

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

April 9, 2021

Jennifer Webber
BK Corners LLC
49 Box Street
Brooklyn, NY 11222

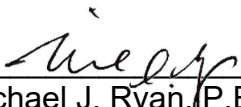
RE: Site Name: 1036 Manhattan Ave BCP Site
Site No.: C224315
Location of Site: 1032 and 1036-1038 Manhattan Avenue
Kings County, Brooklyn, NY 11222

Dear Jennifer Webber:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 1036 Manhattan Ave BCP Site.

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

Sincerely,



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

Enclosure

ec: Wendi Zheng, Project Manager
cc: Aldie Levine, Esq.
Jennifer Andaloro, Esq./Dale Thiel

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C224315-03-21**

1036 Manhattan Ave BCP Site

DEC Site No:C224315

Located at: 1032 and 1036-1038 Manhattan Avenue
Kings County
Brooklyn, NY 11222

Hereinafter referred to as "Site"

by:

BK Corners LLC
49 Box Street, Brooklyn, NY 11222

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on December 18, 2020; and

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

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

I. Applicant Status

The Applicant, BK Corners LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

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

Invoices shall be sent to Applicant at the following address:

BK Corners LLC
49 Box Street, Brooklyn, NY 11222
jennifer@ashnyc.com

II. Tangible Property Tax Credit Status

Applicant requested a determination that the Site is eligible for tangible property tax credits. Pursuant to ECL § 27-1407(1-a), the Department has determined that the Site is not eligible for tangible property tax credits because the Site is located in a City having a population of one million or more and the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.229 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 03-2513-5
Street Number: 1032 Manhattan Avenue, Brooklyn
Owner: 777 Partners LLC

Tax Map/Parcel No.: 03-2513-6
Street Number: 1036 Manhattan Avenue, Brooklyn
Owner: Marshall Kesten LLC

Tax Map/Parcel No.: 03-2513-8
Street Number: 1038 Manhattan Avenue, Brooklyn
Owner: Marshall Kesten LLC

IV. Communications

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

1. Communication from Applicant shall be sent to:

Wendi Zheng
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
wendi.zheng@dec.ny.gov

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

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

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

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

BK Corners LLC
Attn: Jennifer Webber
49 Box Street
Brooklyn, NY 11222
jennifer@ashnyc.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

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

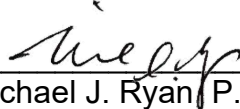
B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

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

DATED: April 9, 2021

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

By:



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

CONSENT BY APPLICANT

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

BK Corners LLC

By: _____

Title: Authorized Signatory

Date: 3.31.21

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 31 day of MARCH in the year 2021, before me, the undersigned, personally appeared JONATHAN MINKOFF, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Jacqueline Helleis
Signature and Office of individual
taking acknowledgment

JACQUELINE HELLEIS
Notary Public, State of New York
No. 01HE4956974
Qualified in New York County
Commission Expires October 2, 2021

EXHIBIT A SITE MAP



ID	Block	Lot	Address	Owner
A	2504	44	1043 Manhattan Ave.	Krystyna Malik
B	2505	1	1044 Manhattan Ave.	Irene Klementowicz
C	2505	2	1048 Manhattan Ave.	Manhattan Holdings NY LLC
D	2505	58	181 Freeman St.	Geri N. Cizmar
E	2505	59	179 Freeman St.	Irene Klementowicz
F	2512	43	1041 Manhattan Ave.	Alfred Kaminski
G	2512	44	1037 Manhattan Ave.	1037 Manhattan Avenue LLC
H	2512	45	1035 Manhattan Ave.	1035 Manhattan Avenue LLC
I	2512	46	1031 Manhattan Ave.	P. F. H. Manhattan Ave. H.
J	2512	47	1029 Manhattan Ave.	Man-Ave, LLC
K	2512	48	1025 Manhattan Ave.	Emil Sofsky
L	2513	1	1020 Manhattan Ave.	Leko Enterprises, LLC
M	2513	3	1026 Manhattan Ave.	Marria LLC
N	2513	4	1030 Manhattan Ave.	Matta LLC
O	2513	10	178 Freeman St.	178 Freeman LLC
P	2513	11	180 Freeman St.	Andre Daparma
Q	2513	57	177 Green St.	Mahbub Rahman

**EXHIBIT B
PAST COSTS**

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

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

EXHIBIT I

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

COST SUMMARY

SITE NAME: 1036 Manhattan Avenue
 SITE NO.: C224315
 TIME FRAME: DEC Life - 02/03/21

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$296.10	
FRINGE	\$184.74	
INDIRECT	<u>\$150.31</u>	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$631.15</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$631.15	
DOH TOTAL (NOT AVAILABLE)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	<u>N/A</u>	
<i>DEC & DOH TOTAL</i>	<i>\$631.15</i>	
COST CAP (IF APPLICABLE)	<u>N/A</u>	
GRAND TOTAL	\$631.15	

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 12/10/2020 And Timecard End Date 2/3/2021 And Task Code 75376

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)

[Print](#)

Jump To Employee:

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 75376 - C224315 - 1036 MANHATTAN AVE BCP SITE														
2020/22	01/21/2021 - 02/03/2021	02/17/2021	223014	H1	2020	ZHENG, WENDI	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City - Regional HQ	42.30	184.74	150.31	7.00	296.10
Task 75376 Sub Total:											184.74	150.31	7.00	296.10
Report Total:											184.74	150.31	7.00	296.10

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APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

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

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

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

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

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

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

IX. Change of Use

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

X. Environmental Easement

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

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

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

eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

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

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

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

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

**BK CORNERS LLC AUTHORIZATION
TO COMPLETE REMEDIAL REQUIREMENTS**

The undersigned, being all of the members of BK Corners LLC, a New York limited liability company (the "Company") hereby certify as of February 3, 2021, as follows and adopt the following resolutions and authorize the Company to authorize and direct Jonathan Minkoff (the "Authorized Signatory") to take the following actions on behalf of the Company:

WHEREAS, the Company desires to authorize the Authorized Signatory to undertake actions necessary to redevelop 1032, 1036, and 1038 Manhattan Avenue, Brooklyn, New York 11222; Block 2513, Lots 5, 6, and 8 (the "Property" or the "Site").

