

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

July 22, 2021

Inwood Lot 9 Associates LLC
George Tsapelas
111 Eighth Avenue, Suite 1500
New York, NY 10011

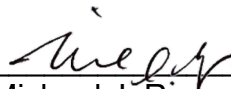
RE: Site Name: 430 West 207th Street
Site No.: C231144
Location of Site: 430 West 207th Street, New York County, New York, NY 10034

Dear George Tsapelas:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 430 West 207th Street Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Jennifer Andaloro, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway, Albany, NY 12233-1500 or by email at jennifer.andaloro@dec.ny.gov.

Sincerely,



Michael J. Ryan, P.E.

Director

Division of Environmental Remediation

Enclosure

ec: Kyle Forster, Project Manager

cc: 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. C231144-07-21**

430 West 207th Street

DEC Site No:C231144

Located at: 430 West 207th Street
New York County
New York, NY 10034

Hereinafter referred to as "Site"

by:

Inwood Lot 9 Associates LLC

111 Eighth Avenue, Suite 1500, New York, NY 10011

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 April 20, 2021; 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, Inwood Lot 9 Associates LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Department has determined that the Site is eligible for tangible property tax credits pursuant to ECL § 27-1407(1-a) because the Site is located in a City having a population of one million or more and at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law. The Applicant acknowledges that the Department made this determination in reliance on information submitted to the Department by the Applicant.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.376 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 2203-9
Street Number: 430 West 207th Street, New York
Owner: West 207 Grocery Owners, 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:

Kyle Forster
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
kyle.forster@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

Jennifer Andaloro, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233
jennifer.andaloro@dec.ny.gov

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

Inwood Lot 9 Associates LLC
Attn: George Tsapelas
111 Eighth Avenue, Suite 1500
New York, NY 10011
gtsapelas@tacon.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.

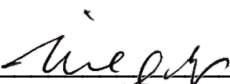
B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

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

DATED: July 22, 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.

Inwood Lot 9 Associates LLC

By: [Signature]

Andrew Ziotnick

Title: Authorized Signatory

Date: 7/21/21

STATE OF NEW YORK)
COUNTY OF New York) ss:

On the 21 day of July in the year 2021, before me, the undersigned, personally appeared Andrew Ziotnick, 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

SARAH K. COX
Notary Public, State of New York
Reg. No. #01CO6345971
Qualified in Queens County
Commission Expires Aug. 1, 2024

EXHIBIT A SITE MAP



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

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

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

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

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

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

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

IX. Change of Use

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

X. Environmental Easement

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

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

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

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

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

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

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

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

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

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

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

INWOOD LOT 9 ASSOCIATES LLC

MANAGER AND MEMBER CONSENT AND CERTIFICATE

The undersigned, being the manager (“**Manager**”) and the member (the “**Member**”) of Inwood Lot 9 Associates LLC (the “**Company**”), hereby certifies as of April 5, 2021 as follows and adopt the following resolutions and authorize the Authorized Signatories (as hereinafter defined) to take the following actions on behalf of the Company:

1. The Member is the sole member of the Company.
2. The Manager is the sole manager of the Company.
3. The Company was formed pursuant to that certain Certificate of Formation filed with the Department of State of Delaware, a copy of which is attached hereto as Exhibit A, and the Company has authorized the filing for an Application of Authority with the New York Secretary of State.
4. The Member executed that certain Limited Liability Company Operating Agreement of the Company, as of the date hereof, , a copy of which is attached hereto as Exhibit B.

WHEREAS, the Company, was formed to acquire, own, administer, lease, service, sell, dispose of, finance, refinance, improve, develop or otherwise deal with the leasehold interests in the property commonly known as 430 West 207th Street, New York, New York, also known as Block 2203, Lot 9 on the Tax Map of the City of New York, New York County (the “**Lot 9 Property**”).

