

# New York State Department of Environmental Conservation

## Division of Environmental Remediation

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • Fax: (518) 402-9020

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

NOV 28 2012

Bevin Associates LLC  
Attn: Elias S. Kefalidis  
155 East 56<sup>th</sup> Street, 6<sup>th</sup> Floor  
New York, New York 10022

**RE: Site Name: 1676 Third Avenue**  
**Site No.: C231079**  
**Location of Site: 1676 Third Avenue, City of New York, New York County**

Dear Applicant:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 1676 Third Avenue Site.

If you have any further questions relating to this matter, please contact the project attorney Lou Oliva, Esq., NYS Department of Environmental Conservation, Office of General Counsel, One Hunters Point Plaza, 47-40 21<sup>st</sup> Street, Long Island City, NY 11101, or by email at [lpoliva@gw.dec.state.ny.us](mailto:lpoliva@gw.dec.state.ny.us).

Sincerely,

Robert W. Schick, P.E.

Director

Division of Environmental Remediation

cc w/out att: Shaun Boller, Project Manager

cc w/att: E. Armater/M. Caruso  
L. Oliva

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

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In the Matter of a Remedial Program for

**BROWNFIELD SITE  
CLEANUP AGREEMENT  
Index No.: C231079-10-12**

**1676 Third Avenue**

DEC Site No.: C231079

Located at: 1676 Third Avenue  
New York County  
New York, NY 10011

Hereinafter referred to as "Site"

by:

Bevin Associates LLC

155 East 56th Street, 6th Floor, New York, NY 10022

Hereinafter referred to as "Applicant"

-----  
**WHEREAS**, the Department of Environmental Conservation (the "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 August 13, 2012; 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, Bevin Associates LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.020 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 5-1522-40  
Street Number: 1676 Third Avenue, New York  
Owner: Bevin Associates LLC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

Bevin Associates LLC  
Attn: Elias S. Kefalidis  
155 East 56th Street, 6th Floor  
New York, NY 10022  
[ek@klmconstruction.com](mailto:ek@klmconstruction.com)

#### 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:

Shaun Bollers  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
One Hunters Point Plaza  
47-40 21st Street  
Long Island City, NY 11101  
[snboller@gw.dec.state.ny.us](mailto:snboller@gw.dec.state.ny.us)

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

Krista Anders (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[kma06@health.state.ny.us](mailto:kma06@health.state.ny.us)

Lou Oliva, 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  
[lpoliva@gw.dec.state.ny.us](mailto:lpoliva@gw.dec.state.ny.us)

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

Bevin Associates LLC  
Attn: Elias S. Kefalidis  
155 East 56th Street, 6th Floor  
New York, NY 10022  
[ek@klmconstruction.com](mailto:ek@klmconstruction.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.

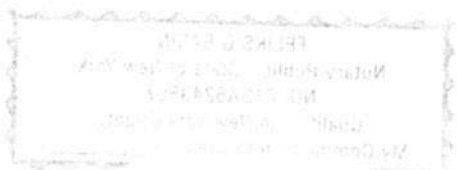
DATED: NOV 27 2012

JOSEPH J. MARTENS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:



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





CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Bevin Associates LLC

By: [Signature]