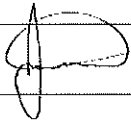
WHEREAS, in connection with the redevelopment of the Property, the Company has or will prepare and submit an application to participate in the New York State Brownfield Cleanup Program ("BCP") and, if accepted into the BCP, enter into a Brownfield Cleanup Agreement ("BCA"); file related documents with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

NOW THEREFORE, BE IT

RESOLVED, the Authorized Signatory be, and hereby is, authorized and directed, in the name of and on behalf of the Company, to execute and to deliver all applications, documents and instruments required to effectuate the BCA (including execution of the BCA), and make any filings required to comply with the BCA consistent with the Remedial Program Requirements; and be it further;

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

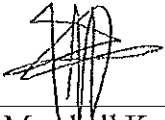
RESOLVED, The Authorized Signatory is authorized to bind the Company as an Authorized Signatory for the purposes set forth in this Authorization, the signature set forth opposite his name below is his actual signature:

<u>Authorized Signatory</u>	<u>Signature</u>
Jonathan Minkoff	

IN WITNESS WHEREOF, the undersigned have signed and sealed this Member Consent on February 3, 2021.

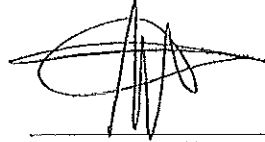
MEMBERS:

777 Partners LLC



By: Marshall Kesten

Marshall Kesten LLC



By: Marshall Kesten

OPERATING AGREEMENT

OF

BK CORNERS LLC

THIS OPERATING AGREEMENT, dated as of this ____ day of December, 2020 (the "Agreement Date"), by and among each of the parties named on the signature pages hereto.

WITNESSETH:

WHEREAS, the individuals and entities signing this Agreement heretofore formed a limited liability company known as BK CORNERS LLC (the "Company"), pursuant to the New York Limited Liability Company Law (the "Act").

WHEREAS, the individuals and entities signing this Agreement desire to provide for the management and the conduct of the Company's business and establish their respective rights and obligations in connection with forming the Company; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter provided, the parties hereto hereby agree as follows:

ARTICLE 1

CERTAIN DEFINED TERMS

Section 1.1 Certain Defined Terms. The following capitalized terms shall have the meanings set forth below:

"Act" means the Limited Liability Company Law of New York, as amended.

"Affiliate" of a person means another person directly or indirectly controlling, controlled by, or under common control with such person; for this purpose, "control" of a person means the power (whether or not exercised) to direct the policies, operations or activities of such person by virtue of the ownership of, or right to vote, or to direct the manner of voting of, securities of such person, or pursuant to law or agreement, or otherwise and shall include the spouse of such person as well as the grandparents of any person deemed an "Affiliate" by virtue of this definition, any descendent (whether natural or adopted) of any such grandparents and any spouse of any such decedent.

"Agreement" means this Operating Agreement, including any Schedules or Exhibits hereto, as the same may be supplemented, amended or restated from time to time in the manner provided herein.

"Business" means (i) to own, operate, manage and dispose of the Property, (ii) to engage in such other business to which the Members from time to time consent, and (iii) any other acts or activities and to exercise any powers permitted to the Company under the Act, so long as the same shall be necessary or convenient to accomplish the foregoing or are incidental thereto or connected therewith (including, but not limited to, investment of proceeds accruing to the Company); provided, however, that the Company shall at all times operate in such a manner so as not to be required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the regulations thereunder.

"Capital Account" has the meaning given in Section 3.2.

"Capital Gain" or "Capital Loss" means, for any fiscal year of the Company, the Company's net taxable gain or loss, respectively, for such year from Capital Transactions as computed for federal income tax purposes, after reduction for expenses directly attributable to such Capital Transactions (whether or not such amounts are treated as capital gain or capital loss for federal income tax purposes).

"Capital Transaction" means the sale, exchange or other disposition or casualty or condemnation of all or a substantial portion of the Property, the refinancing of the Company's purchase money mortgage that helped finance the acquisition of the Property, or any other Company borrowing secured by an interest in the Property.

"Carrying Costs" means real estate taxes and property insurance premiums, utility charges and any service contracts fee attributable to the maintenance of the Property.

"Cause" has the meaning given in Section 7.1.

"Closing" means the closing of the transactions contemplated by the Contract.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, or any corresponding or succeeding provisions of applicable law.

"Consent" means the prior approval, authorization or consent to any act or matter by the vote of the Members are entitled to vote on such matter pursuant to this Agreement, Members owning a majority of the Percentages so entitled to vote. In the event the required vote is obtained, all Members shall be deemed to have approved such Consent.

"Depreciation" means for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to the assets of the

Company for such Fiscal Year (adjusted by the Manager in the event Capital Accounts are adjusted under Section 3.2(c) hereof).

"Fiscal Year" means a fiscal year of the Company, which shall end on [December 31] of each year.

"Interest" means the right of a Member to be allocated a share of Profit, Loss, Capital Gain and Capital Loss and special allocations, to receive distributions and to participate in the management of the Company in accordance with this Agreement, and all other rights, powers, duties and obligations of such Member provided herein or by applicable law.

"Lender" means any lending institution chosen by the Members.

"Liability" has the meaning given in Section 6.6.

"Liquidating Member" means the Manager, or if none or the Manager is without the capacity to act as manager hereunder resulting from his/her disability or otherwise, a Member appointed by Consent of the Members to act pursuant to Article IX hereunder.

"Manager" has the meaning given in Section 6.3.

"Member" means a member of the Company.

"Minimum Contribution" is the amount set forth on Schedule A.

"Net Capital Proceeds" means, for any Fiscal Year, the aggregate cash proceeds from Capital Transactions received by the Company during such Fiscal Year reduced by (a) the aggregate expenses directly attributable to a Capital Transaction and any capital expense or operating expense which are required to be paid from such proceeds (including without limitation any selling expense and cost of restoring the property (in excess of insurance proceeds, condemnation awards and any deductible under insurance) which is the subject of the Capital Transaction as determined by the Manager with the Consent of the Members, if applicable) and (b) the repayment (or provision for repayment of) any Company obligation which was or may be paid from such proceeds.

"Net Cash Flow" means, for any Fiscal Year, the amount by which the sum of (a) the gross cash receipts from the operations of the Company during such Fiscal Year and (b) the amount of any reduction in Reserves from Net Cash Flow from the prior Fiscal Year exceeds the sum of (c) the gross cash expenditures from the operations of the Company during such Fiscal Year, and (d) the amount of any increase in the Reserves from Net Cash Flow from the prior Fiscal Year.