WHEREAS, in furtherance of the Company’s purpose the Company shall execute an assignment and assumption of that certain Lease by and between WEST 207TH GROCERY OWNERS, LLC, a New York limited liability company (“**Landlord**”) and A&P REAL PROPERTY, LLC, a Delaware limited liability company (the “**Prior Tenant**”), dated March 19, 2013 (“**Original Lease**”), as subsequently amended pursuant to that certain First Amendment to Lease, date December 1st, 2015, a Memorandum of which is recorded in the City Register of the City of New York (“**City Register**”) in CRFN 20190000003136 (the “**First Amendment**”), and subsequently assigned by Prior Tenant to Assignor pursuant to that certain Assignment and Assumption, dated December 1, 2015 (the “**2015 Assignment of Lease**”), and which the Assignor and Landlord subsequently entered into a Second Amendment and Extension of Lease, dated December 20, 2018, a Memorandum of which is recorded in the City Register in CRFN 20190000003136 (the “**Second Amendment**” and together with Original Lease, the First Amendment, and the 2015 Assignment of Lease, collectively, the “**Ground Lease**”) (and such assignment of the Ground Lease, the “**Assignment and Assumption of Ground Lease**”).

WHEREAS, in furtherance of the Company’s purpose, the Company seeks to engage in certain predevelopment, planning and site permitting activity as necessary to prepare for the demolition and development of the Lot 9 Property, including but not limited to the submit

Brownfield Cleanup Program Application for acceptance under the New York State Department of Environmental Conservation Brownfield Cleanup Program, and such other actions and documentation as necessary for acceptance to secure an acceptable Brownfield Site Cleanup Agreement.

WHEREAS, the undersigned, in its capacity as both Manager and Member of the Company, desires to adopt the following resolutions in connection therewith, and appoint certain authorized signatories as provided for in this Consent and Certificate.

NOW THEREFORE, BE IT

RESOLVED, that all actions heretofore taken on behalf of the Company by the Organizer are hereby ratified and affirmed;

RESOLVED, that the following persons are hereby appointed as the Authorized Signatory of the Company, with respect to the consents and resolutions contemplated in this Consent, but not in contravention of the Company's Operating Agreement or the Member's operating agreement:

Andrew Zlotnick
Charles R. Bendit
Peter Braus
Paul Pariser

RESOLVED, that all actions that have been taken and to be taken by the Authorized Signatory or Manager in connection with these consents are hereby approved, adopted, ratified and confirmed by the Company in all respects; and it is further

RESOLVED, that all actions heretofore taken by the Authorized Signatory or Manager in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, adopted, ratified and confirmed in all respects; and it is further

RESOLVED, that the foregoing resolutions shall be deemed to include all such further acts and deeds as may be necessary, convenient or appropriate, in the judgment of the Authorized Signatory or Manager, to carry out fully the purpose and intent of the transactions contemplated thereby; and it is further

RESOLVED, that this Manager and Member Consent and Certificate may be signed in any number of counterparts, may be executed by electronic signature and shall become effective as of the date herein below written when each person named below shall have signed a copy hereof; and be it further

[Signature Page Follows.]

IN WITNESS WHEREOF, the Executive Committee of the 410 West 207th Holdings LLC, in its capacity as Manager and Member of the Company, have signed this Consent and Certificate as of the date set forth above.

Charles Bendit

CHARLES R. BENDIT

PETER BRAUS

Paul Pariser

PAUL PARISER

Andrew Zlotnick

ANDREW ZLOTNICK

IN WITNESS WHEREOF, the Executive Committee of the 410 West 207th Holdings LLC, in its capacity as Manager and Member of the Company, have signed this Consent and Certificate as of the date set forth above.

