subject to the limitations set forth in this Agreement, including without limitation **Section 3.3**, and to the requirements of applicable law, the Manager shall have full, exclusive, and complete discretion, power and authority 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, to execute and deliver, for and on behalf of the Company, any and all documents and instruments which may be necessary or desirable to carry on the business of the Company.

B. Except as otherwise expressly provided herein, the Manager shall not be paid any compensation solely for serving as the Manager of the Company; provided, that the Manager shall be reimbursed by the Company for all reasonable out-of-pocket costs and expenses (including legal and accounting fees) incurred by the Manager acting as Manager of the Company in connection with the business of the Company, in accordance with this Agreement.

C. The Manager may contract, on behalf of the Company, any of the Project Entities or the Project with any qualified Person, including any of the Members, or any firm or corporation in which the Members may have an interest (a “**Related Party**”), at competitive rates of compensation, commission or remuneration, for the performance of any and all services which, in the Manager’s discretion, may at any time be necessary, proper, convenient or advisable to carry on the business of the Company; provided, however, that the Manager must receive the prior written consent of the Contributing Members prior to entering into any agreement or relationship, directly or indirectly, involving a Member or a Related Party, which consent shall not be unreasonably withheld or delayed.

D. At the discretion of the Manager, the Officers of the Company may consist of a President, one or more Vice-presidents, a Secretary, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers. The Company also may have, at the discretion of the Manager, such other Officers as may be appointed in accordance with the provisions of this Section 3.2 (D). Any number of offices may be held by the same Person. Officers shall have the power to bind the Company and enter into contracts and other agreements on behalf of the Company, subject to the limitations on the Manager set forth in this Agreement.

- i. Subject to the approval of Contributing Members holding a majority of the Percentage Interests of the Contributing Members (“Majority”), the Officers of the Company shall be chosen by the Manager, and each shall serve at the pleasure of the Manager. The initial officers of the Company shall be:

David Kramer – President  
William Fowler – Vice President  
Alison Novak – Treasurer  
Aaron Koffman -- Secretary

- ii. Subject to the approval of a Majority, the Manager may appoint such additional Officers as the business of the Company may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement or as provided for by the Manager.
- iii. Any Officer may be removed, with or without cause, by the Manager or by a Majority. Any Officer or may resign at any time by giving written notice to the Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that

notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party.

- iv. A vacancy in any office because of death, resignation, removal, disqualification or other cause shall be filled by the Manager, subject to the approval of a Majority. The Manager or the President may make temporary appointments to a vacant office pending action by the Manager.

**Section 3.3. Limitations on Actions of the Manager.** Notwithstanding anything to the contrary contained in this Agreement, the Manager shall not, directly or indirectly, either in his capacity as Manager of the Company or on behalf of the Company in its capacity as manager (directly or indirectly) of the Project Owner, do any of the following without the specific prior unanimous written consent of the Contributing Members until the first to occur of either (1) the fifth (5th) anniversary of the date of acquisition of the Property by the Project Owner or (2) the date on which all payment, operating deficit, construction costs, completion or similar guarantees made by any of the Contributing Members or his Affiliates shall no longer be in effect, and, thereafter, without the prior written consent of Members holding at least sixty percent (60%) of the Percentage Interests:

- A. Execute, amend or modify any Project Entity operating agreement, or adopt, amend or modify any Project Entity's articles of organization;
- B. Construct the Project, except in accordance with the applicable Project Entity operating agreement;
- C. Adopt a development plan for the Project or amend such development plan in any material respect;
- D. Adopt a budget for the development of the Project or amend such Project development budget in any manner which would increase the total development cost;
- E. Adopt an operating plan for the Project or amend such operating plan in any material respect;
- F. Adopt a budget for operation of the Project or amend such operating budget in any manner which would increase the total operating cost;
- G. Exercise any option under any Project Entity operating agreement;
- H. Commence any federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceeding (any of the foregoing, a "**Bankruptcy Proceeding**"), or consent to the institution of any Bankruptcy Proceeding or the appointment of a receiver, liquidator, assignee, trustee, conservator or sequester (or other similar official) or of all or a substantial part of its assets;

I. Amend or modify this Agreement or the Articles, or take any action that is inconsistent with the terms and provisions of this Agreement;

J. Admit any Additional Member or substitute Member;

K. Voluntarily dissolve, terminate or liquidate, or consolidate or merge with or into any Person;

L. Commence (including the filing of a counterclaim) or settle any litigation or arbitration to which the Company or any Project Entity is, or may be, a party, or by which the Company or any Project Entity is or may be affected unless the amount in dispute or controversy, as reasonably determined by the Manager, and which is not covered by insurance, would not exceed one hundred thousand dollars (\$100,000);

M. Sell, lease (other than residential tenant leases in the ordinary course of operating the Project), transfer or otherwise dispose of, directly or indirectly, all or any portion of the Project;

N. Subject all or any portion of the Project or any other property of the Company to any mortgage, deed of trust, lien or other encumbrance;

O. Borrow money or execute any promissory note, evidence of indebtedness, guaranty or the like;

P. Settle any insurance or indemnity claims for sums exceeding one hundred thousand dollars (\$100,000) with respect to any claim;

Q. Make any material tax election or tax filing on behalf of the Company;

R. Grant any general power of attorney to any Person on behalf of the Company;

S. Consent to any zoning change, variance, landmarking or other land use restriction;

T. Enter into, execute, modify in any material respect or terminate any agreement which is not terminable without penalty upon thirty (30) days' or less notice and which involves a sum in excess of one thousand dollars (\$1,000), except if due to the default of the other party to such agreement;

U. Enter into any agreement for services with any accountant or legal counsel or engage any accountants to prepare the tax returns of the Company or audit the Company's financial statements (the parties agree that Grodsky, Caporrino & Kaufman, CPA's, PC is approved as the Company's initial accountant and auditor);

V. Settle any eminent domain proceedings by any Person having the power of eminent domain; or

W. Appoint or remove any officer.

**Section 3.4 Indemnification.**

**A. Extent.**

(i) To the fullest extent permitted by applicable law, the Company shall indemnify each Indemnitee from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Company as set forth in this Agreement, in which such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise; provided, however, that indemnification shall not be paid hereunder with respect to any matter as to which any Indemnitee shall have been finally adjudicated in any such action, suit or other proceeding, or otherwise by a court of competent jurisdiction, to have committed willful malfeasance, gross negligence, bad faith, deliberate dishonesty or fraud in the conduct of its or their office. Without limitation, the foregoing indemnity shall extend to any liability or other obligations of any Indemnitee pursuant to a loan guaranty or otherwise for any indebtedness of the Company (including, without limitation, any indebtedness which the Company has assumed or taken subject to). The Manager is hereby authorized and empowered, on behalf of the Company, to enter into one or more indemnity agreements consistent with the provisions of this **Section 3.4** in favor of any Indemnitee having or potentially having liability for any such indebtedness.

(ii) The termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in **Section 3.4A.(i)** The termination of any proceeding by conviction or upon a plea of nolo contendere or its equivalent, or an entry of an order of probation prior to judgment, shall create a rebuttable presumption that the Indemnitee acted in a manner contrary to that required for indemnification under **Section 3.4A.(i)** with respect to the subject matter of such proceeding.

(iii) Any indemnification pursuant to this **Section 3.4** shall be made only out of the assets of the Company and any insurance proceeds from any insurance policies covering any Indemnitee, and no Member shall have any obligation to contribute to the capital of the Company, or otherwise provide funds, to enable the Company to meet its obligations under this **Section 3.4**.