"Operating Expenses" of the Company include (i) all costs of personnel employed by the Company and involved in the business of the Company to the extent and only for such periods as such employee shall be employed by the Company in the conduct of the business of

the Company; (ii) all costs of borrowed money, real estate and personal property taxes and assessments of the Company's properties and other taxes applicable to the Company; (iii) audit, accounting, real estate brokerage, attorneys' and other fees; (iv) printing and related expenses; (v) taxes incurred in connection with insurance, distribution, transfer, registration and recording of documents evidencing ownership of an interest in the Company; (vi) any fees and expenses paid to independent contractors, mortgage bankers, brokers and servicers, consultants, insurance brokers and other agents including affiliates thereof; (vii) expenses in connection with the disposition, refinancing, management and development of the Premises or any additional properties hereafter acquired by the Company (including the cost and expenses of insurance premiums, all utility costs and expenses paid by the Company, real estate brokerage commissions, other management fees and costs of maintenance of the Premises or any additional properties hereafter acquired by the Company); (viii) the cost of insurance required in connection with the business of the Company; (ix) expenses incurred by the Company or the Manager in organizing, revising, amending, converting, modifying or terminating the Company; (x) expenses in connection with distributions made by the Company to any Members; (xi) communications, bookkeeping, and clerical work necessary in maintaining relations with Members including the cost of printing and mailing to such persons, reports of the business and the meetings of the Company; and (xii) fees and reimbursable expenses for the Manager.

"Percentage" means the percentage with respect to each Member as initially set forth on Schedule A hereto, which shall subsequently be adjusted as provided herein. The Percentage need not be equal with respect to economies and voting and the appropriate context shall be applied in applying the term Percentage so the Voting Percentage and Economic Percentage is properly utilized in this Agreement.

"Person" means any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, organization, business, government or agency or political subdivision thereof, or any other entity.

"Profit" or "Loss" means, for any Fiscal Year, the Company's taxable income or loss, respectively, for such Fiscal Year as computed for federal income tax purposes (including all items required to be separately stated), increased by items of income which are exempt from federal income tax and reduced by expenditures which, under federal income tax law, are neither deductible nor properly chargeable to a capital account, other than (a) Capital Gains and Capital Losses and (b) amounts required to be specially allocated pursuant to Section 4.3. In the event that property contributed to the Company has a fair market value which differs from its basis (at the time of contribution) or an election is made under Treasury Regulation §1.704-1(b)(2)(iv)(f), the Capital Accounts shall be adjusted in accordance with Treasury Regulation §1.704-1(b)(2)(iv)(g) for allocations of depreciation, amortization and gain or loss, as computed for book purposes, with respect to such property.

"Property" means the property located at 1032, 1036 and 1038 Manhattan Avenue, Brooklyn, New York, including any buildings and improvements thereon erected, as well as all fixtures, equipment, furniture, furnishings, fittings and articles of personal property

now or hereafter attached; provided, however, the same shall be delivered in the condition required pursuant to the terms of the Contract.

"Reserves" means, for any Fiscal Year, such amounts as the Manager, with the Consent of the Members, determines from time to time are required to maintain reserves and working capital for the payment of liabilities, operating expenses, capital expenses, debt service and other obligations of the Company.

"Transfer" has the meaning given in Section 8.1.

"Unreturned Capital Contribution" of a Member at any time means the excess, if any, of the aggregate amount contributed by such Member to the Company pursuant to Section 3.1(a) and Section 3.1(b) hereof over the aggregate amounts previously distributed to such Member pursuant to Section 4.5.

ARTICLE 2

FORMATION

Section 2.1 Formation. The Company was formed as a limited liability company under the Act by the filing of its articles of organization with the Secretary of State of the State of New York on . By executing this Agreement, the parties are becoming Members, all upon the terms and subject to the conditions set forth in this Agreement.

Section 2.2 Name of the Company. The name of the Company is BK CORNERS LLC. The Company shall conduct its business under such name, or under any assumed, fictitious or other name permitted by law to which the Manager may determine. The Manager shall notify the other Members of any other name under which the Company conducts business.

Section 2.3 Places of Business. The principal place of business of the Company shall be located at 49 Box Street, Brooklyn, New York 11222, or at such other place to which the Manager may determine. The Manager shall notify the other Members of any change to the Company's principal place of business or additional locations.

Section 2.4 Purpose. The purpose of the Company is to engage in the Business.

ARTICLE 3

CAPITALIZATION

Section 3.1 Capital Contributions.

(a) On or before the Closing, the Members shall contribute to the Company, in either cash or in kind property, the amount set forth opposite his or its name on Schedule A hereto.

(b) If at any time the Company shall not have sufficient funds to pay any Expenditure, the Manager may request the Consent of the Members, who if such Consent is given, shall promptly demand such shortfall from the Members in respect of the proportionate shares as set forth on Schedule A (the "Additional Contribution Notice"). Each of such Members shall contribute to the Company in cash their Percentage of the shortfall requested within 30 days after the Manager's demand therefor. If any Member fails to make any contribution demanded therefrom under this Section 3.1(b), then any Member may make contributions sufficient to cover such shortfall. The non-paying Member shall be deemed to have transferred its Interest to the paying Members pro rata in accordance with the contributions made by such paying Members. It is expressly agreed that the non-paying Member's Interest will result in dilution of such non-paying Member's Percentage.

Section 3.2 Capital Accounts.

(a) A separate Capital Account shall be established and maintained for each Member in accordance with Treasury Regulation §1.704-1(b). A Member's Capital Account shall reflect the cash initially contributed to the Company's capital by such Member in accordance with Section 3.1(a) and shall be: (i) increased by (A) the amount of Profit and Capital Gain allocable to such Member and any income or gain specially allocated to such Member, (B) any cash and the fair market value of any property (net of any liabilities secured by such property that the Company assumes or takes subject to) hereafter contributed to the capital of the Company by such Member, and (C) in the case property is distributed in kind, the amount of gain, if any, which would have been allocated to such Member if the property had been sold by the Company for its fair market value on the date of distribution; and (ii) decreased by (A) the amount of Loss and Capital Loss allocable to such Member and any losses or deductions specially allocated to such Member, (B) the amount of cash and the fair market value of any property (net of any liabilities secured by such property that such Member assumes or takes subject to) distributed to such Member, and (C) in the case property is distributed in kind, the amount of loss, if any, that would have been allocated to such Member if the property had been sold by the Company for its fair market value on the date of distribution.

(b) In the event of a Transfer by a Member of all or a part of his Interest in accordance with this Agreement, a proportionate amount of the Capital Account and Percentage of the transferor shall be transferred to such transferee.