CHARLES R. BENDIT



PETER BRAUS

PAUL PARISER

ANDREW ZLOTNICK

[Inwood Lot 9 Associates LLC – Manager and Member Consent and Certificate]

EXHIBIT A
COMPANY ARTICLES

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "INWOOD LOT 9 ASSOCIATES LLC", FILED IN THIS OFFICE ON THE FIFTH DAY OF APRIL, A.D. 2021, AT 9:06 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

5783345 8100
SR# 20211167123

Authentication: 202889602
Date: 04-05-21

You may verify this certificate online at corp.delaware.gov/authver.shtml

CERTIFICATE OF FORMATION

OF

Inwood Lot 9 Associates LLC

The undersigned authorized person, for the purpose of forming a limited liability company pursuant to the provisions of the Limited Liability Company Act of the State of Delaware (the "LLCA"), hereby certifies as follows:

1. The name of the limited liability company is: Inwood Lot 9 Associates LLC
2. The registered office of the company in the State of Delaware is c/o United Corporate Services, Inc., 874 Walker Road, Suite C, in the City of Dover, County of Kent in the State of Delaware, 19904. The name of the company's registered agent at that address is United Corporate Services, Inc.
3. The nature of the business to be conducted by, and the purposes of, the company are to engage in any lawful act or activity for which a limited liability company may be organized under the LLCA.
4. The company reserves the right to amend, alter, change or repeal any provision contained in this Certificate in the manner now or hereafter prescribed by law, and all rights and powers conferred in this Certificate are subject to this reserved power.
5. The company may indemnify and advance expenses to any of its managers, officers and members, any person who has ceased to be a manager, officer or member, and the heirs, executors, administrators, successors and assigns of such a person or entity to the fullest extent permitted by the LLCA as the same exists now or may hereafter be amended.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of Inwood Lot 9 Associates LLC this 2nd day of April, 2021.

/s/RUSSELL A. KIVLER
Russell A. Kivler, Authorized Person

LIMITED LIABILITY COMPANY AGREEMENT
OF
INWOOD LOT 9 ASSOCIATES LLC

**LIMITED LIABILITY COMPANY AGREEMENT OF
INWOOD LOT 9 ASSOCIATES LLC**

This Limited Liability Company Agreement (this “Agreement”) of **INWOOD LOT 9 ASSOCIATES LLC**, a Delaware limited liability company (the “Company”), is made and entered into as of April 5th, 2021, by 410 West 207th Holdings LLC, a Delaware limited liability company (the “Member”), as the sole Member, and the Company.

RECITALS

By this Agreement, the Member desires to create the Company on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below.

Act. The Delaware Limited Liability Company Act, as amended from time to time.

Affiliate. (a) Any Person directly or indirectly owning, controlling or holding the power to vote 10% or more of the outstanding voting securities of an identified other Person; (b) any Person 10% or more of whose voting securities are directly or indirectly owned, controlled or held with power to vote, by such other Person; (c) any Person directly or indirectly controlling, controlled by, or under common control with such other Person; (d) any officer, director, member, manager or partner of such other Person; (e) if such other Person is an officer, director, member, manager or partner, any entity for which such Person acts in any such capacity; and (f) any spouse, lineal ancestor or descendant of such other Person.

Certificate. The Certificate of Formation of the Company, as amended from time to time.

Code. The Internal Revenue Code of 1986, as amended from time to time, or any replacement or successor law.

Gross Cash Receipts. With respect to any period, the amount of all cash funds received by the Company from all sources and any amount released from Company reserves.

Manager. The Person appointed as Manager of the Company pursuant to and in accordance with Section 10.2, for so long as it shall serve as Manager in accordance with Section 10.2, and any replacement Manager appointed in accordance with Section 10.2. The initial Manager shall be the Member.

Member(s). 410 West 207th Holdings LLC, a Delaware limited liability company, and each Person who may become a substituted or additional Member pursuant to the provisions hereof and applicable law.