**B. Reimbursement of Expenses.** The right to indemnification conferred by this **Section 3.4** shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of a proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance

of the final disposition of a proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of its good faith belief that it has met the standard of conduct necessary for indemnification under this **Section 3.4** and a written undertaking, by or on behalf of such Person which the Manager shall determine is from a creditworthy Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this **Section 3.4** or otherwise.

**C. Indemnification Nonexclusive.** The indemnification provided by this **Section 3.4** shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement or as a matter of law or equity or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity unless otherwise provided in a written agreement pursuant to which such Indemnitee is indemnified.

**D. Insurance.** The Company may, but shall not be obligated to, purchase and maintain insurance with customary terms and limits, at its expense, on behalf of the Indemnitee and such other employees of the Company as the Manager shall determine, against any liability that may be asserted against or expenses that may be incurred by such Indemnitee or employee in connection with the Company's activities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement. If the Company elects to purchase insurance for one Member that is not required by contract or law, it shall be required to purchase insurance of equal value for all of the Contributing Members. In the event a Member is required by contract or law to have insurance in order to perform its duties to the Company, the Company shall purchase such insurance.

**E. Duty to Indemnitees.** The provisions of this **Section 3.4** are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this **Section 3.4** or any provision of this Agreement shall be prospective only and shall not in any way affect the Company's liability to any Indemnitee under this **Section 3.4** as in effect immediately prior to such amendment, modification, or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

**F. Provisions Not Invalidated Shall Apply.** If any provision of this **Section 3.4** or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnitee as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this **Section 3.4** that shall not have been invalidated and to the fullest extent permitted by applicable law.

**G. Interest in Transactions No Bar.** An Indemnatee shall not be denied indemnification in whole or in part under this **Section 3.4** solely because the Indemnatee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

## **ARTICLE 4 FISCAL MATTERS**

**Section 4.1 Records and Accounting.** The Company shall keep or cause to be kept at the principal office of the Company those records and documents required to be maintained by the Act and such other books and records deemed by the Company to be appropriate with respect to the Company's business, including, without limitation, all books and records necessary to provide to the Members any information, lists and copies of documents required to be provided pursuant to **Section 4.3**.

**Section 4.2 Fiscal Year.** Except as otherwise required under the Code, the fiscal year ("**Fiscal Year**") of the Company shall be the calendar year.

### **Section 4.3 Reports.**

**A. Annual Reports.** As soon as practicable, but in no event later than ninety (90) days after the end of each Fiscal Year, the Company shall cause to be provided to each Member as of the end of such Fiscal Year, annual financial statements of the Company and each Project Entity for such Fiscal Year, prepared in accordance with GAAP, consistently applied or such other format as the Manager shall specify.

**B. Other Information.** The Company shall, from time to time, deliver to the Members such other information in addition to that set forth in this **Section 4.3** as may be required by applicable law or regulation, and other information as may be reasonably requested by a Member.

**Section 4.4 Bank Accounts; Company Funds.** Bank accounts and/or other accounts of the Company shall be maintained in such banking and/or other financial institution(s) as shall be selected by the Manager, and withdrawals shall be made and other activity conducted on one signature. The funds of the Company shall not be commingled with the funds or other assets of any other Person. The Company shall, on a monthly basis, prepare a monthly statement, detailing the current balance, all withdrawals, and other activity that has taken place during the previous one-month period. Such monthly statement shall be distributed to each Member within 15 days after the end of the month. Each Contributing Member shall be entitled to access and review all monthly bank statements of the Company upon reasonable notice and at reasonable times.

**Section 4.5 Insurance.** The Company shall maintain at all times general liability insurance as shall be customary for the type of property and activity on the type of properties from time to time owned by the Company.

### **Section 4.6 Additional Information; Audit Rights.**

A. **Access to Information.** In addition to the other rights specifically set forth in this Agreement, upon reasonable notice, each Contributing Member shall be entitled to access to the books and records, and all other information and documentation of the Company, each Project Entity and the Project.

B. **Audit.** Each Member, at any time, upon reasonable notice and at reasonable times, shall be entitled to audit, at such Member's cost and expense unless otherwise agreed by the Manager, the books and records of the Company and/or each Project Entity at the offices of the Company.

## **ARTICLE 5 DISTRIBUTIONS**

### **Section 5.1 Distributions.**

Available Cash shall be distributed to the Members (or, if a Member Loan is outstanding, to the Loan Maker on behalf of the Defaulting Member) from time to time, as and when reasonably practicable as determined by the Manager, but no less frequently than annually, in the following order and priority:

A. First, to each of the Contributing Members, pro rata in proportion to their Contribution Percentages, until each Contributing Member has received an amount equal to such Member's Unreturned Capital Contribution;

B. Second, to each of the Contributing Members, pro rata in proportion to their Contribution Percentages, until each Contributing Member has received an amount equal to such Contributing Member's Unpaid Preferred Return; and

C. Third, to the Members pro rata in proportion to their Percentage Interests;

provided, however, by unanimous approval of the Contributing Members in their absolute and sole discretion, the foregoing payment priority may be changed from time to time (for example, to provide for distributions to all Members in proportion to their Percentage Interest prior to payment of all Unreturned Capital Contributions or Unpaid Preferred Returns); provided further, however, to the extent that profits are allocated to Non-Contributing Members in excess of losses previously allocated to them, Available Cash shall be distributed first to them in proportion to their Percentage Interests sufficient to pay the tax cost of such allocation as estimated by the Manager in his sole and absolute discretion.

## **ARTICLE 6 ALLOCATIONS OF PROFITS AND LOSSES**

## **Section 6.1 Profits and Losses.**

A. **Profits.** Except as otherwise provided in this **Article 6**, Profits for each fiscal year shall be allocated as follows:

- i. First, to the Members in proportion to the Losses previously allocated to them under **Section 6.1(B)**, until the cumulative Profits allocated to each Member pursuant to this **Section 6.1(A)(i)** are equal to the cumulative Losses allocated to such Member under **Section 6.1(B)**;
- ii. The balance, if any, to the Members in accordance with their Percentage Interests.

B. **Losses.** Except as otherwise provided in this **Article 6**, Losses for each fiscal year shall be allocated to the Members as follows:

- i. First, in proportion to the Profits allocated to the Members under **Section 6.1(A)(ii)**, but only to the extent no distributions under such **Section 6.1(A)(ii)** equal to such Profits have been made since the allocation of such Profits to the Members;
- ii. Next, to the Contributing Members in proportion to their Unreturned Capital Contributions until all Members have a capital account equal to zero;
- iii. The balance, if any, to the Members in accordance with their Percentage Interests.

## **Section 6.2 Special Allocations and Other Tax Matters.**

A. **Special Allocations.** Except as otherwise provided in this Agreement, the following special allocations will be made in the following order and priority:

(i) **Partnership Minimum Gain Chargeback.** Notwithstanding any provision to the contrary in this **Article 6**, if there is a net decrease in Minimum Gain during any Fiscal Year or other period for which allocations are made, the Members will be specially allocated items of Company income and gain for that period (and, if necessary, subsequent periods) in an amount equal to such Member's share of the net decrease in Minimum Gain during such Fiscal Year or other period determined in accordance with Treasury Regulations Section 1.704-2(g)(2). Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2)(i). This **Section 6.2.A.(i)** is intended to comply with the minimum gain chargeback requirements set forth in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently

therewith, including the exceptions to the minimum gain chargeback requirement set forth in Treasury Regulations Sections 1.704-2(f)(2) and (3).