(c) The Manager with the Consent of the Members may adjust the Capital Accounts to reflect a revaluation of the Company's property on the Company's books in accordance with Treasury Regulation §1.704-1(b)(2)(iv)(f) under the circumstances described therein.

(d) The provisions of this Agreement are intended to comply with Treasury Regulation §1.704-1(b) and -2 and Temporary Treasury Regulation §1.704-1T(b) and shall be interpreted and applied in a manner consistent with such regulations. The Members may amend this Agreement (including without limitation to modify the manner in which Capital Accounts are maintained) in order to comply with such regulations (as they are currently in effect or may subsequently be amended).

Section 3.3 Other Matters Relating to Capital.

(a) No Member shall be entitled to withdraw any part of its contribution to the capital of the Company, except as expressly provided herein in connection with his withdrawal as a Member or the liquidation of the Company pursuant to this Agreement.

(b) No Member shall be liable for the return of any other Member's capital contribution; any such return of capital shall be made solely from the assets of the Company available therefor.

(c) Except as otherwise expressly provided herein in Section 3.1(c), no interest shall accrue for the benefit of, or be paid to, any Member on contributions to the capital of the Company.

Section 3.4 Interests. An Interest is personal property. A Member has no right to, interest in, or claim against any specific property of the Company by reason of his Interest.

ARTICLE 4

ALLOCATIONS AND DISTRIBUTIONS

Section 4.1 Allocations of Profits and Losses:

(a) The Profits and the Losses for each Fiscal Year shall be allocated to each Member in identical ratios as the distributions made to the Members in that same Fiscal Year in proportion to the Percentages allocated to the Members.

(b) Notwithstanding anything to the contrary contained in this Agreement:

(1) Allocations Causing Negative Capital Accounts. No allocations of a loss shall be made to a Member to the extent that such allocations would create or increase a negative balance in that Member's Capital Account if such negative balance exceeds any amount that such Member is obligated to restore, including any amount the Member is deemed to be obligated to restore under the penultimate sentences of Treasury Regulations § 1.704-2(g)(1) and 1.704-2(i)(5).

(2) Qualified Income Offset. Any Member who unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulation § 1.704-

1(b)(2)(ii)(d)(4), (5) or (6), shall be specially allocated (1) items of income, and (2) items of gain (in that order) in an amount and manner sufficient to eliminate or reduce the deficit balance in that Member's Capital Account, to the extent required by the Treasury Regulations as quickly as reasonably possible. This provision is intended to comply with the qualified income offset requirement of Treasury Regulation § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(3) Minimum Gain Chargeback. If there is a net decrease in the Company's Minimum Gain (as defined in Sections 1.704-2(b) and 1.704-2(d) of the Treasury Regulations) during a taxable year of the Company, each Member shall be allocated items of the Company's income and gain for such year (and, if necessary, succeeding years) in an amount equal to such Member's share of the net decrease in the Company's Minimum Gain. This provision is intended to comply with the minimum gain chargeback requirement in Treasury Regulation § 1.704-2(f) and shall be interpreted consistently therewith.

(4) Priorities. For purposes of determining a Member's Capital Account balance under this Section only, distributions made prior to or contemporaneously with any allocation to a Member shall be reflected in such Member's Capital Account prior to making such allocation to such Member. In addition, for purposes of this Section only, a Member's Capital Account shall be reduced for: (A) allocations of losses which, as of the end of each year, are reasonably expected to be allocated to such Member, pursuant to Code § 706(d) and Treasury Regulation § 1.751-1(b)(2)(ii), and (B) distributions that, as of the end of such year, reasonably are expected to be made to such Member, to the extent that they exceed offsetting increases to such Member's Capital Account that reasonably are expected to occur during (or prior to) the Company's taxable year in which such distributions reasonably are expected to be made (other than increases pursuant to the minimum gain chargeback), and (C) any other items as may be required by Treasury Regulation § 1.704-1(b).

(c) In accordance with Code § 704(c) and the regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and the gross fair market value of such property at the time of the contribution. Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement.

Section 4.2 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

Section 4.3 Distributions.

(a) In the absence of a Capital Transaction:

(1) first, to the payment by the Company of its outstanding and unpaid Operating Expenses relating to the Property; and

(2) second, to the Members, pro rata in accordance with each Member's respective Percentages.

(b) During the Term of this Agreement, the Manager shall make Distributions from the proceeds of a Capital Transaction, from time to time, in accordance with the following order of priority:

(1) first, to the payment by the Company of its outstanding and unpaid Operating Expenses relating to the Property;

(2) second, to the repayment of Carrying Costs;

(3) third, to the payment of the Advance Interest to any Member for such Member's Advances;

(4) fourth, to the payment of Advances made by any Member for repayment for any Advances; and

(5) fifth, to the Members, pro-rata in accordance with each Member's respective Percentages.

Section 4.4 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on his, her or its capital contribution or to a return of his, her or its capital contribution, except as specifically set forth in this Agreement.

Section 4.5 Accounting Period. The accounting period of the Company shall be the Fiscal Year.

ARTICLE 5

FISCAL MATTERS

Section 5.1 Partnership Representative. The Manager shall be the "partnership representative" of the Company within the meaning of the Code.

Section 5.2 Tax Returns. The Manager, at the expense of the Company, shall prepare and file, or shall cause to be prepared and filed, all federal and any required state, local and foreign income and other tax returns for the Company for each Fiscal Year, and, in connection therewith, may make any available or necessary elections or determinations.

Section 5.3 Fiscal Year and Other Elections. The Fiscal Year shall end on December 31 of each year or such other date as the Manager may select pursuant to applicable law. All other accounting decisions and elections required or permitted to be made by the Company for tax purposes under applicable law shall be made by the Manager.

Section 5.4 Books and Records. The Manager shall maintain or cause to be maintained at the Company's principal place of business complete and accurate books and records of the assets, business and affairs of the Company, including without limitation:

(a) a current list of the Members, setting forth in alphabetical order the full name, last known mailing address, capital contribution and fractional Interest of each;

(b) a copy of the Company's Articles of Organization and all amendments thereto and restatements thereof, together with an executed copy of any power of attorney pursuant to which any Articles or certificate, or amendment thereto or restatement thereof, is executed;

(c) a copy of this Agreement; and

(d) a copy of the Company's income tax and information returns and reports, if any, for each of the three most recently ended Fiscal Years.

(e) Each Member's accountants shall have full access to any books and records of the Company.

Section 5.5 Reports to Members.