Net Cash Flow. With respect to any period, the amount by which the Gross Cash Receipts in such period exceed the sum of the following: (a) all principal and interest payments on any indebtedness of the Company (including loans from any Member or their Affiliates), and all other sums paid to such lenders in such period; (b) all cash expenditures (including expenditures for capital improvements) made in such period incident to the operation of the Company business, including but not limited to those expenses of the Manager paid, either directly or indirectly, by the Company; and (c) working capital and other reserves in such amounts and for such purposes as the Manager, in its reasonable discretion, deems necessary for proper current and future operation of the Company business.

Person. A natural person, corporation, limited liability company, trust, partnership, estate, unincorporated association or other entity.

Profits or Losses. The net income or loss of the Company for federal income tax purposes as finally determined by the Company's accountants for each fiscal year of the Company, as well as, where the context requires, related federal tax items such as tax preferences and credits, in each case appropriately adjusted with respect to final determination of any of the foregoing for federal income tax purposes.

1.2 **Interpretation.** The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Wherever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms. For all purposes of this Agreement, the term "control" and variations thereof shall mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of the specified entity, through the ownership of equity interests therein, by contract or otherwise. As used in this Agreement, the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". As used in this Agreement, the terms "herein", "hereof" and "hereunder" shall refer to this Agreement in its entirety. Any references in this Agreement to "Sections" or "Articles" shall, unless otherwise specified, refer to Sections or Articles, respectively, in this Agreement.

ARTICLE 2

FORMATION OF THE COMPANY

2.1 **Formation.** The Member has caused a limited liability company to be formed under and pursuant to the provisions of the Act; and the rights and obligations of the Member shall be as provided therein except as otherwise expressly provided in this Agreement. The Member shall execute such certificates or documents and to do such filings and recordings and all other acts, including the filing or recording of the Certificate with the Secretary of State of the State of Delaware, and in any other applicable jurisdictions as may be required to comply with applicable law.

2.2 **Entire Agreement.** Each and every other agreement or understanding, oral or

written, relating in any way to the formation or operation of the Company is hereby superseded in its entirety. From and after the execution of this Agreement, the same shall constitute the only Operating Agreement of the Company except as the same may hereafter be amended pursuant to the provisions hereof. This Agreement represents the entire agreement and understanding of the Member concerning the Company and its status as the Member, and all prior or concurrent agreements, understandings, representations and warranties in regard to the subject matter hereof are and have been merged herein.

ARTICLE 3

NAME AND PRINCIPAL OFFICE

3.1 **Name.** The business of the Company shall be conducted under the name of “INWOOD LOT 9 ASSOCIATES LLC,” or such other name as the Manager may designate.

3.2 **Principal Place of Business, Registered Office and Registered Agent.** The principal place of business of the Company shall be located at c/o Taconic Investment Partners LLC, 111 Eighth Avenue, Suite 1500, New York, New York 10011. The registered agent and the registered office of the Company shall be United Corporate Services, Inc., 874 Walker Road, Suite C, in the City of Dover, County of Kent in the State of Delaware, 19904. The Manager shall designate registered agents and registered offices in any additional jurisdictions as the Manager may determine to be necessary or advisable. The Manager may from time to time designate another statutory agent or another location for the registered office or principal place of business of the Company upon notice to the Member.

ARTICLE 4

PURPOSE

4.1 **Purpose.** The purpose of the Company is to acquire, own, administer, lease, service, sell, dispose of, finance, refinance, improve, develop or otherwise deal with the leasehold interests in the property commonly known as 430 West 207th Street, New York, New York, also known as Block 2203, Lot 9 on the Tax Map of the City of New York, New York County, to do all the things and to take all actions necessary and desirable in connection therewith, and to engage in any other lawful business or activity for which a limited liability company may be organized under the Act. Except as specifically limited or prohibited by this Agreement, the Company is empowered to perform such actions and engage in such activities consistent with, useful or necessary to carry out the purpose of the Company.

ARTICLE 5

TERM AND FISCAL YEAR

5.1 **Term.** The term of the Company shall commence as of the date hereof and shall continue in perpetuity until terminated pursuant to the provisions of this Agreement or as otherwise provided by law.