**(ii) Partner Nonrecourse Debt Minimum Gain Chargeback.**

Notwithstanding any other provision of this **Article 6** (other than **Section 6.2.A.(i)** which shall be applied before this **Section 6.2.A.(ii)**), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Fiscal Year or other period for which allocations are made, each Member with a share of Partner Nonrecourse Debt Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(5) shall be specially allocated items of Company income and gain for that period (and, if necessary, subsequent periods) in an amount equal to the Member's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i). The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii). This **Section 6.2.A.(ii)** is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith, including the exceptions set forth in Treasury Regulations Section 1.704-2(f)(2) and (3) to the extent such exception apply to Treasury Regulations Section 1.704-2(i)(4).

**(iii) Qualified Income Offset.** A Member who unexpectedly receives any adjustment, allocation or distribution that causes or increases a deficit balance in such Member's Adjusted Capital Account, taking into account the rules of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), respectively, will be specially allocated items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for the relevant Fiscal Year) in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of Member as quickly as possible, provided that an allocation pursuant to this **Section 6.2.A.(iii)** shall be made only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in **Section 6.2.A.** have been made in the first instance without regard to this **Section 6.2.A.(iii)**.

**(iv) Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year or other period shall be allocated among the Members in proportion to each Member's Membership Interest. Solely for purposes of determining each Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3), each Member's interest in Company Profits shall be equal to its Membership Interest in the Company. The items of Losses, deductions and Code Section 705(a)(2)(B) expenditures to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(j)(1)(ii).

**(v) Partner Nonrecourse Deductions.** Notwithstanding anything to the contrary provided in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Member who bears the economic risk of loss with respect to the liability to which the Partner

Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

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

**(vii) Depreciation Recapture.** In the event there is any recapture of Depreciation or item of tax credit, the allocation thereof shall be made among the Members in the same proportion as the deduction for such Depreciation or item of tax credit was allocated.

**B. Curative Allocations.** The allocations set forth in **Sections 6.2.A.(i)** through **(v)** (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Members are authorized to further allocate Profits, Losses, and other items among the Members in a reasonable manner so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions would be divided among the Members pursuant to **Section 5.1**, but for application of the Regulatory Allocations. In general, such reallocation will be accomplished by specially allocating other Profits, Losses and items of Income, gain, loss and deduction, to the extent they exist, among Members so that the net amount of the Regulatory Allocations and the special allocations to each Member is zero. The Company shall accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Treasury Regulations.

**C. Tax Allocations - Code Section 704(c).**

**(i)** Notwithstanding any provision to the contrary in this Agreement, depreciation, gain or loss, and deduction with respect to any Company property (including, but not limited to, the Property) that is subject to Code Section 704(c), the Treasury Regulations thereunder and/or Treasury Regulations Section 1.704-1(b)(2)(iv)(f) shall be determined and allocated among Members, and the Capital Accounts of Members shall be determined, in accordance with Section 704(c) of the Code and the Treasury Regulations thereunder and/or Treasury Regulations Section 1.704-1(b)(2)(iv)(f), as the case may be.

**(ii)** In the event the book value of any Company asset is adjusted pursuant to the other provisions of this Agreement (not including herein the initial booking of any asset contributed to the Company), subsequent allocations of taxable income, gain, loss and deduction with respect to such asset shall be determined and allocated among Members, and the Capital Accounts of Members shall be determined, so as to account for

any Book-Tax Disparity arising from such adjustment in the same manner as would occur as to an asset contributed to the Company under Code Section 704(c) and the Treasury Regulations thereunder.

**D. Regulatory Compliance.** The foregoing provisions of **Section 6.2.A and B** relating to the allocation of Profits, Losses and other items for federal income tax purposes are intended to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

## **ARTICLE 7**

### **RIGHTS, LIABILITIES AND OBLIGATIONS OF MEMBERS**

**Section 7.1 Rights and Obligations of the Members.** The rights and obligations of the Members shall be determined pursuant to the Act and this Agreement. To the extent the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be under the Act in the absence of any such provision, or if this Agreement is inconsistent with the Act, this Agreement shall control except to the extent that the Act at the time in question prohibits any particular provision of the Act to be waived or modified by the Members, in which event any contrary provisions herein shall be valid to the extent permitted under the Act, except where such partial validity is clearly inconsistent with the intent of the Members, in which event the entire contrary provision shall be invalid.

**Section 7.2 Limitation of Liability.** Except as expressly provided in this Agreement, no Member shall have any liability under this Agreement to contribute capital or make loans to the Company or other Members. Except as required under the Act or as expressly provided in this Agreement, no Member in its capacity as a Member shall be personally liable for any debt, obligation, liability or losses of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

**Section 7.3 Representation and Warranties.** Each Member (including, without limitation, each Member as a condition to becoming a Member) represents and warrants to the Company and each other Member that this Agreement and all transactions contemplated by this Agreement to be performed by such Member have been duly authorized by all necessary corporate or other action, and this Agreement and the performance by such Member of its covenants and obligations under this Agreement will not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or by-laws, as the case may be, any material agreement by which such Member or any of such Member's properties, is or are bound, or any statute, regulation, order or other law to which such Member is or are subject.

**Section 7.4 Outside Activities of Members.** Any Member and any partner, member, shareholder, equity holder, officer, director, employee, agent, trustee, or Affiliate of any Member shall be entitled to and may have business interests and engage in business

activities in addition to those relating to the Company, including business interests and activities that are in direct competition with the Company or that are directly enhanced by the activities of the Company, including development of any other real property; provided, that such competing activities having a material impact on the Company or its assets must be disclosed to, and receive the written consent of, the Manager and the Contributing Members. Neither the Company, nor any Member, nor any Affiliate of any Member, nor any other Person, shall have any rights, by virtue of this Agreement or the relationship to the Company established hereby, in any other business ventures of any other Member or any of their Affiliates. No Member shall have any obligation pursuant to this Agreement to offer any interest in any other business ventures to the Company, any Member or any of their Affiliates, even if such opportunity is of a character which, if presented to the Company, any Member or any of their Affiliates, could be undertaken by such Person.

**Section 7.5 Meeting and Voting of Members.** A meeting of the Members may be called at any time by any Contributing Member. Meetings shall be held at the Company's principal place of business. Not less than five (5) nor more than thirty (30) days before each meeting, the Contributing Member calling the meeting shall give written notice of the meeting to the other Members. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of the requisite percentage of Members.

**Section 7.6 Related Transactions.** The Company may employ, enter into agreements with or otherwise engage for compensation a Member or a Related Party; provided, however, that the Manager must receive the prior written consent of the Contributing Members prior to entering into any agreement or relationship, directly or indirectly, involving a Member or a Related Party.

## **ARTICLE 8 INTENTIONALLY DELETED**

## **ARTICLE 9 TAX MATTERS**

**Section 9.1 Preparation of Tax Returns.** The Company shall arrange for the preparation and timely (including valid extensions) filing of all federal, state and local tax returns and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each Fiscal Year, the tax information required to be furnished to Members for federal, state and local income tax reporting purposes.

**Section 9.2 Tax Matters Member.** William Fowler shall be the "tax matters partner" of the Company for federal income tax purposes. Pursuant to Section 6230(e) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Company, the tax matters partner shall furnish the IRS with the name, address, taxpayer identification number, and profit interest of each of the Members and the Assignees; provided, however, that such information is provided to the Company by the Members and the assignees. Notwithstanding anything herein to the contrary, the tax matters partner shall, upon receipt of notice from the IRS, give notice of an administrative proceeding with respect to the Company to all Members in accordance

with, and as if each such Member were a "notice partner" pursuant to Section 6231(a)(8) of the Code.