(a) As soon as practicable after the end of each Fiscal Year, the Company shall distribute to each Member:

(1) a copy of its Schedule K-1 to the Partnership Tax Return (Form 1065); and

(2) a copy of its financial statement, including a balance sheet as of the end of such Fiscal Year and an income statement for the Fiscal Year then ended,

(b) Each Member may, for any purpose reasonably related to such Member's Interest, at such Member's own expense, upon reasonable prior notice to the Manager, inspect and copy, during the normal business hours of the Company, any records or information maintained by the Company, including without limitation the records and information required to be maintained pursuant to Section 5.4 and the Company's financial statements, if any, for each of the three most recently ended Fiscal Years.

(c) Each Member's accountants shall have full access to any books and records of the Company.

ARTICLE 6

ADMINISTRATION

Section 6.1 Management of the Company.

(a) Except as otherwise expressly provided in this Agreement or by applicable law, the Manager shall have the exclusive right, power and authority to manage the assets, properties, business and affairs of the Company, with all rights and powers and the full authority necessary, desirable or convenient to administer and operate the same for Company purposes, to incur, perform, satisfy and compromise all manner of obligations on behalf of the Company, and to make all decisions and do all things necessary or desirable in connection therewith. For the avoidance of doubt, no consent of Members is required hereunder so long as Marshall Kesten is the Manager; so long as Marshall Kesten is the Manager, the Manager has full authority to transact any and all business on behalf of the Company. If Marshall Kesten is unable or unwilling to serve as Manager, then, in such event, the Consent of the Members is needed to select a replacement Manager.

(b) Without limiting the generality of Section 6.1(a) above, or any other term or provision of this Agreement and except as otherwise prohibited or limited by the provisions of this Agreement or applicable law, the Manager, acting together, shall have the exclusive right, power and authority to, directly or indirectly, take or omit whatever action for Company purposes that the Manager may, in their sole discretion, deem necessary or desirable to carry out the Company's purposes including, but not limited to, the right, power and authority:

(1) to pay or otherwise satisfy, perform or compromise any and all of the Company's administrative, interest, operating and other expenses, capital expenditures, indebtedness and other liabilities and obligations;

(2) subject to Section 6.1(e) of this Agreement, to employ, retain or otherwise secure the services of various persons (including the Manager and his Affiliates and other Members), or to enter into contracts or other arrangements with them, and to delegate one or more of its rights, powers and obligations under this Agreement and applicable law to one or more of them; provided, if the value of a contract is in excess of \$15,000.00 or if Consent is otherwise required under Section 6.5(b) the Consent of the Members will be required;

(3) to sell, assign, exchange, mortgage, pledge or otherwise transfer or encumber one or more of the Company's assets and properties;

(4) to perform other obligations and make the determinations provided elsewhere in this Agreement to be performed by the Manager;

(5) to mortgage one or more of the Company's assets or properties.

(c) The Manager shall be responsible for all aspects of maintenance and improvements of the Property (other than the responsibility of the cost thereof except as otherwise provided herein) in order to comply with all applicable laws, regulations and municipal ordinances and to enhance the Property's fair market value including, without limitation, (i) the implementation of all improvements on the Property that are necessary such that the Property shall (A) have such leasing marketability as like properties in Westchester County, New York and the surrounding markets and (B) be maintained in good repair, working order and condition, (ii) all necessary repairs, replacements, alterations and improvements of the Property and (iii) the inspecting, keeping, maintaining, repairing and replacing of the interior, exterior, structural and nonstructural improvements, alterations and other components on the Premises so as to keep all such improvements, alterations and other components in reasonably good repair subject to ordinary wear and tear and in safe condition.

(d) With respect to all of his duties hereunder, the Manager shall (1) perform his services in such capacity diligently and faithfully for the benefit of the Company in substantially the same manner as the Manager perform their duties with respect to other properties owned by the Manager, (2) perform such services in accordance with all applicable policies and practices of the Company, and (3) devote such portion of his business time and attention to the Business and affairs of the Company as he deems necessary to carry out his duties hereunder.

(e) Any transaction between the Company and the Manager, Members or any Affiliate of the Manager or a Member shall be at arm's length, and any payment to the Manager, Members or its Affiliate for services rendered or property transferred to the Company shall not exceed the prevailing rate in the area for comparable items; provided, however, if the Manager shall employ, retain or otherwise secure the services of himself or any of his Affiliates with respect to the administration or operation of the Business, no such Manager shall be entitled to any compensation or remuneration other than the reimbursement of such Manager's direct costs and out-of-pocket expenses; and provided, further, however, neither the Manager nor any of his or its Affiliates shall be entitled to receive any leasing commission, management fee or other brokerage commission with respect to any lease, sale, assignment or transfer of the Property or any part thereof or any fee with respect to the implementation of the Manager's responsibilities hereunder.

Section 6.2 Required Consent. If, as and when Marshall Kesten is no longer the Manager, without the Consent of the Members, the Manager shall not:

(a) except as provided in Section 3.1 hereof, call for or permit to be made any capital contribution or investment in the Company;

(b) adopt, amend, restate or revoke the Articles of Organization of the Company or this Agreement;

(c) except as otherwise provided in Section 9.1 hereof, dissolve, liquidate or wind up its Business and affairs;

(d) except as provided in Section 6.1(b)(3) and (5) hereof, sell, assign, exchange, mortgage, pledge or otherwise transfer or encumber, in any transaction or group of related transactions, the Property;

(e) merge or consolidate with or into another Person or enter into any business combination, partnership or joint venture, or acquire or dispose of all or any interest in any other Person;

(f) adjust, compromise, settle, abandon or refer to arbitration any suit, proceeding, dispute or claim in favor of or against the Company, and institute, prosecute and defend any legal action or proceeding or any arbitration proceeding other than landlord and tenant or tax certiorari proceedings;

(g) confess a judgment against the Company; or

(h) take any action which would cause the Company to be taxed as an association taxable as a corporation for income tax purposes.

Section 6.3 Manager.

(a) Marshall Kesten shall be the initial Manager. In the event of the death, removal, resignation or Disability (as defined below) of both of the initial Manager, a new Manager shall be chosen by the Consent of the Members.

(b) For purposes of this Section 6.3, a person shall be considered Disabled if the person because of physical or mental illness or incapacity, shall become substantially unable to perform the duties and services required of him under this Agreement for a period of 90 consecutive days or 180 days in any 365-day period as determined by a physician selected by the Consent of the Members.

(c) A Manager may resign at any time by giving at least 30 days' written notice of such resignation to the other Members.

Section 6.4 Standard of Care.