5.2 **Fiscal Year.** The fiscal year of the Company shall be the calendar year.

ARTICLE 6
CAPITAL CONTRIBUTIONS

6.1 **Capital Contributions.** Concurrently with the execution of the Agreement, the Member has contributed cash in the amount of \$1,000 to the capital of the Company. The Member shall not be required to contribute additional capital to the Company but, in its sole discretion, may from time to time contribute additional capital to the Company in the form of cash or other property.

6.2 **Return of Capital Contributions.** Except as specifically provided in this Agreement, the Member shall not be entitled to the return of its capital contribution to the Company but, in its sole discretion, contribute additional capital to the Company in the form of cash or other property.

6.3 **Interest on Capital Contributions.** The Company shall not pay interest on capital contributions or undistributed profits.

ARTICLE 7
ALLOCATION OF PROFITS AND LOSSES

7.1 All Profits and Losses (including all items of income and expense entering into the determination of such Profits and Losses), as finally determined for federal income tax purposes for each fiscal year of the Company, shall be allocated entirely to the Member. For so long as the Member holds all of the economic interests in the Company, the Company shall be disregarded as an entity separate from the Member for federal income tax purposes and, to the extent consistent with applicable law, for all applicable state and local income tax purposes.

ARTICLE 8
DISTRIBUTIONS

8.1 **Distribution of Net Cash Flow.** Net Cash Flow, if any, shall be distributed entirely to the Member.

8.2 **Timing; No Third-Party Beneficiaries.** Net Cash Flow shall be distributed to the Member in such amounts and at such intervals as the Manager, in its reasonable discretion may determine. The foregoing priorities of application of Net Cash Flow are for the benefit of the Member only and not for the benefit of any third party or creditor of the Company or of the Member, and neither the Company, the Manager nor the Member shall be liable or responsible to any third party or creditor of the Company or of the Member for any deviation from such priorities.

ARTICLE 9
BOOKS OF ACCOUNT, RECORDS AND REPORTS

9.1 The Manager shall maintain at the principal place of business of the Company the books of account and other records of the Company.

ARTICLE 10

MANAGEMENT OF THE COMPANY

10.1 **Management of Company Affairs**. Except as otherwise specifically provided in this Agreement, the management of the Company shall be vested in the Manager. Subject to the foregoing, the Manager shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Company and shall make all decisions affecting the Company's business and affairs, and, except as otherwise provided herein, any action taken by the Manager (in its capacity as such) shall constitute the act of and serve to bind the Company. The Manager may designate one or more of its employees, agents or Affiliates to carry out its duties and responsibilities to the Company. Persons dealing with the Company shall be entitled to rely conclusively on the power and authority of the Manager as set forth in this Agreement. The Manager shall not be entitled to any fees or other compensation for the performance of its duties as such; provided, however, the Company shall reimburse the Manager for all direct costs incurred by the Manager, its Affiliates, employees or agents on behalf of the Company or otherwise in connection with performance of the duties of the Manager.

10.2 **Appointment and Replacement of Manager**. The Member hereby appoints the Member as the initial Manager of the Company. If at any time the Manager shall resign as Manager, become bankrupt, dissolve or terminate its legal existence, die or be adjudicated insane or incompetent, then the Manager shall immediately thereupon cease to be the Manager of the Company. In addition, the Member may at any time remove the Manager from the office of Manager. If at any time the Manager is removed as Manager or otherwise ceases to be the Manager of the Company for any reason, the Member shall appoint a new Manager.

10.3 **Engagements by the Company**. The Manager may engage, on behalf and at the expense of the Company, such persons, firms or corporations as the Manager in its reasonable judgment shall deem advisable for the conduct and operation of the business of the Company, including managers, leasing, rental and sales agents and brokers, mortgage bankers, lawyers, accountants, architects, engineers, consultants, contractors, subcontractors and purveyors of other services or materials for the Company on such terms and for such compensation or costs as the Manager, in its reasonable judgment, shall determine.