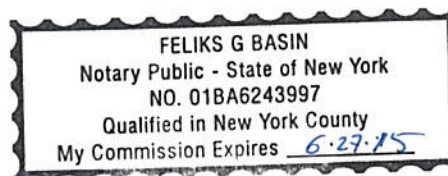
Title: Manager

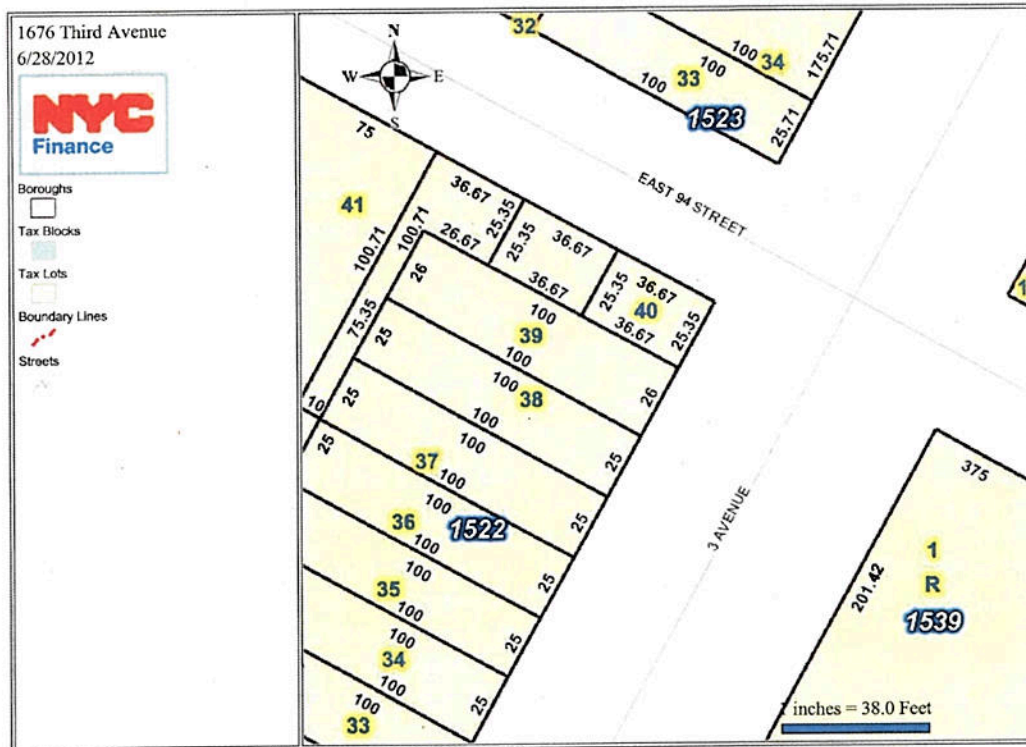
Date: 11/19/12

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF                     )

On the 19 day of November in the year 2012, before me, the undersigned, personally appeared Elias Kefalidis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual  
taking acknowledgment





## APPENDIX A

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

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this 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 ECL § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

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

##### A. Work Plan Requirements

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

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

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

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

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

necessary monitoring and/or operation and maintenance of the remedy.

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

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

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

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

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

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

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

##### C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR §



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

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

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

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

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

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

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

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

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

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

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

#### F. Institutional/Engineering Control Certification

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

#### III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a



result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

#### IV. Entry upon Site

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

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

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

#### V. Payment of State Costs

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

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

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

D. The Department shall provide written notification to the Applicant of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1423 and ECL § 71-4003.

#### VI. Liability Limitation

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

#### VII. Reservation of Rights

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

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

#### VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York,



and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

#### IX. Change of Use

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

#### X. Environmental Easement

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

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

#### XI. Progress Reports

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

#### XII. Termination of Agreement

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

#### XIII. Dispute Resolution

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

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

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, VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

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

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

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

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

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

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

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

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants



are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

L. Applicant's obligations under this Agreement represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

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

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

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

## OPERATING AGREEMENT

### OF

## BEVIN ASSOCIATES LLC

This Operating Agreement of BEVIN ASSOCIATES LLC (the Agreement) is adopted and entered into by and among BEVIN ASSOCIATES LLC, a New York limited liability company (the Company) and the other persons executing this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties, intending legally to be bound, agree as follows:

1. **Name.** The name of the limited liability company is BEVIN ASSOCIATES LLC

2. **Office.** The principal office of the Company shall be located in the County of New York, and all correspondence for the Company shall be sent to 155 East 56<sup>th</sup> Street, 6<sup>th</sup> Floor, New York, New York 10022, or such other place or places as the Managers shall determine.

3. **Term.** The Company shall continue until December 31, 2064 or such other time as it is dissolved in accordance with Section 18 of this Agreement or with the Limited Liability Company Law of the State of New York (the AAct@)

4. **Purpose.** The purpose of the Company is to own, operate and manage real property and to engage in any lawful act or activity for which limited liability companies may be formed under the Act and to engage in any and all activities necessary or incidental thereto.

5. **Management.**

(a). **Managers.** The Company shall initially be managed by one Manager. Elias S. Kefalidis is hereby designated to serve as the initial Manager.

The Members may at any time designate one or more natural persons as additional or successor managers to serve on the Board of Managers, in which event the Company shall be managed by a Board of Managers consisting of the number of persons as designated, not in excess of three persons.



A person serving as Manager may resign by giving notice in writing to the other persons serving on the Board, or if there is no such other person, to the Members. A Manager may be removed by action of the Members.

Each named person shall serve as a Manager until such person dies, becomes incapacitated, resigns, is removed or makes a Transfer of his or her entire Membership interest.