(a) In acting on behalf of the Company, each Member shall act in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing its duties, a Member shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) one or more agents or employees of the Company;

(2) counsel, public accountants, business, investment or financial consultants or advisors, or other persons as to matters that it believes to be within such person's professional or expert competence; or

(3) another Member duly designated in accordance with this Agreement, as to matters within his designated authority; which the Member believes to merit confidence, so long as in so relying the Member shall be acting in good faith and with such degree of care, but a Member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A Member who performs his duties in accordance with this Section 6.3 shall have no liability by reason of being or having been a Member or acting on behalf of the Company pursuant to the provisions and authority of this Agreement.

Section 6.5 Interested Members.

(a) Except as otherwise provided herein, a Member may lend money to, borrow money from, guarantee or act as a surety for, provide collateral for an obligation of and transact other business with, the Company and, subject to Section 6.5(b) and any applicable law, shall have the same rights and obligations with respect thereto as a person who is not a Member.

(b) No contract or other transaction between or among the Company and one or more of its Members or any Affiliate of a Member or any other person in which one or more of the Members are partners, members, Manager, directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such Member is present at the meeting of the Members which approves such contract or transaction, or that its consent was given for such contract or transaction, if the material facts as to such Member's interest in such contract or transaction and as to any such common partnership, membership, managership, directorship, officership or financial interest are disclosed in good faith or known to the Manager, and the Manager consents to such contract or transaction, and if any other Member's consent is required by any other provision of this Agreement to such contract or transaction, such information is disclosed to such Member and such Member also consents to such contract or transaction.

(c) If such good faith disclosure of the material facts as to the Member's interest in the contract or transaction and as to any such common partnership, membership, managership, directorship, officership or financial interest is made to the Members, or known to the Manager and the Manager consents to such contract or transaction, as provided in Section 6.5(b), the contract or transaction may not be avoided by the Company for the reasons set forth in such Section. If there was no such disclosure or knowledge, the Company may avoid the contract or transaction, unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the Company at the time it was approved by the Manager.

Section 6.6 Limitation of Liability. No Member or Manager shall be liable to the Company or any other Member or Manager for any loss, damage, liability or expense ("Liability") suffered or incurred by any person on account of, or by reason of any claim based on or arising from, any act taken or omitted to be taken in the course of representing or performing services for the Company or otherwise in its capacity as a Member or Manager, including without limitation its appointment or retention of, or reliance upon, any employee or agent of the Company or any person referred to in Section 6.5(b), notwithstanding any negligence, fraud or willful misconduct by such employee, agent or person, except to the extent that a judgment or other final adjudication adverse to it establishes that its acts or omissions (a) were in violation of any provision of this Agreement, (b) were in bad faith, (c) involved intentional misconduct or a knowing violation of law, (d) that the Member personally gained in fact a financial profit or other advantage to which he was not legally entitled, or (e) that with respect to a distribution in violation of Section 508(a) of the Act its acts were not performed in accordance with Section 6.4.

Section 6.7 Indemnification. The Company shall indemnify each Member in his capacity as a Member or a Manager, and their respective legal representatives, successors and assigns, and hold each of them harmless from and against any Liability suffered or incurred by such Member or Manager, as such, or any of them in the course of serving in any office of, or otherwise representing (within the scope of its authority) or acting for or on behalf of the Company, except to the extent that a judgment or other final adjudication adverse to such Member, Manager or other person establishes (a) that the Member's or Manager's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) that he personally gained in fact a financial profit or other advantage to which he was not legally entitled; provided, however, that, any other provision hereof notwithstanding, any such indemnification shall be solely from the net assets of the Company, and no Member shall be required to make any capital contribution or otherwise pay any amount from its own assets as a result thereof. The Company may procure insurance in such amounts and covering such risks as may be deemed appropriate by the consent of the Manager and the Consent of the Members to fund any indemnification required or permitted to be made hereunder.

Section 6.8 Trade Secrets. Each Member shall hold in a fiduciary capacity for the benefit of the Company all information relating to or concerned with its Business and affairs, and it shall not, at any time after the date hereof, use or disclose to any person any such information, except as may be necessary or appropriate in connection with the Business and affairs of the Company.

Section 6.9 Bank Accounts. The Company shall maintain one or more accounts, including checking, cash management and/or money market accounts, in such banks or other financial institutions as the Manager may select. All amounts deposited by or on behalf of the Company in those accounts shall be and remain the property of the Company. Withdrawals from such accounts shall be made by the signature of the Manager or person designated by them. No funds of the Company shall be kept in any account other than a Company account, and funds of the Company shall not be commingled with the funds of any other person. No Member shall

apply, or permit any other person to apply, such funds in any manner, except for the benefit of the Company.

Section 6.10 Other Activities of Members. Each Member may engage or participate in any other activities indicated to any employment, occupation, business venture or enterprise. Except as otherwise agreed between or among them, none of the Company nor any other Member shall be entitled to participate or otherwise have any interest in such other employment, occupation, business venture or enterprise.

ARTICLE 7

MEETINGS OF MEMBERS

Section 7.1 Meetings of Members.

(a) Members' meetings may be called by the Manager or Members owning at least the required Percentages to constitute a quorum pursuant to Section 7.1(b) hereof upon prior written notice to each of the other Members, when any action requiring Consent is to be taken or when it is otherwise deemed to be in the best interest of the Company. Meetings shall be held at the office of the Company or at such other place as shall be determined by the Manager with the Consent of the Members. The parties shall endeavor to have meetings on nights or weekends. Telephone conferences and/or video conferences are hereby expressly permitted in lieu of meetings.

(b) The presence of Members who own sufficient Interests to give the required Consent shall constitute a quorum at any meeting of Members if the purpose of such meeting is to obtain the Consent of the Members to act (and the presence of the Manager if the Manager's consent is also required). Once a quorum is present at a meeting, any action properly taken at the meeting remains valid and effective, notwithstanding the subsequent withdrawal of any Member from the meeting. If a quorum does not appear at a meeting, the Members present may adjourn the meeting despite the absence of a quorum.

(c) Whenever under this Agreement Members are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if an instrument or instruments setting forth the action so taken shall be signed by all the Members and delivered by hand or by certified or registered mail, return receipt requested, to the office of the Company, its principal place of business or an officer, employee or agent of the Company having custody of the records of the Company. Every such instrument shall bear the date of signature of each Member who signs such instrument, and no such instrument shall be effective to take the action referred to therein unless, within 60 days of the earliest dated such instrument delivered in the manner required by this Section to the Company, instruments signed by all the Members are delivered to the office of the Company, its principal place of business or an officer, employee or agent of the Company having custody of the records of the Company.