10.4 **Employment of Affiliates**. The Manager may, on behalf and at the expense of the Company, engage any Member or an Affiliate of any Member or of the Manager to render services or provide goods to the Company, provided that the fees or other amounts payable for such services or goods are comparable to those prevailing in arm's-length transactions for similar services or goods.

10.5 **Liability of the Manager**. The Manager and its Affiliates, agents and employees shall not be liable, responsible or accountable in damages or otherwise to the Company or the Member or their successors or assigns for any acts performed or omitted within the scope of its authority as Manager, or otherwise conferred on the Manager and such Affiliates, agents and employees by this Agreement, including the execution and delivery of deeds in lieu of foreclosure, provided that the Manager or such Affiliates, agents or employees shall act in good faith and shall not be guilty of willful misconduct or gross negligence.

10.6 **Devotion of Time by Manager**. The Manager and its agents, Affiliates, employees and agents of Affiliates shall devote such time to the Company business as is reasonably necessary to manage and supervise the Company business and affairs in an efficient manner and to accomplish the purposes of the Company. The Manager and each employee, agent or Affiliate thereof, shall be free

to engage in other business ventures whether or not directly competing with the Company, or to exploit business opportunities whether or not arising from the conduct of Company business.

10.7 **Other Business of Manager.** The Manager and its Affiliates may engage in or possess any interests in other business ventures of any kind, independently or with others. Neither the Company, the Manager, nor the holder of any interest in the Company shall have any right by virtue of this Agreement or the relationship created hereby in or to such ventures or activities or to the income or profits derived therefrom, and the pursuit of such ventures, even if competitive with the business of the Company, shall not be deemed wrongful or improper.

10.8 **Company Indemnification of Manager.** The Company shall indemnify, defend, and hold the Manager and its Affiliates, employees and agents, or their respective successors, executors, administrators or personal representatives harmless from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) sustained or incurred as a result of any act or omission concerning the business or activities of the Company; provided that the Manager or any Affiliate, employee, or agent is not guilty of gross negligence or willful misconduct. The foregoing indemnity shall not be enforceable against the Member personally but solely from the Member's interest in the Company.

ARTICLE 11

RIGHTS AND DUTIES OF MEMBERS

11.1 **Admission of Members.** 410 West 207th Holdings LLC, a Delaware limited liability company, is hereby recognized and admitted as the sole Member of the Company. No other person shall be recognized or admitted as a Member of the Company except a transferee of the Member pursuant to Article 12.

11.2 **Limited Liability.** The debts, obligations and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company. No Member, in its capacity as a Member of the Company, shall be responsible or liable for any indebtedness or obligation of any other Member, nor, except to the extent provided in Section 11.5, shall the Company be responsible or liable for any indebtedness or obligation of any Member.

11.3 **No Individual Authority.** Except as otherwise expressly provided in this Agreement or in the Act, the Member, in its capacity as such, shall not have any authority to act for, or to create, undertake or assume any liabilities, obligations or responsibilities on behalf of the Company or any other Member.

11.4 **No Compensation.** The Member shall not be entitled to receive any compensation from the Company for services performed in its capacity as Member.

11.5 **Indemnification by the Company.** The Company shall indemnify each of its Members and former Members for all costs, losses, liabilities and damages paid or incurred by any of them in connection with the business of the Company, including any judgments, settlements, penalties, fines and expenses incurred in a proceeding to which any such person is a party because the person is or was a Member of the Company, to the fullest extent provided or allowed by the Act or any other

applicable laws, provided, however, that such liability does not arise by reason of the willful misconduct or gross negligence of such Member.