When the Board of Managers consists of three persons, then the determination of two shall be required to exercise the power delegated herein. When the Board of Managers consists of two or less persons, unanimous approval shall be required. Determinations by the Board of Managers shall be made by action taken at a meeting or evidenced by a written consent signed by required number of Managers.

Whenever there is only one Manager designated to serve, the words "Board of Managers", whenever used in this Agreement, shall be construed in the singular and the word "Manager" shall be substituted for the words "Board of Managers".

The Board of Managers may delegate responsibility for the day-to-day management of the Company, or to execute and deliver any and all instruments and documents necessary or desirable to carry out the intent and purposes of any action taken by the Board of Manager, to any one Manager, or other person, who shall have and exercise on behalf of the Company all powers and rights necessary or convenient to carry out such management responsibilities or execution and delivery.

(b). **General Powers.** The Board of Managers shall have full, exclusive, and complete discretion, power, and authority subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, for Company purposes, the power to:

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

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

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

(iv) execute any and all other instruments and documents which may be necessary or in the opinion of the Board of Managers desirable to carry out the intent and



purpose of this Agreement, including, but not limited to, documents whose operation and effect extend beyond the term of the Company;

(v) make any and all expenditures which the Board of Managers, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement; and

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

(c). **Extraordinary Transactions.** Notwithstanding anything to the contrary in Subsection (b), the Board of Managers shall not undertake any of the following except upon the affirmative vote of Members as provided in Section 12 of this Agreement:

(i) any transaction requiring any Member to pay any additional sums to the Company as capital;

(ii) the sale, exchange, transfer, lease, mortgage, refinancing, pledge or other disposition of all or substantially all of the assets of the Company;

(iii) the borrowing of any money for or behalf of the Company;

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

(v) amending the articles of organization of the Company (except as permitted in Law Section 213(b)).

6. **Members.** The names and addresses of the Members are as set forth in Exhibit A to this Agreement. AMember@ and AMembers@ shall mean the persons who are named as such in Exhibit A.

7. **Capital Contributions and Percentages.** The Members have contributed to the Company the amounts set forth in Exhibit A to this Agreement as their respective capital contribution and shall have the percentage interest set opposite their respective name. APercentage@ means, as to a Member, the percentage interest set forth after the Member=s name on Exhibit A.

No interest shall be paid on capital contributions of Members. No Member shall have the right to receive any return of any capital contribution except as may otherwise be provided in this Agreement. If the Board of Managers determines to return of all or

part of a capital contribution, the Company may distribute cash or any personal property, tangible or intangible, or a combination thereof, in return of the capital contribution.

**8. Additional Contributions.** The Members are not required to make any additional capital contributions to the Company, provided however, that additional capital contributions may be made at such times and in such amounts as all of the Members shall determine.

**9. Capital Accounts.** A separate capital account shall be maintained for each Member in accordance with the following provisions:

(i) a Member's capital account shall be credited with the such Member's capital contributions, the fair market value of property contributed by such Member to the Company, the amount of any Company liabilities assumed by the Member (or which are secured by Company property distributed to the Member), and the Member's distributive share of profit; and

(ii) a Member's capital account shall be debited with the amount of money and the fair market value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), and the Member's distributive share of loss.

It is intended that the capital accounts of all Members shall be maintained in compliance with the provisions of Treasury Regulations Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of capital accounts shall be interpreted and applied in a manner consistent with that regulation.

**10. Allocation of Profits and Losses.** The Company's profits and losses shall be allocated to the Members in proportion to their Percentages.

**11. Distributions of Cash.** Cash flow for each taxable year shall be distributed to the Members in proportion to their Percentages at such time or times as determined by the Board of Managers, subject to the following provision. The Company shall distribute out of its cash flow no less frequently than before each tax payment date as of which federal, state and city income taxes, including estimated tax payments, are owing by Members with respect to income of the Company taxable to such Members, amounts sufficient to cover the payment of such federal, state and city income taxes. The minimum amount distributable to each Member pursuant to the foregoing shall be determined using as the hypothetical tax rate for each Member the highest combined federal, state and city income tax that is applicable to a Member who is an individual.