Section 7.2 Participation in Meetings.

(a) A Member may appear and vote at a meeting in person or by proxy. Any proxy shall be dated and signed by the Member (or his attorney-in-fact) and shall remain effective until revoked. Any such proxy may be revoked at any time, such revocation to be effective upon the presentation of a later-dated proxy or written notice of revocation given to the Company.

(b) Members may participate in a meeting by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other simultaneously and such participation in a meeting shall constitute presence in person at such meeting.

Section 7.3 Notice of Meeting.

(a) Written notice shall be given stating the place, date and hour of the meeting, indicating that it is being issued by or at the direction of the person calling the meeting and, in the case of a special meeting, stating the purpose or purposes for which the meeting is called. An affidavit of a person giving the notice that the notice required by this Section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transaction at the original date of the meeting. Notwithstanding the foregoing, if a meeting of Members is adjourned because of a failure to obtain a quorum, written notice of the time and place of the adjourned meeting stating that the original meeting had to be adjourned due to the absence of a quorum shall be sent to each Member at least 10 days before the date scheduled for the adjourned meeting.

(b) Notice of meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by it.

ARTICLE 8

TRANSFERS

Section 8.1 Transfers Prohibited.

(a) Except as provided in Sections 8.2 hereof, no Member may withdraw from the Company or sell, assign, exchange, give, or otherwise voluntarily or involuntarily transfer or dispose of, pledge, hypothecate, grant a security interest in, or otherwise, voluntarily or involuntarily, encumber (collectively, "Transfer") any Interest in the Company, without the prior written consent of the Manager and the Consent of the Members, each of which consents may be

withheld in their sole discretion. In the event of such a Transfer, the transferee shall become a Member only if the admission of the transferee as a Member shall be approved by the Consent of the Members, each of which consent may be withheld in such Person's sole discretion, and such transferee accepts and agrees to be bound by this Agreement by executing a counterpart hereof, expressly assumes all of the obligations of the transferor hereunder and executes and delivers such other agreements, instruments, certificates, affidavits, opinions of counsel and other documents as the Manager may reasonably require in order to admit such new Member. Any purported Transfer in violation of this Agreement shall be void ab initio and shall not bind the Company.

(b) Notwithstanding anything herein to the contrary (including Section 8.2 hereof), a Transfer of an Interest may not be made if (i) such Transfer would violate applicable securities or "blue sky" law, (ii) the transferee is a minor or incompetent or (iii) without the Consent of the Members, if required (which shall not unreasonably be withheld), such Transfer cause a termination of the Company pursuant to Section 708(b)(1)(B) of the Code.

Section 8.2 Permitted Transfers.

(a) Notwithstanding anything to the contrary contained in Section 8.1(a) hereof, any Member may cause the Transfer of his Interest or to the extent a Member is an entity and such entity is dissolved, the ownership of such entity may be transferred, in whole or in part, to members of his immediate family, which shall be his parents, siblings, spouse and children and grandchildren or a trust solely for their benefit and upon his death to the representatives of his estate and the beneficiaries thereof. In any such case, subject to (b) below, such transferee shall be admitted as a Member.

(b) A permitted Transfer of an Interest shall not dissolve the Company or entitle a transferee who is not admitted as a Member hereunder to participate in the management and affairs of the Company or to become, or to exercise any rights or powers of a Member. The only effect of a permitted Transfer, unless the transferee is admitted as a Member, is to entitle the transferee to receive, to the extent Transferred, the distributions of Net Cash Flow and Net Capital Proceeds and allocations of Profit, Loss, Capital Gain, Capital Loss and special allocations to which the transferor would be entitled. Until the transferee becomes a Member, the transferee shall have no liability as a Member solely as a result of such Transfer. The other Member shall not unreasonably withhold, condition or delay its Consent to the admission of a person who is other the assignee of a permitted Transfer.

ARTICLE 9

DISSOLUTION AND LIQUIDATION

Section 9.1 Dissolution. Subject to the provisions of applicable law, the Company shall be dissolved upon the first of the following events to occur:

(a) the bankruptcy, incapacity, dissolution or withdrawal of the Manager, unless within 90 days after such event the remaining Members Consent to continue the Company;

(b) the sale or other disposition of all or substantially all of the Company's assets, or

(c) the Consent of the Members and the consent of the Manager.

Section 9.2 Liquidation.

(a) Upon a dissolution of the Company, the Liquidating Member shall take or cause to be taken a full account of the Company's assets, properties, indebtedness and liabilities as of the date of such dissolution and shall proceed with reasonable promptness to liquidate the Company's assets and properties and to terminate its Business and affairs. The Company's property, or the proceeds from the liquidation thereof, shall be applied in cash or in kind in the following order:

(1) to the payment of all liabilities and obligations of the Company, including expenses of the liquidation and obligations and liabilities to the Members (other than on account of their Capital Accounts or liabilities for distributions under applicable law);

(2) to the establishment of such reserves for contingent liabilities of the Company as are deemed necessary or desirable by the Liquidating Member; provided, however, that such reserves shall be deposited in escrow with a bank for the purpose of disbursing such reserves for the payment of such contingent liabilities and, at the expiration of such period as the Liquidating Member may reasonably deem advisable, for the purpose of distributing the remaining balance in accordance with subparagraph (3) below; and

(3) to the Members, to be divided among them in accordance with their respective Capital Account balances.

(b) The Liquidating Member shall be allowed a reasonable time for the orderly liquidation of the Company's assets and properties and the discharge of indebtedness and other liabilities to creditors, so as to preserve and, upon disposition, maximize the value of the Company's assets and properties.

Section 9.3 Fiscal Year of Termination. Upon the liquidation of the Company (or any Member's Interest) within the meaning of Treasury Regulation §1.704-1(b)(2)(ii)(g), the liquidating distributions shall be made, if practicable, on or before the close of the Fiscal Year in which the liquidation occurs, and, in any event, within 90 days after the date of such liquidation. In the case of the liquidation of the Company, such distribution may be made to a trust established for the benefit of the Members for purposes of liquidating Company assets, collecting amounts owed to the Company, paying any indebtedness and other liabilities of the Company

and distributing the remaining amounts to the Members in the same amounts as would have been distributed by the Company without regard to the trust.