**Section 9.3 Tax Accountant and Consistency of Reporting.** The selection of the accountant preparing the Company's tax reports shall be made by a decision of the Manager. Each Member shall report in its tax returns on a basis consistent with the position taken by the Company in its own reports.

## **ARTICLE 10 TRANSFERS AND WITHDRAWALS**

**Section 10.1 Transfers.** No Member shall have the right to sell, transfer, assign or otherwise convey, or mortgage, pledge, hypothecate or encumber all or any portion of his/her Interest, or any direct or indirect ownership or economic interest in any such Member (any of the foregoing, a "**Transfer**"), without the express written consent of the Contributing Members. 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 Interests, in violation of the prohibition contained in this **Section 10.1** shall be deemed invalid, null and void, and of no force or effect. Any Person to whom any such Interests are attempted to be transferred in violation of this **Section 10.1** 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, nor receive distributions from the Company. Notwithstanding the foregoing, such an Interest, may be Transferred in whole or in part, to an Affiliate of a Member or to any immediate family member of a Member, or family trust, family partnership or other similar estate-planning vehicle of a Member, or, upon the death of a Member, to such Member's heirs and distributees. Any Person who acquires in any manner whatsoever any such Interest (or any part thereof), whether or not such Person has accepted and assumed in writing the terms and provisions of this Agreement, shall be deemed, by acceptance of the acquisition of any such Interest, to have agreed to be subject to and bound by, and shall be deemed to have assumed all of the obligations of this Agreement with respect to, such Interest and shall be subject to the provisions of this Agreement.

**Section 10.2 Purchase Option.** David Kramer, Aaron Koffman and Alison Novak at their option exercised in writing, shall have the right to purchase a percentage (the "Applicable Percentage") of the Interest of a Non-Contributing Member (the "Option Interest") at any time after the Non-Contributing Member shall no longer be employed (voluntarily or involuntarily) by The Hudson Companies Incorporated or any of its Affiliates, until a permanent or temporary Certificate of Occupancy is issued for the Project, equal to:

1. 45% upon the date of execution of this Agreement;
2. 25% upon the date of the construction loan closing for any phase of the Project; and

3. 20% upon the date of the requisition of 50% of the construction lender's budget for any phase of the Project.

The purchase price for the Option Interest shall equal the book value of the Non-Contributing Member's Capital Account as of the date (the "Exercise Date") of exercise of the option, as determined by the Company's accountants, multiplied by the Applicable Percentage. Upon the exercise of such option, David Kramer, Aaron Koffman and Alison Novak and the Non-Contributing Member shall execute and deliver to each other such documents as are reasonably necessary to confirm the transfer of the Non-Contributing Member's Interest as of the Exercise Date; provided, however, no such documents shall be necessary for the effective transfer of the Option Interest.

**Section 10.3 Withdrawals.** A Contributing Member and/or Guarantor may not voluntarily withdraw from the Company prior to the dissolution and winding up of the Company. Any such attempted withdrawal shall be null and void but the Company shall be entitled to relief for the damages caused by any attempts to withdraw.

**Section 10.4 Other Transfer Issues.**

**A. Non-Complying Transfers Void.** Any Transfer in contravention of any of the provisions of this **Article 10** and this Agreement shall be null and void and ineffective to Transfer any Interest, and shall not bind, or be recognized by, or be reflected on the books of, the Company.

**B. Remedies.** In the event any Member shall at any time Transfer an Interest in contravention of any of the provisions of this Agreement, then the Company and each other Member, in addition to any other rights set forth herein, and all other rights and remedies at law and equity, shall be entitled to a decree or order restraining and enjoining such transaction, and the offending Member shall not plead in defense thereto that there would be an adequate remedy at law; it being expressly hereby acknowledged and agreed that damages at law would be an inadequate remedy for a breach or threatened breach of the violation of the provisions concerning such Transfer.

**C. No Dissolution.** The death, legal disability, bankruptcy or dissolution of a Member or the Transfer by any Member of all or any part of its Interest (whether or not in compliance with the terms of this Agreement) shall not cause dissolution of the Company.

**ARTICLE 11  
DISSOLUTION, LIQUIDATION AND TERMINATION**

**Section 11.1 Dissolution.** The Company shall dissolve, and its affairs shall be wound up, only upon the first to occur of any of the following (each, a "**Liquidating Event**"):

**A.** an election to dissolve the Company upon the written consent of the Contributing Members; or

B. entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Act.

### **Section 11.2 Winding Up.**

#### **A. Procedure.**

(i) Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Manager or a person selected by it (being referred to herein as the “**Liquidator**”), shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities. The Company's property shall be liquidated as promptly as is consistent with obtaining the fair value therefor, and the proceeds therefrom shall be applied and distributed in the following order:

**First**, to the payment and discharge of or reserves for all of the Company's debts and liabilities to creditors other than Members;

**Second**, the balance, if any, to the Members pursuant to **Section 5.1**.

(ii) Reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to this **Section 11.2** in order to minimize any losses otherwise attendant upon such winding up and the provisions of this Agreement shall remain in effect during the period of liquidation.

**B. No Obligations to Restore Deficits.** If any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company, to any Member, or to any other Person for any purpose whatsoever.

**Section 11.3 Termination of Company and Cancellation of Certificate of the Company.** Upon the completion of the liquidation of the Company's assets, as provided in this **Article 11**, the Members shall file a certificate of cancellation.

## **ARTICLE 12 GENERAL PROVISIONS**

### **Section 12.1 Addresses and Notice: Time Computation.**

**A. Notices.** All notices, notifications, elections, offers, acceptances, demands, consents, reports and other communications (collectively, “**Notices**”) given hereunder shall be in writing and shall be given to the Company at the address set forth in this **Section 12.1.A.**, to the Members at their respective addresses set forth in **Schedule A**, or at such other address as the Company or a Member may hereafter designate.

If to the Company:

826 Broadway, 11 FL  
New York, NY 10003  
Attn: Aaron Koffman

**B. Method of Delivery.** All Notices or other communications shall be (i) mailed to the correct address by United States registered or certified mail, return receipt requested, postage prepaid, deposited in a United States post office or a depository for the receipt of mail regularly maintained by the post office, or (ii) sent by any reputable overnight courier service (with all fees prepaid). All Notices shall be deemed to have been given (and to be effective) (a) on the third business day following the date of such mailing to the correct address, or (b) if sent by courier, on the date of delivery or refusal, at the correct address, or the date tendered for delivery if on a Business Day. Notices may also be delivered by hand, in which case they shall be deemed to have been given (and to be effective) on the date of delivery, or refusal, to the correct address.

**D. Computation.** In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period shall run until the next Business Day.

**Section 12.2 Titles and Captions.** All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Agreement. Except as specifically provided otherwise, references to “**Articles**” and “**Sections**” are to Articles and Sections of this Agreement.

**Section 12.3 No Construction Against Drafter.** No provision of this Agreement shall be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which either such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or thereof.

**Section 12.4 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns. This Agreement shall only be binding on parties who have executed this Agreement.

**Section 12.5 No Third Party Rights.** The provisions of this Agreement are for the benefit of the Company and the Members, and with respect to **Article 3**, the Indemnitees, and no other Person, including creditors of the Company, shall have any right or claim against the Company, or any Member by reason of this Agreement or any provision hereof or be entitled to enforce any provision of this Agreement.