**12. Meetings of and Voting by Members.**



(a). The Company shall not be required to hold an annual meeting of Members. A meeting of the Members may be called at any time by the Board of Managers or by any Member upon at least 24 hours' prior notice. Meetings of Members shall be held at the Company=s principal place of business or at any other place in New York, New York designated by the person calling the meeting. The notice shall state the place, date, hour, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Member=s meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than 80 percent of the aggregate Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the member or by the Member=s duly authorized attorney in fact.

(b). Except as otherwise provided in this Agreement, the affirmative vote of Members holding not less than 80 percent of the aggregate Percentages then held by Members shall be required to approve any matter coming before the Members.

(c). In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding such Percentages then held by Members as would be required for Members to take action under this Operating Agreement. No written consent shall be effective to take such action unless within 60 days of the earliest dated consent delivered in accordance with the Law, signed consents sufficient to take such action have been likewise delivered. If such consent is not unanimous, prompt notice shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

### **13. Transfer of Interests.**

(a) **Transfers Prohibited.** No Member may Dispose, voluntarily or involuntarily, of all, or any portion of, or any interest or rights in, the Membership interest owned by the Member, without the consent of the Board of Managers except as provided in Subsection (b). Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. Any Member attempting to make a voluntary Disposition of any Membership interest in violation of this Section 13, shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, or have any other rights in or with respect to his Membership Interest.

Disposition (Dispose) means any sale, hypothecation, pledge, assignment, exchange, mortgage, grant, attachment, or other transfer, absolute or as security or encumbrance (including transfers by operation of law).



(b) **Permitted Transfers.**

(i) A Member may assign his entire Membership interest or part thereof to any other Member who is such at the date of such assignment.

(ii) A Member may assign by instrument of transfer or by will all or any portion of his Membership interest to his spouse or to a descendant or parent, a brother or sister of such Member, or to descendants of any of them, or to a trust for the lifetime benefit of any one or more of the foregoing, or to any recognized charitable or eleemosynary institution or organization (hereinafter referred to as a "charity"). Any permitted assignee under this subsection shall become an Economic Interest Holder and shall not become a Member unless the assignee is admitted as a Member. Such assignee may apply for admission to the Company as a Member and, upon approval of such application by the Board of Managers, shall be admitted as a Member in the place and stead of the transferee (or if the transferee be more than one person, trust or charity, all of such persons, trusts or charities shall make such application and be admitted as a Member as aforesaid); provided, however, that no individual who is a minor or an incompetent shall be so admitted as a Member. For the purposes of this Agreement, the term Adescendant@ shall include a lawfully adopted child.

(iii) If any Member is a trust, or if, pursuant to subsection (ii), all or any portion of a Membership interest is assigned to a trust for the lifetime benefit of any one or more of the persons designated in that subsection, then upon the termination of such trust the provisions of subsection (ii) shall apply to any distribution of such Membership interest or any portion thereof, which such trust may be permitted or obligated to make under the terms of the trust instrument or will creating the same, except that the related persons listed in subsection (ii) to whom the trust may transfer all or any portion of the Membership interest held by it (or to a trust for whose benefit the trust may so transfer the same) without the consent of the Board of Managers shall be those of the grantor of the trust or of the deceased Member under whose will the trust was created.

(iv) As a condition to the admission of any substituted Member, as provided in subsection (ii), the person, trust or charity so to be admitted shall execute and acknowledge such instruments, in form and substance reasonably satisfactory to the Board of Managers, as it may deem necessary or desirable to effectuate such admission and to confirm the agreement of the person, trust or charity to be admitted as such Member to be bound by all of the covenants, terms and conditions of this Agreement, as the same may have been amended.

(v). Any person, trust or charity to be admitted as a Member pursuant to the provisions of subsection (ii) shall, as a condition to such admission, pay all reasonable expenses in connection with such admission as a Member, including, but not limited to, the cost of the preparation, filing and publication of any amendment to this Agreement and/or of any certificate which the Board of Managers may deem necessary or desirable in connection with such admission.

(vi). **Economic Interest Holder** means a person who holds an Economic Interest. **Economic Interest** means a person's right to receive the share of profits, losses and distributions from the Company, which the transferor would otherwise be entitled with respect to the interest transferred, and shall not include the right to participate in the management of the Company or to vote with the Members on, or to grant or withhold consents or approvals of, any matter.