Section 9.4 Continuing Liabilities and Other Obligations. Except as otherwise expressly provided herein, no reconstitution, dissolution, liquidation or termination of the Company shall relieve, release or otherwise discharge any Member, or any of that Member's successors, assigns, heirs or legal representatives, from any previous breach or default of, or any obligation or other liability theretofore incurred or accrued under, any provision of this Agreement or applicable law, and any and all liabilities, claims, demands or causes of action arising from any such breaches, defaults, obligations and liabilities shall survive any such reconstitution, dissolution, liquidation or termination.

Section 9.5 Final Statement. As soon as practicable after the dissolution of the Company, the Liquidating Member shall cause a statement of the Company's assets and liabilities to be prepared as of the date of such dissolution and furnished to the Members.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Fees and Expenses. All fees and expenses, including without limitation attorney's fees and expenses, incurred in connection with the initial organization of the Company and the preparation of this Agreement shall be borne by the Company; provided, however, that each Member shall bear his own fees and expenses in connection with reviewing this Agreement.

Section 10.2 Notices. Except as otherwise expressly provided herein, any notice or demand required or permitted to be given or made hereunder shall be in writing and signed by the maker, and shall be deemed to have been given or made for all purposes if sent by (a) messenger or an overnight courier service against receipt, or (b) certified or registered mail, postage paid, return receipt requested, or (c) sent by telegram, telecopy, telex or similar electronic means, provided that a written copy thereof is sent on the same day by postage paid first-class mail, in each case, to the Member at his address set forth on Exhibit 2, or such other address or fax number as any Member may from time to time direct by notice given to the other Members in accordance with this Section. The date of the giving or making of any such notice or demand shall be, in the case of notice given under clause (a), the date of the receipt; in the case of notice given under clause (b), five business days after such notice or demand is sent; and, in the case of clause (c), the business day next following the day that notice or demand is sent. The Members and Managers further agree to deliver to each other copies of any notices received from third parties and to request lenders and other significant third party relationships to deliver notice to each Member at the same time as notice to the Company, to the extent practicable.

Section 10.3 Amendment. This Agreement may be amended if such amendment is in writing and approved by the Manager and the Consent of the Members (if such Consent is required). Notwithstanding the foregoing, no amendment to this Agreement shall

materially and adversely affect any Member, change the allocation or distribution to any Member or make any Member personally liable for any obligation of the Company, without such Member's consent.

Section 10.4 Waiver. No course of dealing or omission or delay on the part of any party hereto in asserting or exercising any right hereunder shall constitute or operate as a waiver of any such right. No waiver of any provision hereof shall be effective, unless in writing and signed by or on behalf of the party to be charged therewith. No waiver shall be deemed a continuing waiver or waiver in respect of any other or subsequent breach or default, unless expressly so stated in writing.

Section 10.5 Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to choice or conflict of laws principles.

Section 10.6 Jurisdiction.

(a) Each of the parties hereto hereby irrevocably consents and submits to the exclusive jurisdiction of the Supreme Court of the State of New York and of the United States District Court for the Southern District of New York in connection with any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated hereby as the exclusive jurisdiction for such proceeding, waives any objection to venue in New York County or such District, and agrees that service of any summons, complaint, notice or other process relating to such suit, action or other proceeding may be effected in the manner provided by clause (b) of Section 10.2.

(b) In the event of any actual or prospective breach or default by any party, the other parties shall be entitled to equitable relief, including remedies in the nature of injunction and specific performance. In this regard, the parties acknowledge that they will be irreparably damaged in the event this Agreement is not specifically enforced, since (among other things) the interests in the Company are not readily marketable. Subject to this Section 10.6, all remedies hereunder are cumulative and not exclusive and nothing herein shall be deemed to prohibit or limit any party from pursuing any other remedy or relief available at law or in equity for any actual or prospective breach or default, including the recovery of money damages.

Section 10.7 Severability. The provisions hereof are severable and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof shall not be affected, but shall, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision shall be deemed, without further action on the part of the parties hereto, amended and limited to the extent necessary to render such provision, as so amended and limited, valid and enforceable.

Section 10.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute one and the same agreement.

Section 10.9 Further Assurances. Each party hereto covenants and agrees promptly to execute, deliver, file or record such agreements, instruments, certificates and other documents and to perform such other and further acts as the other parties hereto may reasonably request or as may otherwise be necessary or proper to consummate and perfect the transactions contemplated hereby.

Section 10.10 Assignment. Except as otherwise provided elsewhere herein, this Agreement, and each right, interest and obligation hereunder, may not be assigned by any party hereto without the prior written consent of each other party hereto. Any purported assignment without such consent shall be void and without effect.

Section 10.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is not intended, and shall not be deemed, to create or confer any right or interest for the benefit of any person not a party hereto.

Section 10.12 Titles and Captions. The titles and captions of the Articles and Sections of this Agreement are for convenience of reference only and do not in any way define or interpret the intent of the parties or modify or otherwise affect any of the provisions hereof.

Section 10.13 Grammatical Conventions. Whenever the context so requires, each pronoun or verb used herein shall be construed in the singular or the plural sense and each capitalized term defined herein and each pronoun used herein shall be construed in the masculine, feminine or neuter sense.

Section 10.14 References. The terms "herein," "hereto," "hereof," "hereby," and "hereunder," and other terms of similar import, refer to this Agreement as a whole, and not to any Section or other part hereof.

Section 10.15 No Presumptions. No party hereto is entitled to any presumption with respect to the interpretation of any provision hereof or the resolution of any alleged ambiguity herein based on any claim that another party hereto drafted or controlled the drafting of this Agreement.

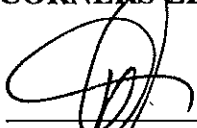
Section 10.16 Entire Agreement. This Agreement embodies the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior agreement, commitment or arrangement relating thereto.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Members, by their respective duly authorized officers, have duly executed and delivered this Agreement as of the date first above written.


COMPANY:

BK CORNERS LLC


By: 
Name: Marshall Kesten
Title: Manager

MEMBERS:

Marshall Kesten LLC

By: 
Marshall Kesten
Manager

777 PARTNERS LLC

By: 
Marshall Kesten
Manager

SCHEDULE A

MEMBERS

<u>Name and Address</u>	<u>Contribution</u>	<u>Percentage</u>
Marshall Kesten LLC		75%
777 Partners LLC		25%



Payee	Amount	Deliver by	Additional items	
Commissioner of NYSDEC <input type="button" value="Check"/>	\$631.15	4/6/2021	Confirmation #	2587
			Check number	12571
			From account	HM MANAGEMENT LLC
			Process	3/30/2021
			Delivery	Standard
			Invoice/Comment	