**Section 12.6 Waiver.** The failure of either of the Members to at any time enforce any of the provisions of this Agreement, or any agreement or instrument delivered herewith, or to give any notice of default thereunder, shall not be deemed or construed to be a waiver of any such provision, nor to in any way affect the validity of this Agreement, or any agreement or instrument delivered herewith, or any provision hereof or the right of either of the Members to thereafter enforce each and every provision of this Agreement, and each agreement and instrument delivered herewith. No waiver of any breach of any of the provisions of this Agreement, or any agreement or instrument delivered herewith, shall be effective unless set forth in a written instrument executed by Member against which enforcement of such waiver is sought; and no waiver of any such breach shall be construed or deemed to be a waiver of any other or subsequent breach.

**Section 12.7 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party hereto shall become bound by this Agreement immediately upon affixing its signature hereto.

**Section 12.8 Applicable Law.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of New York, without regard to the principles of conflicts of law.

**Section 12.9 Invalidity of Provisions.** If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

**Section 12.10 Entire Agreement.** This Agreement, together with any agreements and instruments delivered herewith, contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to the matters dealt with in this Agreement and the rights, interests, understandings, agreements and obligations of the respective parties pertaining to the Company. Any and all other prior agreements between the parties except those noted with respect to such subject matter are hereby superseded.

**Section 12.11 Affirmative Covenant.** Subject to Article 10, no Member, or member of a Member, shall encumber, mortgage, pledge, assign or otherwise Transfer any interest in the Member, the Company, or the Property.

**Section 12.13 Amendment.** This Agreement may not be amended, terminated or modified orally but only in writing signed by all of the parties hereto.




IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the date first set forth above.

*Each person who shall sign a Member Signature Page in the form attached hereto and who shall be accepted by the Manager to the Company as a Member.*

**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

By its signature below, the undersigned hereby agrees that effective as of the date of its admission to HUDSON GOWANUS LLC as a Member, the undersigned shall (i) be bound by each and every term and provision of the Amended Operating Agreement, dated as of October 6, 2020, of HUDSON GOWANUS LLC, as the same may be duly amended from time to time in accordance with the provisions thereof, and (ii) become and be a party to said Amended and Restated Operating Agreement of HUDSON GOWANUS LLC.

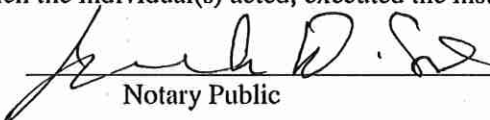
<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: David Kramer	<u>50</u> %	<u>31</u> %

STATE OF NEW YORK)

: ss.:


COUNTY OF NEW YORK)

On the 20<sup>th</sup> day of Oct, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared David Kramer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.


HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023


**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

By its signature below, the undersigned hereby agrees that effective as of the date of its admission to HUDSON GOWANUS LLC as a Member, the undersigned shall (i) be bound by each and every term and provision of the Amended Operating Agreement, dated as of October 6, 2020, of HUDSON GOWANUS LLC, as the same may be duly amended from time to time in accordance with the provisions thereof, and (ii) become and be a party to said Amended and Restated Operating Agreement of HUDSON GOWANUS LLC.

<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: William Fowler	<u>50</u> %	<u>31.0</u> %

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

On the 20<sup>th</sup> day of October, in the year 2020 before me, the undersigned, a notary public in and for said state, personally appeared William Fowler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_, 20\_\_.


HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6098118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023

**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

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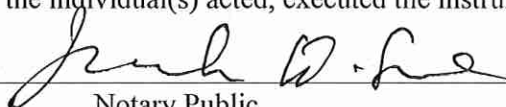
<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: Alan Hajtler	0 %	3 %

STATE OF NEW YORK)

: ss.:


COUNTY OF NEW YORK)

On the 20<sup>th</sup> day of October, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared Alan Hajtler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

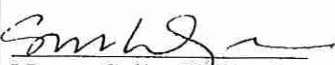
HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023


**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

By its signature below, the undersigned hereby agrees that effective as of the date of its admission to HUDSON GOWANUS LLC as a Member, the undersigned shall (i) be bound by each and every term and provision of the Amended Operating Agreement, dated as of October 6, 2020, of HUDSON GOWANUS LLC, as the same may be duly amended from time to time in accordance with the provisions thereof, and (ii) become and be a party to said Amended and Restated Operating Agreement of HUDSON GOWANUS LLC.

<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: Sally Gilliland	0 %	6.19 %

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

On the 16<sup>th</sup> day of October, in the year 2020 before me, the undersigned, a notary public in and for said state, personally appeared Sally Gilliland, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.


HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023

**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

By its signature below, the undersigned hereby agrees that effective as of the date of its admission to HUDSON GOWANUS LLC as a Member, the undersigned shall (i) be bound by each and every term and provision of the Amended Operating Agreement, dated as of October 6, 2020, of HUDSON GOWANUS LLC, as the same may be duly amended from time to time in accordance with the provisions thereof, and (ii) become and be a party to said Amended and Restated Operating Agreement of HUDSON GOWANUS LLC.

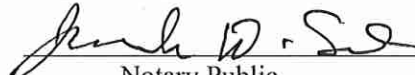
<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: Aaron Koffman	<u>0</u> %	<u>10.32</u> %

STATE OF NEW YORK)

: ss.:

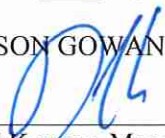
COUNTY OF NEW YORK)

On the 20<sup>th</sup> day of October, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared Aaron Koffman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_, 20\_\_.

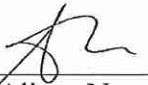
HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023

**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

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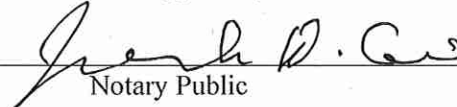
<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: Alison Novak	<u>0</u> %	<u>10.32</u> %

STATE OF NEW YORK)

: ss.:

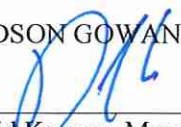
COUNTY OF NEW YORK)

On the 20<sup>th</sup> day of October, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared Alison Novak, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_, 20\_\_.

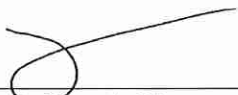
HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023

**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

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<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: Joseph Riggs	<u>0</u> %	<u>5.16</u> %

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 20<sup>th</sup> day of October, in the year 2020 before me, the undersigned, a notary public in and for said state, personally appeared Joseph Riggs, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

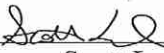
HUDSON GOWANUS LLC

By:   
David Kramer, Manager

**JOSEPH D. LOVE**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023

**OPERATING AGREEMENT  
OF  
HUDSON GOWANUS LLC  
MEMBER SIGNATURE PAGE**

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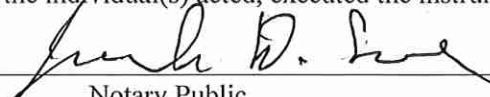
<u>MEMBER</u>	<u>CONTRIBUTION PERCENTAGE</u>	<u>PERCENTAGE INTEREST</u>
 Name: Scott Lorber	<u>0</u> %	<u>3</u> %

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 21<sup>st</sup> day of October, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared Scott Lorber personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Accepted and Agreed to  
as of this \_\_\_\_ day of \_\_\_\_, 20\_\_.

HUDSON GOWANUS LLC

By:   
David Kramer, Manager

JOSEPH D. LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LO6088118  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 3, 2023

## EXHIBIT A

### TO OPERATING AGREEMENT FOR HUDSON GOWANUS LLC

#### SCHEDULE OF DEFINITIONS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

**“Accountants”** means the firm of independent certified public accountants designated by the Manager and retained by the Members on behalf of the Company at any relevant time to conduct the audits and perform the other functions as designated by the Members under this Agreement, but if there shall be no such firm at such time, the firm that shall have so prepared the Company's most recent statements and reports, if any.