11.6 **Rights of a Former Member.** No Member shall have the right or power to resign or withdraw by voluntary act from the Company. If a Member shall cease to be a Member for any reason, notwithstanding the terms of Section 18-604 of the Act, such former Member shall not thereby be entitled to receive the fair value of such former Member's membership interest in the Company or any other payment or distribution except as specifically provided in this Agreement.

ARTICLE 12

TRANSFER OF MEMBER INTERESTS

12.1 The Member may sell, transfer, encumber, pledge or assign all or any part of its membership interest in the Company to any Person without the prior written consent of the Manager or any other Person.

ARTICLE 13

DISSOLUTION AND LIQUIDATION OF COMPANY

13.1 **Dissolution of the Company.** The Company shall be dissolved upon the occurrence of any of the following:

- (a) the written agreement of all Members;
- (b) any event that makes it unlawful for the Company business to be continued; or
- (c) the sale, disposition, or abandonment of all or substantially all of the non-cash assets of the Company.

The death, retirement, resignation, bankruptcy, court declaration of incompetence, or dissolution of any one or more Members or the Manager or the occurrence of any other event that terminates the continued membership of any one or more Members (except as provided in the immediately preceding sentence) shall not cause the dissolution of the Company.

13.2 **Winding Up of Affairs.** In the event of the dissolution and liquidation of the Company for any reason, the Manager shall file a written notice of winding up on behalf of the Company in the appropriate governmental offices, shall commence to wind up the affairs of the Company and shall convert all of the Company's assets to cash or cash equivalents within such reasonable period of time as may be required to receive fair value therefor. All items of income, gain, loss, deduction and credit during the period of liquidation shall be allocated among the Members in the same manner as before the dissolution.

13.3 **Accounting.** In the case of the dissolution and termination of the Company, prior to any distributions to the Member pursuant to Section 13.4(c), a proper accounting shall be made of each item of income, gain, loss, deduction and credit of the Company from the date of the last previous accounting to the date of dissolution. The Manager shall provide a copy of such accounting to the Member.

13.4 **Final Distribution of Company Property.** Upon termination of the Company, the Manager shall apply and distribute the remaining property of Company, together with the proceeds of any sales of same, as follows:

- (a) first, all Company debts and liabilities shall be paid and discharged, except any debts that are nonrecourse to the extent that the Manager elects not to pay such debts;
- (b) second, to establish any reserve which the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. Such funds may be placed in escrow by the Manager for the purposes of disbursing such funds in payment of any of the contingencies, liabilities or obligations, and, at the expiration of such period as the Manager shall deem advisable, the balance then remaining shall be distributed pursuant to Section 13.4(c); and
- (c) third, to distribute the balance entirely to the Member.

13.5 **Certificate of Cancellation.** Upon completion of the liquidation of the Company and the distribution of all Company property, the Company shall terminate, and the Manager shall have the authority to execute and record one or more Certificates of Cancellation of the Company as well as any and all other documents required or considered advisable by the Manager to effectuate and evidence the dissolution and termination of the Company.

13.6 **No Restoration of Deficit Capital Accounts.** At no time shall a Member with a deficit balance in its capital account have any obligation to the Company or to another Member or to any other person to restore such deficit balance.

ARTICLE 14

AMENDMENT OF AGREEMENT

14.1 **Amendment of Agreement.** This Agreement may be amended by the written agreement of all Members.

14.2 **Amendment of Certificate.** If this Agreement shall be amended pursuant to this Article 14, the Manager shall cause the Certificate to be amended, to the extent required by applicable law, to reflect such change. The Manager shall promptly notify the Member of any amendments made under this Section 14.2.