**14. Withdrawal of a Member.** No Member shall have the right or power to withdraw from the Company.

**15. Transfer to Third Party.** If a Member proposes to transfer his Economic Interest or part thereof to an independent third party, the Member shall notify the Board of Managers of the proposed terms of the transfer. The Board of Managers shall notify the other Members of the proposed transfer and the terms thereof and offer the other Members the right to participate in proportion to their respective Percentages in the purchase of the offered Economic Interest on the same terms. The Members who desire to purchase the same on such terms shall notify the offering Member of such acceptance within 30 days of the offer. The accepting Members shall within 60 days thereof purchase the offered interest at a closing to be held within the Borough of Manhattan designated by the Board of Managers. If the offered Economic Interest is not so accepted, then the proposed transfer shall be permitted to be concluded. Any such independent third party transferee shall not become a Member unless the transferee is admitted as a Member under similar terms as set forth in Section 13 for the admission of a permitted transferee.

**16. Admission of Additional Members by the Company.** One or more additional Members of the Company may be admitted to the Company only with the vote or written consent of all of the Members.

**17. Death, Dissolution, Bankruptcy or Incompetency of a Member.** Upon the death, dissolution, adjudication of bankruptcy or adjudication of incompetency of a Member, such Member's successors, executors, administrators or legal representatives shall have all the rights, economic and otherwise, of a Member for the purpose of settling or managing such Member's estate.

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

- (a) when the period fixed for its duration in Section 3 has expired;
- (b) Upon the affirmative vote of all of the Members; or
- (c) Termination or dissolution required by operation of law.



19. **Liability of Members.** The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.

20. **Indemnification.** To the fullest extent permitted by law, the Company shall indemnify and hold harmless, and may advance expenses to, any Member, Manager or other person, or personal representative of such Member, Manager or other person (collectively, the "Indemnitees"), from and against any and all claims and demands whatsoever; provided, however, that no indemnification may be made to or on behalf of any Indemnatee if a judgment or other final adjudication adverse to such Indemnatee establishes (a) that his or her 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 or she personally gained a financial profit or other advantage to which he or she was not legally entitled. The provisions of this section shall continue to afford protection to each Indemnatee regardless of whether such Indemnatee remains a Member, Manager, employee or agent of the Company.

21. **Complete Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty.

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

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

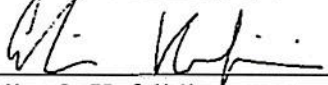
24. **Amendment.** Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of Members holding not less than 80 percent of the aggregate Percentages then held by Members. Notwithstanding the foregoing, in no event shall any amendment of this Agreement affect adversely the Economic Interest of any Member or Economic Interest Holder without the written consent of such Person.

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

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement  
the        day of December, 2006.




BEVIN ASSOCIATES LLC

By:   
Elias S. Kefalidis, Manager

MEMBERS:

Elias S. Kefalidis



Melanie K. Kefalidis



U/D FBO Marisa A. Kefalidis

Dated January 9, 2003

By:   
Laurie D. Kefalidis, Trustee

EXHIBIT A

Members

Name and Address	Capital Contribution	Percentage
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Elias S. Kefalidis 155 East 56 <sup>th</sup> Street 6 <sup>th</sup> Floor New York, NY 10022		33 1/3%
Melanie K. Kefalidis 155 East 56 <sup>th</sup> Street 6 <sup>th</sup> Floor New York, NY 10022		33 1/3%
U/D FBO Marisa A. Kefalidis DTD 01/09/03, Laurie D. Kefalidis, Guardian 155 East 56 <sup>th</sup> Street 6 <sup>th</sup> Floor New York, NY 10022		33 1/3%
Total		100.0%



**TANNENBAUM HELPERN SYRACUSE & HIRSCHTRITT LLP**

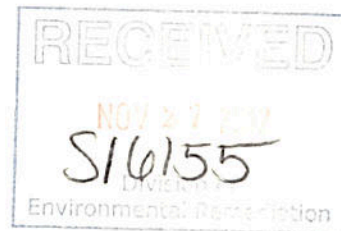
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Joshua M. Levy  
Writer's Direct Dial: (212) 508-6730  
E-mail: Levy@thsh.com

November 20, 2012

**VIA FEDERAL EXPRESS**

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



Re: 1676 Third Ave  
Tax Map ID No.: 5-1522-40  
Property County: New York  
Site No.: C231079

Dear Mr. Schick

Enclosed please find three (3) copies of the Brownfield Cleanup Application executed by the initial manager of the Requestor and one (1) copy of the Operating Agreement of Bevin Associates LLC. Should you require any additional information please do not hesitate to contact me.

Sincerely,

Joshua M. Levy

Enclosures