**“Act”** means the New York Limited Liability Law.

**“Adjusted Capital Account”** means, with respect to any Member, such Member's Capital Account maintained in accordance with **Section 2** hereof, as of the end of the relevant Fiscal Year of the Company, after giving effect to the following adjustments:

**A.** Credit to such Capital Account that portion of any deficit Capital Account balance that such Member is obligated to restore under the terms of this Agreement, of any other document or under the Act, such Member's share of Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(g)(1), and such Member's share of Partner Nonrecourse Debt Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(5).

**B.** Debit to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of **“Adjusted Capital Account”** is intended to comply with the provisions of Treasury Regulations Sections 1.704-1(b)(2) and 1.704-2, and shall be interpreted consistently therewith.

**“Adjusted Capital Account Deficit”** means, with respect to any Member, the deficit balance, if any, in that Member's Adjusted Capital Account as of the end of the relevant Fiscal Year of the Company.

**“Additional Members”** mean the Members listed on Schedule A other than the original Members, William Fowler and David Kramer.

**“Affiliate”** means, with respect to any Person, **(i)** any Person directly or indirectly controlling, controlled by or under common control with such Person; **(ii)** any

Person beneficially, directly or indirectly, owning or controlling more than fifty percent (50%) or more of the outstanding voting interests of such Person; **(iii)** any Person of which such Person beneficially, directly or indirectly, owns or controls more than fifty percent (50%) or more of the voting interests; or **(iv)** any officer, director, member, manager, partner or trustee in such Person or in any Person referred to in **clauses (i), (ii), and (iii)** above. For purposes of this definition, “control”, as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“**Agreement**” means this limited liability operating agreement.

“**Asset Management Agreement**” means an agreement, set forth in Schedule B within, between the Company and Hudson Pool LLC (“the Asset Manager”);

“**Available Cash**” means, with respect to any period for which such calculation is being made and determined (and distributed):

**A.** all cash revenues and funds received by the Company from whatever source, including all Capital Transaction Proceeds, but excluding the proceeds of any Capital Contribution, plus the amount of any reduction (including, without limitation, a reduction resulting because the Members determine such amounts are no longer necessary) in reserves of the Company, which reserves are referred to in **clause B (iii)** below;

**B.** less the sum of the following (except to the extent made with the proceeds of any Capital Contribution and except to the extent taken into account in determining Capital Transaction Proceeds):

**(i)** all interest, principal and other debt payments made during such period by the Company,

**(ii)** all cash costs, expenses and expenditures (including capital expenditures with respect to tangible and intangible assets) made by the Company during such period, including general overhead,

**(iii)** the amount of any reserves established during such period which the Members determine are necessary or appropriate, and

**(iv)** all distributions previously made by the Company to any of its Members with respect to such period.

“**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978, as it may from time to time be amended, and as codified in title 11 United States Code 101 et seq.

“**Book-Tax Disparity**” means, with respect to each of the Properties or any other property contributed to the Company, as of the date of determination, the difference between the book value of such property and the adjusted basis of such property for federal

income tax purposes, as such differential may change from time to time pursuant to the provisions of this Agreement.

**“Business Day”** means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

**“Capital Account”** means a capital account maintained and adjusted for each Member in accordance with the Code and the Treasury Regulations, including, without limitation, the Treasury Regulations under Sections 704(b) and (c) of the Code.

**“Capital Contribution”** means, with respect to any Contributing Member, the aggregate amount of cash and property which such Contributing Member contributes or is deemed to contribute to the Company pursuant to **Article 2**. Capital Contributions shall include Initial Capital Contributions and Additional Capital Contributions.

**“Capital Transaction Proceeds”** means the net cash proceeds of a sale, financing, transfer or other disposition of all or any portion of the assets of the Company (other than sales of non-material portions of any individual properties or any other non-material assets of the Company), after deducting all expenses incurred in connection therewith and after application of any proceeds, as determined by the Manager, toward the payment of any indebtedness of the Company secured by the property that is the subject of a Capital Transaction or any other indebtedness of the Company, or for capital expenditures or the purchase of any improvements or an expansion of any Company property or the acquisition of additional assets by the Company, or the establishment of reserves for any of the above or otherwise deemed necessary or appropriate by the Manager.

**“Code”** means the Internal Revenue Code of 1986, as amended and in effect from time to time, as interpreted by the applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

**“Contributing Members”** means David Kramer and William Fowler.

**“Contribution Percentage”** shall be as set forth on Schedule A; provided, however, in the event that a Capital Contribution is required and arises out of the wrongful act of one of the Contributing Members, the Contribution Percentage shall be 100% for the perpetrator of such wrongful act and 0% for the other Contributing Members. The term “wrongful act” shall mean any of the following:

1. fraud or material misrepresentation;
2. gross negligence or willful misconduct;
3. physical waste; or
4. the misapplication or conversion of (i) any insurance proceeds paid by reason of any loss, damage or destruction to any property, (ii) any awards or other

amounts received in connection with the condemnation of all or a portion of any property, (iii) any rents, and (iv) any loan proceeds.

**“Depreciation”** means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for federal income tax purposes; provided, however, that, if an asset has a Book-Tax Disparity at the beginning of such year or other period (as a result of property contributions or adjustments to such values), Depreciation shall be adjusted as necessary so as to be an amount which bears the same ratio to such beginning book value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to the beginning adjusted tax basis; provided, further, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation for such year or other period shall be determined with reference to such beginning book value using any reasonable method.

**“Guarantor”** means David Kramer, Aaron Koffman, Alison Novak and Whitfarm Realty LLC, which is solely controlled by William E. Fowler.

**“Indemnitee”** means any Person made a party to a proceeding by reason of its status or the status of an Affiliate or Affiliates of such Person **(i)** as a Member, or **(ii)** as a director, trustee or officer of the Company, or **(iii)** with respect to any Member, its liabilities, pursuant to a loan guarantee or otherwise, for any indebtedness of the Company (including, without limitation, any indebtedness which the Company has assumed or taken assets subject to); or (iv) such other Persons (including Affiliates of a Member or the Company) as the Manager may designate from time to time (whether before or after the event giving rise to potential liability) in his reasonable discretion.

**“Interest”** with respect to a Member means such Member's ownership interest in the Company and includes any and all legal and economic benefits and other attributes to which such Member may be entitled as provided in this Agreement, together with all obligations of such Member to comply with the terms and provisions of this Agreement.

**“Manager”** shall have the meaning provided in Section 1.1C.

**“Member”** shall mean each of the members from time to time admitted to the Company as a Member of the Company, or the successors of a Member permitted by this Agreement. Members shall include Contributing Members and the Manager.

**“Non-Contributing Member”** means each person who shall sign a Member Signature Page in the form attached hereto and who shall be accepted by the Manager to the Company as a Member and who is neither a Contributing Member nor a Guarantor.

**“Overhead Preferred Return”** shall mean a return, calculated for any period based on a 360-day year times the actual number of days elapsed in such period, on a Contributing Member's Unreturned Capital Contribution for Overhead determined by

multiplying such Contributing Member's Unreturned Capital Contribution for Overhead by the Preferred Return Rate over the period beginning on the date that the Unreturned Capital Contribution was contributed to the Company and ending on the date of determination

**"Percentage Interest"** means, for each Member, as of the date of determination, such Member's pro rata Interest in the Company. The Percentage Interest for each Member shall be specified on Schedule A, which shall be amended by the Manager from time to time in accordance with the terms of this Agreement. The sum of the Percentage Interests shall equal one hundred percent (100%).