ARTICLE 15

NOTICES

15.1 Any and all notices to be served hereunder shall be in writing and shall be personally delivered, sent by private courier, sent by certified mail, postage prepaid, or sent by facsimile transmission and, if intended for the Company or the Manager, to the Company or the Manager at the address of the principal place of business of the Company set forth herein, or, if intended for a Member, to such Member at the address set forth below such Member's signature on this Agreement, or to such other

address as the Manager, for himself or on behalf of the Company, or a Member may designate from time to time in a written notice served upon the Company and each other Member in accordance herewith. Any notice personally delivered shall be deemed delivered on the date actually delivered. Any notice sent by private courier shall be deemed delivered on the date of delivery or rejection of delivery, as shown on the receipt for delivery. Any notice sent by mail as provided above shall be deemed delivered on the third (3rd) business day next following the postmark date which it bears.

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 **Severability**. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected.

16.2 **Parties Bound**. Any Person acquiring or claiming an interest in the Company, in any manner whatsoever, shall be subject to and bound by all terms, conditions and obligations of this Agreement to which his or its predecessor in interest was subject or bound, without regard to whether such Person has executed a counterpart hereof or any other document contemplated hereby. No Person, including the legal representative, heir or legatee of a deceased Member, shall have any rights or obligations greater than those set forth in this Agreement and no Person shall acquire an interest in the Company or become a Member thereof except as permitted by the terms of this Agreement. This Agreement shall be binding upon the parties hereto, their successors, heirs, devisees, assigns, legal representatives, executors and administrators.

16.3 **Applicable Law**. The Company and this Agreement shall be governed by the laws of the State of Delaware.

16.4 **Additional Documents and Acts**. In connection with this Agreement as well as all transactions contemplated by this Agreement, each party hereto shall execute and deliver such additional documents and instruments, and perform such additional acts, as any other party hereto may reasonably deem necessary or desirable from time to time to effectuate, perform and evidence all of the terms, provisions and conditions of this Agreement and all such transactions.

16.5 **Benefit**. Nothing contained herein, express or implied, is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

16.6 **Waiver**. The failure to insist upon strict enforcement of any of the provisions of this Agreement or of any agreement or instrument delivered pursuant hereto shall not be deemed or construed to be a waiver of any such provision, nor to in any way affect the validity of this Agreement or any agreement or instrument delivered pursuant hereto or any provision hereof or the right of any party hereto to thereafter enforce each and every provision of this Agreement and each agreement and instrument delivered pursuant hereto. No waiver of any breach of any of the provisions of this Agreement or any agreement or instrument delivered pursuant hereto shall be effective unless set forth in a written instrument executed by the party against which enforcement of such waiver is sought, and no waiver of any such breach shall be construed or deemed to be a

waiver of any other or subsequent breach.

16.7 **Survival**. The representations, warranties and covenants of the Members contained herein or in any agreement or instrument delivered pursuant hereto shall survive the consummation of the transactions contemplated hereby and shall not be affected by any investigation which may have been made by any of the parties hereto.

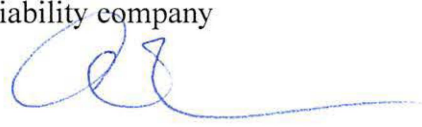
16.8 **Headings**. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision.

16.9 **Counterparts**. This Agreement may be executed in multiple counterparts with separate signature pages, each such counterpart shall be considered an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first set forth above, agrees to be bound by this Agreement, swears that the statements set forth herein are true and correct and the sole Member confirms its agreement to become the Member of the Company.

MEMBER:

410 WEST 207TH HOLDINGS LLC, a Delaware limited liability company


By: 
Name: Andrew Zlotnick
Title: Authorized Signatory

Address: 111 Eighth Avenue, Suite 1500
New York, New York 10011

COMPANY:

INWOOD LOT 9 ASSOCIATES LLC, a Delaware limited liability company

By: 410 WEST 207TH HOLDINGS LLC, Delaware limited liability company, its Manager

By: 
Name: Andrew Zlotnick
Title: Authorized Signatory

Address: 111 Eighth Avenue, Suite 1500
New York, New York 10011

EXHIBIT B

OPERATING AGREEMENT OF THE COMPANY