**"Person"** means a natural person, a natural person together with members of his or her immediate family, or a corporation, partnership (general or limited), limited liability company, trust, unincorporated organization, association or other entity.

**"Preferred Return"** shall mean a return, calculated for any period based on a 360-day year times the actual number of days elapsed in such period, on a Contributing Member's Unreturned Capital Contribution determined by multiplying such Contributing Member's Unreturned Capital Contribution by the Preferred Return Rate over the period beginning on the date that the Unreturned Capital Contribution was contributed to the Company and ending on the date of determination.

**"Preferred Return Rate"** means a per annum simple rate of return equal to [ten percent (10%)] for all capital contributed by any member and, solely in the case of Inkwell, overhead contributed as well.

**"Profits and Losses"** means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss (as the case may be) for such year or period, determined in accordance with Code Section 703(a) (for this period, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

**A.** Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

**B.** Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss (including amounts paid or incurred to organize the Company (unless an election is made pursuant to Code Section 709(b)) or to promote the sale of Interests and by treating deductions for any losses incurred in connection with the sale or exchange of Company property disallowed pursuant to Section 267(a)(1) or Section 707(b) of the Code as expenditures described in Section 705(a)(2)(B) of the Code);

C. Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the book value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from such book value;

D. In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with the definition of “Depreciation” herein;

E. In the event that any item of income, gain, loss or deduction that has been included in the initial computation of Profit or Losses is subject to the special allocation rules of **Section 6.2** hereof, Profit or Losses shall be re-computed without regard to such item; and

F. In the event of an adjustment of the book value of any Company asset which requires that the Capital Accounts of the Company be adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e), (f) and (m), the amount of such adjustment is to be taken into account as additional Profits or Losses pursuant to **Section 6.2** hereof.

If the Company's taxable income or loss for such Fiscal Year, as adjusted in the manner provided above, is a positive amount, such amount shall be the Company's Profits for such Fiscal Year; and if negative, such amount shall be the Company's Losses for such Fiscal Year.

“**Project**” means the acquisition, construction, development, management, leasing and operation of the Property by the Project Owner.

“**Project Owner**” means the limited liability company to be formed by the Company and an affiliate of Housing Works, Inc. to be the equitable and beneficial owner of the Property.

“**Project Entity(ies)**” means, as the case may be: (1) the Project Owner, (2) a first tier limited liability company which will be the managing member and/or General Partner of the Project Owner and a member of the Project Owner together with a tax credit equity investor, (3) a second tier limited liability company, Gowanus Green Partners LLC, which will be the manager and a member of the first tier limited liability company(ies), and (4) a housing development fund corporation formed under the Private Housing Finance Law of New York which will hold title to the Property(ies) as nominee for the Project Owner; provided, however, such organizational structure for ownership of the Property and performance of the Project is subject to change in accordance with this Agreement.

“**Property**” means that certain property known as Public Place, generally bound by 5<sup>th</sup> Street to the north, the Gowanus Canal to the east, a line parallel to 5<sup>th</sup> Street beginning roughly 90 feet south of Luquer Street and east to the Gowanus Canal to the south, and Smith Street to the west in Brooklyn, New York, Block 471, Lots 1 and 100 on the Tax Map for the Borough of Brooklyn, County of Kings, City and State of New York.

**“Transfer”** means a transaction in which a Member assigns, absolutely or conditionally, as security or otherwise, all or any part of its Interest to another Person, and includes any direct or indirect transfer, sale, assignment, grant, conveyance, gift (outright or in trust), pledge, mortgage, exchange, hypothecation, encumbrance or other disposition or act of alienation whether voluntary or involuntary or, occurring by operation of law (such as, but not limited to, a statutory merger) or otherwise.

**"Unpaid Preferred Return"** shall mean the amount by which the Preferred Return of a Contributing Member for the current year and all prior years, calculated with respect only to such Contributing Member's Capital Contributions exceeds the aggregate amount of distributions made to such Member in the current year and all prior years.

**"Unreturned Capital Contribution"** shall mean, as of any date of determination, the Capital Contributions of a Member, reduced by any distributions to such Member.

## EXHIBIT B

### TO OPERATING AGREEMENT FOR HUDSON GOWANUS LLC

#### FORM OF CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between WHITFARM REALTY LLC AARON KOFFMAN, ALISON NOVAK and DAVID KRAMER, all having an address c/o The Hudson Companies Incorporated, 826 Broadway, New York, NY 10003 (individually, a “Guarantor” and, collectively, the “Guarantors”).

#### WITNESSETH:

WHEREAS, [recite source of guaranty requirement];

WHEREAS, in order to induce Lender, and as a condition for Lender, to make the Loan, the Guarantors executed and delivered to Lender [recite guarantees delivered] (individually, a “Guaranty” and, collectively, the “Guarantees”);

WHEREAS, all the parties hereto derive an indirect benefit of the Loan;

WHEREAS, the parties hereto desire to set forth their rights and obligations in the event any payment is required to be made under any Guaranty.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Each of the Guarantors shall be responsible for his applicable percentage (the “Guaranty Percentage”) of any and all payments made under the Guarantees. The Guaranty Percentages are as follows:

Whitfarm Realty LLC	45%
Aaron Koffman	5%
Alison Novak	5%
David Kramer	45%

2. Notwithstanding anything else to the contrary contained in this Agreement, to the extent any portion of the payments required to be made under any Guaranty shall be payable as a result of any breach of any representation or warranty made by a Guarantor under such Guaranty with respect to his financial condition or any other personal matter or any wrongful act of such Guarantor, then such Guarantor’s share of such portion of the payments required to be made under such Guaranty shall be one hundred percent (100%) (“wrongful act” under this Agreement is any act which would constitute a “Non-Recourse Exclusion” under the Carve-Out Indemnity).

3. If any Guarantor shall pay any sum (the "Payment") on account of any Guaranty, the Guarantor who shall have paid such Payment (the "Paying Party") shall provide the other parties (the "Underpaying Parties") with a written notice specifying the amount of the Payment made by the Paying Party. Evidence of the payment by the Paying Party shall be included with such notice. Each of the Underpaying Parties shall pay to the Paying Party his Applicable Percentage of the Payment, with interest thereon at the rate of ten percent (10%) per annum from the date of payment by the Paying Party to the date of reimbursement by the Underpaying Party, within ten (10) days after receipt of such written notice.
4. This Agreement is for the benefit only of the parties hereto and is not intended to be for the benefit of any third party, creditor or other person to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) any party hereto; and no such third party, creditor or other person shall obtain any right under this Agreement against any party hereto by reason of any debt, liability or obligation (or otherwise).
5. All notices hereunder shall be in writing and shall be personally delivered against a signed receipt or sent by Federal Express or Express Mail to a party at such party's addresses set forth herein (or to such other place and person as such party may designate in writing). All notices and other communication shall be deemed to have been duly given on the date of delivery (or refusal to accept delivery). Any party may change its address for purposes hereof by notice to the other parties hereto.
6. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter hereof. This Agreement may not be changed, terminated or modified orally or in any manner other than by a writing signed by the party to be charged.
7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
8. This Agreement may be executed in counterparts, each of which shall be an original, and all of which taken together shall be deemed to be one original agreement.

**SCHEDULE A**

**TO OPERATING AGREEMENT FOR HUDSON GOWANUS LLC**

**MEMBER INFORMATION**

<b><u>MEMBER and ADDRESS</u></b>	<b><u>INITIAL CAPITAL CONTRIBUTION</u></b>	<b><u>CONTRIBUTION PERCENTAGE</u></b>	<b><u>PERCENTAGE INTEREST</u></b>
David Kramer	\$100	50%	31.00%
William Fowler	\$100	50%	31.00%
Alan Hajtler	\$100	0%	3%
Sally Gilliland	\$100	0%	6.19%
Aaron Koffman	\$100	0%	10.32%
Alison Novak	\$100	0%	10.32%
Joseph Kohl-Riggs	\$100	0%	5.16%
Scott Lorber	\$100	0%	3%

**SCHEDULE B**

## **ASSET MANAGEMENT AGREEMENT WITH HUDSON POOL LLC**

1. The Company has entered into a certain Asset Management Agreement (the “Asset Management Agreement”) with Hudson Pool LLC (the “Asset Manager”), pursuant to which Hudson Pool will provide certain management services to the Company.
  - a. In accordance with the Asset Management Agreement, the Company will pay to the Asset Manager for its management fee (the “Asset Management Fee”) an amount equal to ten percent (10%) of all Available Cash payable to the Members.
  - b. For purposes of computing the Asset Management Fee, the Asset Management Fee shall not be included as a deduction pursuant to paragraph B of the definition of Available Cash.
  - c. As of the Effective Date, all distributions payable to David Kramer will be reduced by an amount equal to ninety percent (90%) of the Asset Management Fee, and ninety percent (90%) of the Company expense for the Asset Management Fee will be specially allocated to David Kramer on the Company’s tax returns.
  - d. As of the Effective Date, all distributions payable to William Fowler will be reduced by an amount equal to ten percent (10%) of the Asset Management Fee, and ten percent (10%) of the Company expense for the Asset Management Fee will be specially allocated to William Fowler on the Company’s tax returns.

# LIMITED LIABILITY COMPANY AGREEMENT

OF

## ROSE CAPITAL LLC

This Limited Liability Company Agreement (this "Agreement") of Rose Capital LLC (the "Company") is entered into by Jonathan F. P. Rose, as the sole managing member of the Company (the "Managing Member").

The Company was formed as a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. § 18-101, *et seq.*), as amended from time to time (the "Act") pursuant to a Certificate of Formation, which was filed with the Secretary of State of the State of Delaware (the "Secretary") on July 9, 2008.

The Managing Member wishes to set forth the terms of the Company as follows:

1. Name. The name of the Company is Rose Capital LLC.
2. Purpose. The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act and to engage in any and all activities necessary or incidental thereto.
3. Principal Office. The address of the principal office of the Company in the State of Delaware is c/o National Corporate Research, Ltd., 615 South DuPont Highway, Dover, Delaware 19901.
4. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is National Corporate Research, Ltd.
5. Managing Member. The name and address of the Managing Member are as follows:

<u>Name</u>	<u>Address</u>
Jonathan F. P. Rose	33 Katonah Avenue Katonah, New York 10536

6. Management. Except as otherwise expressly provided for in this Agreement, management of the Company shall be vested in the Managing Member in accordance with Section 18-402 of the Act. The Managing Member shall have the sole and exclusive responsibility and authority for the management, conduct and operation of the Company's business in all respects and in all matters, except to the extent that the Managing Member agrees

to delegate any such responsibility or authority to any officer, employee or agent of the Company.

7. Dissolution. The Company shall dissolve, and its affairs shall be wound up, upon the first to occur of the following: (a) the written consent of the Managing Member, (b) the death, retirement, resignation, expulsion, bankruptcy or dissolution of the Managing Member or the occurrence of any other event which terminates the continued membership of the Managing Member in the Company, (c) the entry of a decree of judicial dissolution under Section 18-802 of the Act or (d) assignment by the Managing Member of all or part of its limited liability company interest in the Company in violation of this Agreement or the Act.

8. Initial Capital Contribution. The Managing Member hereby agrees to contribute, upon the demand of the Company therefor, \$1.00, in cash, and no other property, to the Company.

9. Allocation of Profits and Losses. The Company's profits and losses shall be allocated to the Managing Member.

10. Distributions. Distributions shall be made to the Managing Member at the times and in the aggregate amounts determined by the Managing Member.

11. Amendments. Amendments to this Agreement may be made only with the consent of the Managing Member.

12. Admission of Additional Members. One or more additional members may be admitted to the Company with the consent of the Managing Member. Prior to the admission of any such additional members to the Company, the Managing Member shall amend this Agreement to make such changes as the Managing Member shall determine to reflect the fact that the Company shall have such additional member(s). Each additional member shall execute and deliver a supplement or counterpart to this Agreement, as necessary.

13. Liability of Managing Member. The Managing Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.

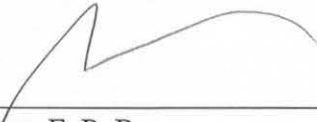
14. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

15. Severability. In the event that any provision of this Agreement shall be declared to be invalid, illegal or unenforceable, such provision shall survive to the extent it is not so declared, and the validity, legality and enforceability of the other provisions hereof shall not in any way be affected or impaired thereby, unless such action would substantially impair the benefits to any party of the remaining provisions of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 17 day of September, 2008.

**MANAGING MEMBER**

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Jonathan F. P. Rose

# Exhibit C

**EXHIBIT C**  
**SECTION IV: REQUESTOR ELIGIBILITY INFORMATION**

**Volunteer Status of Requestor**

Requestor GOWANUS GREEN PARTNERS LLC meets the eligibility requirements of ECL 27-1407. In addition to the information provided in Section IV of the Brownfield Cleanup Agreement amendment application, GOWANUS GREEN PARTNERS LLC has no affiliation with the previous owner(s) responsible for the contamination at the site. The entity is seeking acceptance into the Brownfield Cleanup Program in order to clean up contamination at the site.

# Exhibit D

October 13, 2020

Kelly A. Lewandowski, PE  
Chief, Site Control Section  
New York State Department of  
Environmental Conservation  
650 Broadway, 11th Floor  
Albany, NY 12233

Re: BCP Site Access Letter - C224012, Carroll Gardens/Public Place Former MGP Site

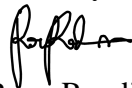
Dear Ms. Lewandowski,

I am writing in regard to Gowanus Green Partners LLC's application to be added as a requestor on the Brownfield Cleanup Agreement for Brownfield Cleanup Program ("BCP") site C224012, Carroll Gardens/Public Place Former MGP Site (the "Site"). The Site is currently owned by the City of New York (the "City"). The City is currently a requestor on the existing BCA.

As the prospective purchaser of the Site, Gowanus Green Partners LLC, including its members, officers and employees listed on Schedule A and its contractors, upon reasonable notice, will have access to the Site for the duration of the BCP work to be performed provided that Gowanus Green Partners LLC delivers to the City, acting by and through its Department of Housing Preservation and Development ("HPD"), such evidence of insurance, releases from liability and other documents as HPD may require from time to time in its sole discretion.

Please accept this letter to serve as proof of site access. If you have any further questions, please feel free to contact me at 212-863-8576.

Sincerely,



Rona Reodica  
Assistant Commissioner, Buildings and Land  
Development Services

## Schedule A

The following members, officers and employees of Gowanus Green Partners LLC shall have access to the Site:

1. Ira Lichtiger of Bluestone Gowanus Green Partners LLC;
2. Jay Marcus of FAC Gowanus Green LLC;
3. Aaron Koffman of Hudson Gowanus LLC; and
4. Andrew Foley of Rose Capital LLC.

1. The information provided in this document is confidential. It is not to be distributed outside the organization without the prior written consent of the organization.

2. The information provided in this document is confidential. It is not to be distributed outside the organization without the prior written consent of the organization.